

# Herald Trustees Ltd v D

<b>Jurisdiction:</b>	Jersey
<b>Judge:</b>	J. A. Clyde-Smith, Jurats Blampied, Pitman
<b>Judgment Date:</b>	13 May 2019
<b>Neutral Citation:</b>	[2019] JRC 86
<b>Date:</b>	13 May 2019
<b>Court:</b>	Royal Court

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## Text

[2019] JRC 86

Royal Court

(Samedi)

Before:

J. A. Clyde-Smith, **Esq., Commissioner, and** Jurats Blampied **and** Pitman.

In The Matter of the Q Settlement

And

In the Matter of Article 51 of the Trusts (Jersey) law 1984

Between  
Herald Trustees Limited  
Representor  
and  
D

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First Respondent

and

C

Second Respondent

and

E

Third Respondent

and

F

Fourth Respondent

and

G (on her own behalf and as guardian ad litem on behalf of A)

Fifth Respondent

and

H (together “the L beneficiaries”)

Sixth Respondent

and

I

Seventh Respondent

and

J

Eighth Respondent

and

K (together “the M beneficiaries”)

Ninth Respondent

and

CRYS Finance SA

Third Party

**Advocate J. M. Sheedy for the Representer.**

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**Authorities**

Security Interests (Jersey) Law 2012.

Trust — shares — costs.

**THE COMMISSIONER:**

- 1 On 24<sup>th</sup> April, 2019, the Court granted the Representor, Herald Trustees Limited, orders enabling it to enforce its security over the shares in R, a company incorporated in Jersey.
- 2 The background is set out in the Court's judgment of 26<sup>th</sup> March, 2019, which we will not set out again and which should be taken as read. In that judgment, the Court:—
  - (i) determined that the L (as defined) were jointly and separately liable to Herald Trustees Limited under the agreement recited in the Act of Court of the 8<sup>th</sup> May, 2014, in the sum of £574,465.83p, being the amount due as at 23<sup>rd</sup> May 2014;
  - (ii) left over Herald Trustee Limited's claim for further sums due as from 23<sup>rd</sup> May, 2014;
  - (iii) joined CRY5 Finance SA ("CRY5") to the proceedings; and
  - (iv) determined that the sum of £574,465.83p is a liability of the L which has not been paid by them and which is secured under the specific security agreement dated 22<sup>nd</sup> May, 2014, within the definition of 'Secure Liabilities' ("the Security Interest"), the Security Interest being registered in the register maintained by the Registrar of Companies under the Security Interests (Jersey) Law 2012.
- 3 The terms of the Security Agreement contained the following provisions in relation to the jurisdiction of this Court:—

*"17 GOVERNING LAW, JURISDICTION AND WAIVER OF IMMUNITY*

*17.1 Governing law*

*This Agreement is governed by, and is to be construed in accordance with, Jersey Law.*

*17.2 Jurisdiction*

*(a) The courts of Jersey have jurisdiction to settle any dispute or claim arising under or in connection with this Agreement and [CRY5] irrevocably submits to the jurisdiction of those courts.*

(b) ....

*(c) [CRYS] unconditionally agrees that a judgment in any proceedings brought in any court referred to in this Clause 17 will be conclusive and binding on [CRYS] and may be enforced in the courts of any other jurisdiction.”*

- 4 Furthermore, pursuant to Clause 18 of the Specific Security Agreement, CRYs irrevocably appointed Mourant Ozannes (for the attention of Advocate Bruce Lincoln) as its agent for service of process in any proceedings before the Jersey courts in connection with the Security Agreement.
- 5 Pursuant to Clause 9 of the Security Agreement, Herald Trustees Limited irrevocably delegated its rights under that Agreement to JTC (Jersey) Limited (“JTC”) and notice of that delegation was sent to FF, the adviser to the L, on 6<sup>th</sup> February, 2019, in both English and Spanish.
- 6 On 15<sup>th</sup> March, 2019, JTC had served upon CRYs at its registered office in Geneva and delivered to Advocate Lincoln, a notice of event of default under the Security Agreement and requiring CRYs to execute and return an enclosed share transfer in relation to the shares in R.
- 7 The summons was issued on 26<sup>th</sup> March, 2019, and served upon Advocate Lincoln. FF responded in writing (in English) to the Court on 22<sup>nd</sup> April, 2019, saying in summary that:-

(i) He was a director of CRYs;

(ii) He did not know the English language;

(iii) The L had no right or participation in CRYs;

(iv) The Court's judgment of 26<sup>th</sup> March, 2019, had been issued without hearing CRYs;

(v) Herald Trustees Limited had given CRYs the shares in R “*poisoned by the poor management*” prior to determination of the Q Trust;

(vi) When accepting and signing the Security Agreement, he had been told that it covered solely and exclusively the liabilities of Mr Bruce Ferguson (a director of Herald Trustees Limited), and the fees of Spanish lawyers for the judicial proceedings initiated against Mr Ferguson in Spain that could not be quantified at the time of the termination;

(vii) CRYs had paid all the fees for the defence of Mr Ferguson in Spain, as agreed;

(viii) The L had offered a payment of shares in underlying assets in Spain amounting to €800,000, which was rejected;

(ix) The sums claimed were not covered by the Act of Court of 8<sup>th</sup> May, 2014, as they were generated subsequently; and finally

(x) That the fees should be claimed in the Spanish courts, where the L reside.

- 8 Under the circumstances, CRYs denied the claims of Herald Trustees Limited, and alleged that they had been made by way of procedural fraud, with this Court being deceived. It said that legal process would be commenced in the corresponding jurisdiction, which is presumably a reference to Spain. Finally, CRYs made this request from the Court:-

*“REQUEST from the REAL COURT OF JERSEY a Resolution by which:*

*I. DISCLAIM the claims of HERALD TRUSTEES LIMITED to appropriate all the shares of R, as they are unfair and unjustified claims.*

*II. REQUIRE HERALD TRUSTEES LIMITED to accept, in payment of its fees, shares of the Spanish underlying for a maximum amount of €800,000 – taking as a value of those shares the value applied by HERALD TRUSTEES LIMITED in the liquidation of the Q Trust.”*

- 9 This last request appeared to be a recognition by CRYs of the debt owed by the L, but requiring Herald Trustees Limited to accept certain non-specified assets in Spain at a value apparently applied to those assets by Herald Trustees Limited when the Q Trust was terminated.
- 10 We would observe in passing that we doubt the suggestion that the L have no interest in CRYs. This was the company put forward by them to receive their share of the trust fund when the Q Settlement was terminated and their advisor FF, who has represented the L throughout, is a director.
- 11 Despite filing this document, CRYs did not appear at the hearing on 24<sup>th</sup> April, 2019, the date fixed in the summons served upon it.
- 12 The amount due by the L has already been determined by this Court on 26<sup>th</sup> March, 2019, at £574,465.83p, at least, and the summons for those proceedings had been served upon the L through Advocate Lincoln, who confirmed that it had been forwarded to FF, who has represented the L throughout (see paragraph 14 of the judgment of 26<sup>th</sup> March, 2019.)
- 13 The L did not attend the hearing on 21<sup>st</sup> February, 2019, that led to that judgment and have not appealed it. There can be no question, therefore, as to the indebtedness of the L

to Herald Trustees Limited, a debt which has not been paid and which is secured by CRY5 under the terms of the Security Agreement. A notice of default under the Security Agreement has been duly served on CRY5.

- 14 CRY5 has elected not to appear before this Court, when it had irrevocably agreed to accept its jurisdiction. Its denial of the debt owed by the L cannot stand in the face of the judgment of the Court of 26<sup>th</sup> March, 2019, and there was no doubt in the mind of the Court that Herald Trustees Limited was entitled now to enforce its security over the shares in R.
- 15 The Court has very wide powers to facilitate the realisation of collateral under the provisions of Article 52 of the Security Interest (Jersey) Law 2012, which is in these terms:-

***“52 Court may facilitate realization of collateral***

***The Royal Court may, on application by the secured party when an event of default occurs in relation to a security agreement, make any of the following orders if it appears to the Court reasonably necessary to do so in order to make it possible or practicable for the secured party to exercise his or her rights under this Part –***

- (a) an order for delivery of collateral to the secured party;***
- (b) an order transferring collateral into the name of the secured party;***
- (c) an order vesting title to the collateral in the secured party free of the right of redemption or reinstatement under Article 54;***
- (d) an order enforcing an instruction given under Article 43(2)(c)(iii);***
- (e) any other order .***

- 16 In our view this gives the Court the jurisdiction to instruct the Viscount to execute the necessary share transfer form from CRY5 to Herald Trustees Limited.

- 17 In the premises, the Court made the following orders:-

- (i) That CRY5 transfers title to the shares in R into the name of Herald Trustees Limited forthwith.
- (ii) If CRY5 does not comply within five days of being notified of the order, the Court authorised the Viscount to execute the share transfer form to transfer the shares from CRY5 to Herald Trustees Limited.

- 18 Finally, the Court ordered CRY5 to pay the costs and expenses of Herald Trustees Limited in connection with this application on the indemnity basis, pursuant to its contractual

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obligation under Clause 12 of the Security Agreement.