

MackInnon v Regent Trust Company Ltd

Jurisdiction:	Jersey
Judge:	F.C. Hamon, O.B.E.
Judgment Date:	08 April 2005
Neutral Citation:	[2005] JRC 57
Reported In:	[2005] JRC 57
Court:	Royal Court
Date:	08 April 2005

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Text

[2005] JRC 57

ROYAL COURT

Before:

F.C. Hamon, **Esq.**, O.B.E., **Commissioner, sitting alone.**

IN THE MATTER OF

an appeal by the Plaintiff/APPELLANT against the Order of the Royal Court of 6th December, 2004, whereby the Royal Court ordered that certain paragraphs of the Plaintiff/APPELLANT's Order of Justice be struck out as disclosing no reasonable cause of action.

Andrew Kinross MacKinnon
Plaintiff/ APPELLANT
and

The Regent Trust Company Limited
First Defendant/ RESPONDENT

and

Kenneth James MacKinnon
Second Defendant

and

Elizabeth Victoria MacKinnon (née Sharman)
Third Defendant

and

Sebastian James MacKinnon
Fourth Defendant

and

Benjamin Thomas Skok MacKinnon
Fifth Defendant

and

Thomasin Anne Skok MacKinnon
Sixth Defendant

and

Sophie Linda Skok MacKinnon
Seventh Defendant

and

Alistair Kinross MacKinnon
Eighth Defendant

and

Ian James MacKinnon
Ninth Defendant

Advocate N.M. Santos Costa for the Plaintiff/ APPELLANT.

Advocate J.P. Speck for the First Defendant/ RESPONDENT.

Advocate C.G.P. Lakeman for the Second, Third, Eighth and Ninth Defendants.

Advocate M.L. Preston for the Fourth to Seventh Defendants.

No Authorities

Application by the First Defendant/RESPONDENT to approve the provision for Regent Trustees past and future costs, as set down in the Agreement made between the Plaintiff and the First Defendant.

THE COMMISSIONER:

- 1 Our judgment of the 25th April, 2005 has caused a flurry of correspondence and the parties are now before Court again.
- 2 Clause 12 of the Agreement (to which we expressed concern) has now been amended. Although I am sitting alone the learned Jurats have approved the amendments. It is necessary to say that one of the letters that has come before us mentions "perjury". We made no mention of that in the judgment and it was never in the Court's contemplation. The further amendments are underlined and clause 12 (as approved) reads as follows:

"Save that they may do so in any oral or written evidence given in relation to the issues raised in the proceedings commenced by the Order of Justice and in Regent's Representation, Regent and Messrs Pirouet, Schindler and Nutbrown hereby undertake not in the future, in relation to any matter occurring or thing done or not done prior to this agreement becoming unconditional, to impugn the integrity of the Plaintiff in relation to his dealings (including communications) with Regent or with Messrs Pirouet, Schindler and Nutbrown in relation to or in connection with the 1981, 1998 or 1999 Settlements or the assets purportedly settled thereon or otherwise howsoever. Nothing in this paragraph shall prevent Regent or Messrs Pirouet, Schindler and Nutbrown from answering questions raised by, or generally providing information to, James Mackinnon or his advisers reasonably required by him/them in preparation for the hearing of the proceedings commenced by Andrews Mackinnon's Order of Justice and Regent's Representation or in any further proceedings concerning matters of which Regent or Messrs Pirouet, Schindler and Nutbrown have knowledge, including for the avoidance of doubt, any matters connected with the affairs of Mrs Dorothy Emily Sparke Mackinnon"

- 3 I now turn to the question of costs. This was dealt with at paragraphs 36 and 37 of the Judgment. Advocate Lakeman argues that I cannot deal with the case as a re-hearing but in my view that is not the point. We said at paragraph 31:

"..The case, if it comes to Court, will turn on the 'sham' aspect of the trusts".

- 4 Regretfully, in the heated argument that thought was uppermost in the decision. As

Advocate Speck has reminded me, the Court of Appeal hearing is only about the strike out. It appears essential to the Agreement to have included in it the retrospective grants of the indemnity costs order which would have been made had the “integrity” point not arisen. It was always my belief that the Trustee was entitled to indemnity costs and the error is corrected as though the reservation in paragraph 37 had not been made. The Trustee shall have his costs on an indemnity basis. The Act will reflect our decision on the other matters that the parties asked us to confirm. It will be noted that the 6th April 2005 application and this hearing will be on the Standard basis.

- 5 Advocate Lakeman (and all his Partners) cannot be in Court tomorrow. The reasons are known to the Court and all the parties and no point is made. I told Advocate Lakeman that, if he wished to appeal this judgment I would refuse leave to enable him to get more speedily before the Court of Appeal. However no Counsel reminded me of Article 13 of the Court of Appeal (Jersey) Law, 1961 which would preclude an appeal for costs unless leave were given. In the particular circumstance leave is hereby granted.