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First Island Trustees Ltd v M

Jurisdiction:	Jersey
Judge:	The Deputy Bailiff
Judgment Date:	25 July 2006
Neutral Citation:	[2006] JRC 105A
Reported In:	[2006] JRC 105A
Court:	Royal Court
Date:	25 July 2006

vLex Document Id: VLEX-793087261

Link: <https://justis.vlex.com/vid/first-island-trustees-ltd-793087261>

Text

[2006] JRC 105A

ROYAL COURT

(Family Division)

Before:

M. C. St. J. Birt, **Esq.**, Deputy Bailiff, **and** Jurats Georgelin **and** King.

In the Matter of the Representation of First Island Trustees Limited
And in the Matter of the Avalon Trust
And in the Matter of Articles 51 And 53 of the Trusts (Jersey) Law 1984, as Amended

Advocate M. H. Temple for First Island Trustees Limited.

Advocate J. M. P. Gleeson for the minor and unborn beneficiaries.

Advocate L. K. A. Richardson on behalf of the wife

Authorities

Rabaiotti [\[2000\] JLR 173](#).

The Deputy Bailiff

- 1 This is a Representation by First Island Trustees Limited as trustee of the Avalon Trust, which is a discretionary trust governed by the law of Jersey, established on 3rd April, 1995, by OK as settlor. The class of beneficiaries comprise the settlor herself; her son D; D's wife MI; D's three children M, T and B and any other issue of D and MI. The only other currently living issue are the four children of B, three of whom are over 18 and one of whom is 15.
- 2 Advocate Gleeson has been appointed to represent the minor and unascertained beneficiaries of the Trust.
- 3 I propose to refer to the beneficiaries by their first names for convenience, but intend no disrespect by this. MI has died, but the remaining beneficiaries are all still living.
- 4 So far the trust assets have essentially been conserved in the Trust. They were initially provided by the settlor and the only distributions, apparently, have been £30,000 to D and his wife in 1996, and £50,000 to T in March 2000.
- 5 M is now involved in divorce proceedings in England, as part of those proceedings the Family Division of the High Court has made an order requiring M to produce documents in relation to the Trust. M, apparently, does not have any such documents and accordingly has requested the Trustee to provide him with such documents so that he may, in turn, comply with the order of the Family Division.
- 6 The Trustee is minded to comply with M's request in part and seeks the Court's approval to the course of action which it proposes to take. The documents requested can be considered under three categories.
- 7 In the first place there are documents such as the accounts of the Trust, the Trust Deed and any supplemental Deeds of Appointment and details of distributions which have been made. These are clearly documents which, in accordance with the decision in *Rabaiotti* [\[2000\] JLR 173](#), a beneficiary is normally to be provided with unless there is good reason not to do so.
- 8 In our judgment far from there being good reason not to provide M with such documents, there is good reason to do so. Even accepting that M has only asked for these documents so that he may provide them to his wife (who is not a beneficiary of the Trust) and the

English Court, it seems to us to be in his interests and the interests of justice generally that the English Court should be made aware of the financial position of the Trust and the extent, if any, to which M has benefited from it in the past.

- 9 The second category of document relates to the Letter of Wishes and any earlier drafts of the Letter of Wishes. As the Court stated in *Rabaiotti* the starting point in relation to Letters of Wishes is that they are confidential between the settlor and the trustee. A particular reason is therefore required as to why, in a particular case, it is appropriate to disclose the Letter of Wishes to a beneficiary.
- 10 In our judgment there is in this case good reason, for much the same reason as appeared in *Rabaiotti* itself. M's wife is in possession of an earlier draft of the Letter of Wishes. It seems to us, in principle, undesirable that the English Court should be invited to proceed on the basis of a document which is not the same as the final Letter of Wishes. There is a risk in such circumstances that the English Court will draw or make assumptions which are not in fact correct.
- 11 We think it preferable that the English Court should see the actual Letter of Wishes so that it can form a more accurate assessment of the level of benefit which M might possibly receive from the Trust in due course, although of course one always has to bear in mind that a letter of wishes is just that.
- 12 We therefore agree that the Trustee should disclose the Letter of Wishes.
- 13 The request from the Trustee is that it should also disclose all drafts of the same. When the Court made enquiries about this it was informed that in fact there are no drafts on the Trustee's records; the only draft Letter of Wishes which is in its possession is that which has been sent to it by M, having obtained it from his wife. In the circumstances we do not think it right to order disclosure of any drafts. There are none and in principle it would seem wrong in any event to disclose draft Letters of Wishes to a beneficiary; all that is of importance is the Letter of Wishes as signed by the settlor.
- 14 Finally M seeks a number of other documents in order to comply with the English Order. He has asked for copies of all correspondence between himself and/or other beneficiaries and the Trustee relating to the Trust, and any correspondence relating to investment strategies discussed between M, his brothers and sister and other members of the family and the Trustee.
- 15 We agree that it is reasonable to provide M with any correspondence between him and the Trustee and we make such an order, although we are informed that, as far as the Trustee is aware without double checking its files, there has not been any such correspondence, save recent correspondence with his lawyer.

- 16 But, in our judgment, to order disclosure of correspondence with other beneficiaries goes beyond what is required to give a full and fair picture of the Trust's assets and the benefits which may accrue to M in due course, which is what is necessary for the English High Court. M is simply one of a number of beneficiaries of the Trust and the other beneficiaries, although resting on the wisdom of the Court formally before us today, have in the past indicated in correspondence that they are not happy with Trust information being disclosed to M simply so that he may pass it on to his wife. Beneficiaries expect a certain confidentiality from their trustee and in relation to their Trust's affairs and would not expect information about their Trust to be disclosed to non-beneficiaries unless there is good reason for doing so.
- 17 For the reasons we have given we do not consider that there is a pressing need for this information to be given to M's wife and the English Court and it seems to us that the balance comes down in favour of refusing the request. Accordingly we make an order for disclosure of the first two categories of document, as we have described them, but we refuse permission to the Trustee to give disclosure of the third category. The terms of what we propose to do will be reflected in more detail in the final Court order.
- 18 On costs we order that the Trustee's costs and Advocate Gleeson's costs come out of the trust fund on an indemnity basis.