

Rathbone and Anor v Mauleverer and Ors

Jurisdiction:	Jersey
Judge:	J. A. Clyde-Smith, Jurats Bullen, Morgan
Judgment Date:	18 February 2008
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Text

[2008] JRC 23

ROYAL COURT

(Samedi Division)

Before:

J. A. Clyde-Smith, **Esq., Commissioner and** Jurats Bullen **and** Morgan.

In the matter of the Scimitar Settlement

Between

(1) Rathbone Trustees Jersey Limited

(2) Lex Trust Company (BVI) Limited

Representors

and

(1) Lionel Rex Dupre Mauleverer

(2) Global Trading Co. (Jersey) Limited

(3) Global Trust Services (Jersey) Limited

(4) Global Sales and Service (Jersey) Limited
Respondents

Advocate J. M. P. Gleeson for the Representors.

The First Respondent in person and on behalf of the Second, Third and Fourth Respondents.

Authorities

Rathbone Fiduciaries Jersey Limited v Mauleverer and Ors [\[2007\] JRC 016](#).

Financial Services Law 1998.

THE COMMISSIONER:

- 1 On 24th January 2007 this Court in giving its judgment in the case of *Rathbone Fiduciaries Jersey Limited v Mauleverer and Ors* [\[2007\] JRC 016](#) expressed profound regret that the Representor in that case (one of the Rathbone group of companies) had to bring a very straight forward matter to the Court, which due to the irrational and intransigent stance of the First Respondent (“Mr Mauleverer”), it had been unable to resolve after five years of correspondence.
- 2 In this case Rathbone Trustees Jersey Limited (another company in the Rathbone group) and Lex Trust (BVI) Limited have brought before the Court an equally straightforward matter involving Mr Mauleverer that should never have required the intervention of the Court.
- 3 The Court granted the prayer of the representation when it heard the matter on 6th December 2007, but in acknowledgment of the work put into the application by both sides we said that we would give our reasons in writing.
- 4 The general background of this matter and in particular the relationship between Rathbone and Mr Mauleverer is set out in the Judgment of the Court in *Rathbone Fiduciaries Jersey Limited v Mauleverer* and we will not repeat what is said in that Judgment in this respect, other than to summarise the background briefly.
- 5 Mr Mauleverer controls the Global Group of Companies, namely the Second to Fourth Respondents (“the Global Companies”), which historically acted as co-trustee on a number of trusts with the corporate trustee owned by Nigel Harris Trust Company Limited namely Lex Trust Company Limited (which is in no way connected with the joint representor Lex Trust Company (BVI) Limited). The trust business of Nigel Harris Trust Company Limited was acquired by Rathbone Brothers Plc in March 2000, and the corporate trustee changed

its name to "Rathbone Trustees Jersey) Limited".

- 6 At the same time all trust company businesses in the Island were having to decide whether to apply for registration under the Financial Services (Jersey) Law 1998 if they wished to continue in those businesses. The Global Companies elected not to apply and therefore had to cease trust company business by 1st February 2001.
- 7 Rathbone Trustees Jersey Limited ("Rathbone Trust") and the third respondent Global Trust Services (Jersey) Limited ("Global Trust") were joint trustees of the Scimitar Settlement created by declaration dated 16th September 1991.
- 8 The assets of the Scimitar Settlement included the beneficial ownership of two Jersey incorporated companies namely ComData Limited ("ComData") and Staghorn Investments Limited ("Staghorn").
- 9 ComData and Staghorn had their registered offices at the home of Mr Mauleverer (from where the Global Companies carried on business) namely GuysCliffe House, St Brelade's Bay, Jersey, and their one hundred issued shares were held in each case as follows:

The directors were Mr Mauleverer and a Mr Ted Talbot and a Mr Guy Hickson (associates of Mr Mauleverer).

(i) Global Trust as to 3 shares (as nominee).

(ii) The fourth respondent Global Sales and Service (Jersey) Limited as to 3 shares (as nominee).

(iii) The second respondent Global Trading Co. (Jersey) Limited as to 3 shares (as nominee).

(iv) Global Trust and Rathbone Trust jointly as to 91 shares (as co-trustees) with Global Trust being the first-named in the register.

The Facts

- 10 The facts are as follows:

(i) Because it had to cease trust company business, Global Trust resigned as trustee of the Scimitar Settlement on 31st January 2001 leaving Rathbone Trust as the sole trustee. It executed and delivered to Rathbone Trust transfer forms in favour of Rathbone Trust in relation to the issued shares of ComData and Staghorn executed by itself and the other Global companies.

(ii) For the same reason the other two directors resigned as directors of ComData and Staghorn with effect from the 26th January 2001. Mr Mauleverer resigned by notice dated 31st January 2001. On the same date Global Trust also resigned as secretary of the two companies. They were thus left on the 31st January 2001 with no officers.

(iii) On the 31st October 2002 Rathbone Trust retired as trustee of the Scimitar Settlement in favour of Lex Trust Company (BVI) Limited ("Lex BVI") which was administered from Switzerland.

(iv) Lex BVI engaged Garfield-Bennett Trust Company Limited in Jersey ("Garfield-Bennett") to provide the registered office for ComData and Staghorn and requested that Russ Van Vleck Bradley and Catherine Biner Bradley both of Lex BVI ("Mr and Mrs Bradley") be appointed as directors.

(v) The share transfers executed by the Global Companies in favour of Rathbone Trustee could not be actioned without an appropriate resolution of the directors of ComData and Staghorn and there were no directors in office to do this.

(vi) What was required was for the Global Companies (and Rathbone Trustee in relation to its joint holding), as registered shareholders, to appoint Mr and Mrs Bradley as directors so that they could then approve the transfer of the shares out of the name of the Global Companies into the name of Rathbone Trustee (and thence to Lex BVI) and generally take over the conduct of the business of the two companies. Written resolutions of the shareholders to this effect were provided by Lex BVI to Mr Mauleverer on 26th February 2003.

(vii) For reasons which may never be entirely clear but connected no doubt to the personal relationship between Mr Mauleverer and Rathbone, the Global Companies refused or neglected to sign the resolutions appointing the new directors; hence the need ultimately for this representation.

11 The Court had no hesitation in ordering the Global Companies to execute, and Mr Mauleverer to procure that they execute, the shareholder resolutions appointing Mr and Mrs Bradley as directors of ComData and Staghorn within seven days failing which the Viscount was authorised and directed to execute them. We trust that this has now been achieved. It should not have been necessary for the Court to have ordered their execution. The Global Companies held the shares in ComData and Staghorn as bare trustee or nominee for Lex BVI in its capacity as trustee of the Scimitar Settlement. Although we were not shown any declarations of trust that may have been executed by the Global Companies, they were under a duty in law to exercise their powers as registered shareholders in the interests of the trustee of the Scimitar Settlement and were under a clear obligation to appoint the new directors when requested by Lex BVI to do so. It was a serious matter for the Global Companies to refuse or neglect to exercise their powers as requested and to leave ComData and Staghorn without directors and rudderless for such a long period.

Explanation for Conduct

12 Why did the Global Companies refuse to discharge their clear obligations in law in this way for so long? We are not going to work our way through the extensive correspondence and labyrinthine history. There were two incidents which Mr Mauleverer was entitled to either criticise or take exception to, neither of which excused the failure of the Global Companies to execute the shareholder resolutions:-

(i) **Change of Registered Office.** In March 2003 Garfield-Bennett submitted a notice of change of registered office of ComData and Staghorn to the Jersey Financial Services Commission ("the Commission") which read as follows:

"The Directors of this Company resolved on the 3rd March that the Registered Office of the Company be changed to CTV House, La Pouquelaye, St Helier, Jersey JE2 3GF [the office of Garfield-Bennett],".

This was done under pressure to deal with the filing of the annual return for the companies and on the erroneous assumption that Mr and Mrs Bradley had been appointed directors – indeed Garfield-Bennett had been sent draft minutes of the directors dealing with this and other matters. In fact, because the Global Companies had refused to sign the shareholder resolutions appointing Mr and Mrs Bradley as directors, there were no directors and no resolution to change the Registered Office.

In September 2003 Mr Mauleverer procured from the Commission a formal certificate which confirmed *inter alia* that the registered office of the companies was at CTV House. Armed with this, Mr Mauleverer argued that for the registered office to have changed, as certified by the Commission, the companies clearly had directors which, as they had not been appointed by the Global Companies, must have been appointed by Rathbone Trustee. This meant that the shares must have been transferred out of the name of Global Companies, which precluded them therefore from signing as shareholders the resolutions appointing new directors. He further argued that the Director General of the Commission, in asking him to procure the signing of the shareholder resolutions, was inciting him to commit fraud. Subsequently he asserted that the confirmations given by the Commission in these certificates were false and indeed went so far as inserting a notice in the Jersey Evening Post on 27th November, 2004, asking the public to take notice that the certificates issued by the Commission were false and that the directors did not resolve to change the Registered Office of the companies from GuysCliffe House to CTV House. The notice went on to publicly remind the Commission of its duty to supervise persons registered by it and to take steps to ensure that the Registered Office of the companies was changed without further delay.

(ii) **Execution of Resolutions.** Mr Mauleverer's wife had worked for many years for Nigel Harris Trust Company Limited and subsequently Rathbone and in July 2004, clearly exasperated by the situation, executed the written resolutions appointing Mr and Mrs Bradley as directors on behalf of the Global Companies believing, in good

faith, that she was a director of the Global Companies. On the strength of this Mr and Mrs Bradley met as directors and resolved *inter alia* to approve the transfer of the shares out of the name of the Global Companies into the name of Rathbone Trustee and entries in the share register were made accordingly. In fact it transpired that his wife had retired as a director of the Global Companies on 10th October 2001. On discovering what had happened, Mr Mauleverer made a formal complaint to the police and wrote to the Archbishop of Canterbury, the Minister for Economic Development, Mr Powell of the Commission, and numerous other parties. In due course it was accepted by Rathbone and the Commission that the resolutions signed by Mr Mauleverer's wife were ineffective and accordingly the appointment of Mr and Mrs Bradley as directors and the transfer of the shares were ineffective.

13 In his submissions to the Court, Mr Mauleverer sought to justify the refusal of the Global Companies to sign the resolutions appointing Mr and Mrs Bradley as directors on the following grounds:

(i) That Rathbone Trustee, and not the Global Companies, was the registered shareholder of ComData and Staghorn. For this submission he relied on an extract from the register of members he obtained from Garfield-Bennett on 14th October, 2004, following the signing of the shareholders resolution by Mrs Mauleverer. As we know that resolution was of no effect as she was not a director of the Global Companies at the time. Accordingly the appointment of the directors, the transfer of the shares into the name of Rathbone Trustee and the entry into the register as approved by them were invalid. The Global Companies remain the registered shareholders.

(ii) That new directors of ComData and Staghorn were in fact in office, and, as they had not been appointed by the Global Companies, must have been appointed by new shareholders. For this submission he relied on the notice of the change of registered office which made reference to the directors of the companies having met on 3rd March 2003 and having resolved to change the registered office. However, it is clear that no directors had been appointed and no such meeting had taken place as Mr Mauleverer himself asserted in the formal notice he placed in the Jersey Evening Post on 27th November 2004.

(iii) That, post the resignation of the directors on the 26th January, 2001, and the 31st January 2001, funds had been withdrawn from the bank accounts of the two companies. No evidence was adduced in support of this contention. We have not seen the bank account statements or the bank mandates. Whether or not funds were withdrawn cannot alter the fact that following 31st January 2001 there were no directors of the companies in office.

(iv) That in the past shares in other Jersey companies had been transferred without director approval. This bare contention without full particulars of the circumstances in which this is asserted to have taken place is of no assistance to this court.

(v) That applying the Duomatic principle the shares had in fact been transferred to Rathbone Trustee and therefore the Global Companies again could not execute the shareholder resolution appointing new directors. No authorities were cited to us in relation to this submission. As we understand it, the Duomatic principle is that where it can be shown that all the shareholders with the right to attend and vote at a general meeting had assented to some matter which a general meeting of the company could carry into effect, the assent was as binding as a resolution in general meeting. That principle can have no application to the absolute discretion vested in the directors to approve transfers of shares (see paragraphs 38 to 41 of the Judgment of the Court in *Rathbone Fiduciaries Jersey Limited v Mauleverer*).

14 The Court asked Mr Mauleverer whether, if there was a doubt as to the transfer of the shares from the Global Companies to Rathbone Trustee and the appointment of new directors, the Global Companies would be prepared to execute the shareholder resolutions for the avoidance of doubt. He said he would have no objection provided:

(i) We confirmed that in so doing the Global Companies would not be committing an offence; and

(ii) We considered whether it was in the interests of the Island to do so in the context of next years IMF visit. He questioned whether it was in the best interests of the Island and the Commission for the Global Companies to be shown as having been left by the Commission for so long as unlicensed nominee shareholders for Jersey purposes and without “qualified intermediary status” for US purposes.

15 We doubt whether the interests of the Island can be a relevant consideration on an application by trustees seeking to have directors appointed by nominee shareholders to companies they own. In any event the public interest must lie in having those directors appointed so that the business of those companies can be managed. The harm lies in Jersey companies being left without directors.

16 As to the possible commission of an offence, Mr Mauleverer referred us to Article 2 of the Financial Services Law 1998 (“the Law”) which provides that a person carries on trust company business if the person carries on a business that involves the provision of company administration services which includes (under Article 2 (iv) (b)) arranging for another person to act or fulfil the function of a director.

17 Mr Mauleverer's concern is that the act of signing the shareholder resolutions will constitute the carrying on of trust company business for which the Global Companies are not registered under the Law. It is very surprising that Mr Mauleverer should harbour such concerns after the repeated confirmations he has received from the Commission that no offence will be committed and after the judgment of the Royal Court in *Rathbone Fiduciaries Jersey Limited v Mauleverer* where at paragraph 33 the Court said it found it inconceivable that the Commission would prosecute for similar acts.

- 18 As long ago as 1st December 2004 the Director General of the Commission wrote to Mr Mauleverer formally asking him to procure the execution of the shareholder resolutions. Leaving aside other correspondence, on 13th February 2007 Mr Boschhat, the Deputy Director – Securities at the Commission, wrote to Mr Mauleverer confirming that the Commission would not regard any action taken by him or by the Global Companies to cease their involvement with these companies as authorised business for the purpose of the Law.
- 19 We did confirm to Mr Mauleverer that no offence would be committed either by him or by the Global Companies in their complying with the order we gave that the shareholder resolutions appointing new directors should be executed. However no such confirmation was necessary as it is plainly obvious that this is the case.
- 20 As we have said earlier none of the matters put forward by Mr Mauleverer in his oral and written submissions in any way justifies the failure of the Global Companies to exercise their powers as shareholders to appoint new directors, powers which they held as bare trustee or nominee for Lex BVI as trustee of the Scimitar Settlement. Any concern that the exercise of such powers would constitute an offence under the law, if genuinely held, was entirely misplaced – what should have been of concern is their potential liability for any loss caused by their failure to act as requested.
- 21 Once new directors of ComData and Staghorn are appointed, we wish to make it clear that we expect Mr Mauleverer and the Global Companies to cooperate with the directors in:
- (i) handing over to them or their duly appointed agents any documents which are the property of ComData and Staghorn; and
 - (ii) allowing them or their duly appointed agents to inspect any files maintained by the Global Companies in relation to the business and affairs of ComData and Staghorn and to provide copies (at the cost of ComData and Staghorn) of any documents which they properly and reasonably request.

Costs

- 22 In his skeleton argument Mr Gleeson, for the Representors, sought an order for indemnity costs, but at the hearing he was instructed to seek the Representors' costs on the standard basis. Costs fall for the Commissioner to determine and having heard both parties I have no hesitation in ordering Mr Mauleverer and the Global Companies jointly and severally to pay the Representors' costs on the standard basis. The Representors had no option other than to bring these proceedings in order to compel the Global Companies to do what they should have done voluntarily at the outset.