

# Regent Trust Company

Jurisdiction:	Jersey
Judge:	J. A. Clyde-Smith, Jurats Newcombe, Liddiard
Judgment Date:	10 June 2009
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## Text

[2009] JRC 117

ROYAL COURT

(Samedi Division)

Before:

J. A. Clyde-Smith, **Esq., and** Jurats Newcombe **and** Liddiard.

Between  
The Regent Trust Company Limited  
Representor  
and  
RJD  
HRC  
CWC  
AAC  
AJD  
IAD

HJC  
HC  
  
and  
  
VAC  
Respondents

**Advocate J. Harvey-Hills for the Representor.**

**Advocate M. H. Temple for and on behalf of the minor and unborn beneficiaries.**

### **Authorities**

*Abdel Rahman v Chase Bank (C.I.) Trust Co. Ltd* [\[1991\] JLR 103](#).

*Midland Bank Trust Co. (Jersey) Limited v Federated Pension Services* [\[1995\] JLR 352](#).

Trustee Act 1925, as amended.

Probate (Jersey) Law 1998.

*Landau v Anburn Trustees Limited* [\[2007\] JLR 250](#).

*In re Duke of Norfolk's Settlement Trusts* [\(1982\) Ch 61](#).

Variation of Trusts Act 1958.

*Quorum Trustees v Falle and Vigors* 2002/61.

*Rathbone Trust Company (Jersey) Limited v Kane* [2004] JRC 041.

### **THE COMMISSIONER**

- 1 On 27th May 2009, the Court gave directions to The Regent Trust Company Limited ("Regent") to enable it to be remunerated as trustee of the LRJS ("the settlement") for past and future services in accordance with its scale of fees in force from time to time. We now set out our reasons.
- 2 The settlement was created with a nominal sum on 19th March 1971 by HRBR (the settlor) for the benefit of his children and remoter issue. The balance of the trust fund was derived from an earlier trust made by him. Although governed by Jersey law, the trust deed was prepared by English counsel on the instructions of Withers, who acted for the settlor and this as part of a restructuring of the affairs of the settlor.

- 3 Accounts for the settlement have been provided on a regular basis since 1971 and Regent has charged its fees on its usual basis namely on time spent at its hourly rates from time to time. There has never been any question from either the beneficiaries or their advisers that Regent was not entitled to charge for its services on this basis.
- 4 The trust is substantial and its structure complex in that it is divided into some eight sub-funds reflecting the various interests of the settlor's children and issue.
- 5 During the course of a restructuring carried out in 2008, Regent first became aware of an issue relating to the scope of the charging clauses in the settlement. There are two relevant clauses as follows:-

*Clause 13: "Any Trustee for the time being hereof being a solicitor or other person engaged in any profession or business (but not being the Settlor or any wife or widow of the Settlor) shall be entitled to charge and be paid all usual professional charges for business done by him or her or his or her firm in relation to the trusts hereof and also his or her reasonable charges in addition to disbursements for all other work and business done and all time spent by him or her or his or her firm in connection with matter (sic) arising in the premises including matters which might or should have been attended to in person by a trustee not being a solicitor or other professional person but which such trustee might reasonably require to be done by a solicitor or other professional person and any Trustee hereof being a trust corporation shall be entitled to remuneration for its services as trustee in accordance with its scale of fees in force at the date of its appointment as trustee and may act as banker and transact any banking or allied business on behalf of the trust on the same terms as would be made with a customer in the ordinary course of business and without being liable to account for any profit thereby made."* (Emphasis added)

*Clause 16: "A corporate trustee may be appointed Trustee hereof to act jointly with any other trustee or trustees and any corporate trustee being a trustee hereof shall be entitled to remuneration in accordance with such scale of fees not being a scale higher than that in force at the date of its appointment as the Trustees shall consider reasonable and any corporate trustee for the time being of this Settlement shall have power to act by its proper officers."* (Emphasis added)

- 6 The first part of clause 13 appears to be concerned with individual persons engaged in any profession or business and it is arguable would not extend to a corporate trustee. That is particularly the case when regard is had to the second part of the clause which deals specifically with what it describes as trust corporations. The Jersey courts have used the expression "trust corporation" to describe a normal corporate trustee (see for example *Abdel Rahman v Chase Bank (C.I.) Trust Co. Ltd* [1991] JLR 103 and *Midland Bank Trust Co. (Jersey) Limited v Federated Pension Services* [1995] JLR 352). The expression "trust corporation" is defined in England, where the settlement was drafted, under the Trustee Act 1925, as amended, but Regent would not be considered to be a "trust corporation" in this

sense, because it was not incorporated in the United Kingdom. The only Jersey statutory definition is in the Probate (Jersey) Law 1998 which is irrelevant for these purposes. The problem with the latter part of clause 13 is that it restricts a trust corporation to charging in accordance with its scale of fees in force at the date of its appointment. That would arguably restrict Regent to charging at its 1971 hourly rates for so long as it remained trustee.

- 7 Clause 16 refers to a “corporate trustee” rather than a “trust corporation” and is concerned with the corporate trustee acting jointly with another. It also refers to the trustee charging on the basis of its scale of fees in force at the date of its appointment.
- 8 There is nothing in the contemporaneous documentation to show that the proposed professional fees of Regent were in issue or the subject of any comment or discussion. Clause 13 would appear to have been a standard clause adopted by counsel. The predecessor settlement was a Bahamian trust with a professional trustee, the remuneration provision permitting the trustee to charge at its rate of charging set out in a schedule to that trust, subject to such amendment as may be agreed from time to time by the person or persons having the power to appoint new trustees. That flexibility does not appear to have been transported into the settlement.
- 9 There is no question on the evidence before us that the settlor's intention was to engage the services of a professional trustee who would be remunerated. Remuneration was subsequently charged on a time spent basis at Regent's hourly rates from time to time without question. Restricting any professional trustee charging on this basis to historic charge out rates would render the position of that trustee increasingly untenable and if enforced would have led to the resignation of Regent some considerable time ago. The position is less problematical where the trustee's charges are based on a percentage of the capital of the trust fund but even so the remuneration provisions are inflexible, which may act to the prejudice of the good administration of the settlement as illustrated by the *Duke of Norfolk* case referred to below.

### **Jurisdiction to order remuneration**

- 10 Under Article 26(1) of the Trust (Jersey) Law 1984 (“the Law”), a trustee is not entitled to remuneration unless authorised by the terms of the trust, the consent in writing of all of the beneficiaries or an order of the Court. The Court has power under both Article 26(1)(c) of the Law and under its inherent jurisdiction to allow a trustee to be remunerated where none was provided for in the trust deed. The jurisdiction also extends to increasing or varying the remuneration provided for in the trust deed in respect of past or future services of a trustee (per Birt, Deputy Bailiff, in *Landau v Anburn Trustees Limited* [2007] JLR 250 at paragraph 17). In *Landau*, the Court was referred to *In re Duke of Norfolk's Settlement Trusts* (1982) Ch 61 which confirmed the inherent jurisdiction of the Chancery Division of the High Court to allow a prospective or existing trustee to be remunerated where none was provided for in the trust deed, and which held further that such jurisdiction also extended to increasing or varying the remuneration provided for in the trust deed in respect of past or

future services of a trustee. The Court found that there was no reason to consider the supervisory jurisdiction of this Court to be any narrower than that possessed by the Chancery Division of the English High Court.

- 11 The facts of the *Duke of Norfolk* case are not dissimilar to those we are concerned with here. In that case, the trust deed entitled the corporate trustee to remuneration in accordance with its scale of fees in force at the date that the trust was created, namely 1st April 1958. The scale of fees for the corporate trustee was a fixed percentage of the capital, namely 10p per £100. The evidence before the Court was that this fee was low compared with similar institutions and the new scale proposed of 40p per £100 would still be below that charged by such institutions, especially the Public Trustee.
- 12 The judge at first instance found that whilst he had jurisdiction to authorise additional remuneration for past work outside the scope of any duties which could reasonably have been expected to be rendered by the trustee, he had no inherent jurisdiction to authorise for the future any general increase in the trustee's remuneration.
- 13 The English Court of Appeal rejected the two reasons for suggesting lack of jurisdiction, firstly that the trustee's right to remuneration is based on a contract between a settlor and the trustee which the trustee is not entitled to avoid and secondly, that the right to remuneration is a beneficial interest in the trust property and can only be varied by an order under the Variation of Trusts Act 1958.
- 14 The Court of Appeal described the basis of the jurisdiction as follows:-

***“ The basis, in my view, in relation to a trustee's remuneration is the good administration of trusts.*** The fact that in earlier times, with more stable currencies and with a plenitude of persons with the leisure and resources to take on unremunerated trusteeships, the particular problem of increasing remuneration may not have arisen, does not, in my view, prevent us from concluding that a logical extension of admitted law and which is wholly consistent with the apparent purpose of the jurisdiction is permissible. If the increase of remuneration be beneficial to the trust administration, I do not see any objection to that in principle.

...

***I conclude that the court has an inherent jurisdiction to authorise the payment of remuneration of trustees and that jurisdiction extends to increasing the remuneration authorised by the trust instrument.*** In exercising that jurisdiction the court has to balance two influences which are to some extent in conflict. The first is that the office of trustee is, as such, gratuitous; the court will accordingly be careful to protect the interests of the beneficiaries against claims by the trustees. The second is that it is of great importance to the beneficiaries that the trust should be well administered. If

therefore the court concludes, having regard to the nature of the trust, the experience and skill of a particular trustee and to the amounts which he seeks to charge when compared with what other trustees might require to be paid for their services and to all the other circumstances of the case, that it would be in the interests of the beneficiaries to increase the remuneration, then the court may properly do so.”

- 15 The Jersey courts have recognised the importance of trusts being professionally managed and administered by those with the appropriate skills (see *Quorum Trustees v Falle and Vigors 2002/61* at paragraph 9), and that it is unrealistic to suggest that professional trustees will provide their services without remuneration (see *Rathbone Trust Company (Jersey) Limited v Kane* [2004] JRC 041 at paragraph 28).
- 16 All of the adult beneficiaries and Mr Temple, representing the minor and unborn beneficiaries supported the application. Appropriately there was no suggestion that the beneficiaries should try and seek a windfall profit by clawing back historic fees charged by Regent in good faith (see *Landau* at paragraph 21). We had no difficulty in concluding that in the circumstances of this settlement, it was in the interests of the beneficiaries that Regent should be properly remunerated for both past and future services.
- 17 We therefore directed Regent to retain the fees it had charged historically and authorised it and any successor trustee of the settlement or any part of it to collect or deduct remuneration in future in accordance with the terms and conditions and schedules of fees and charges of Regent or any successor trustee in place from time to time. For the avoidance of doubt, we made it clear that these directions were without prejudice to the right any beneficiary of the settlement may have as a matter of law to challenge the reasonableness of the trustee's remuneration but any such challenge cannot be made on the ground that the trustee is or was not entitled under the trust deed to charge remuneration in accordance with its scale of fees and/or terms and conditions and fees in force from time to time.