Tanya Marya Dick Stock v G.B. Trustees Ltd

Jurisdiction:	Jersey
Judge:	T. J. Le Cocq
Judgment Date:	10 April 2019
Neutral Citation:	[2019] JRC 64
Date:	10 April 2019
Court:	Royal Court

Text

[2019] JRC 64

Royal Court

(Samedi)

Before:

T. J. Le Cocq, **Esq., Deputy Bailiff, sitting alone**.

Between
Tanya Marya Dick Stock
Representor
and
(1) G.B. Trustees Limited
Respondents
(2) John William Dick II
(3) Advocate H. Sharp QC (acting for minor and unborn beneficiaries)
(4) John William Dick

Advocate S. J. Alexander **for the Representor**.

Advocate M. L. Preston **for the First Respondent**.

Advocate D. Evans **for the Second Respondent**.

Advocate H. Sharp **QC, appeared in person for the Third Respondent the minor and unborn beneficiaries**.

Advocate D. P. Le Maistre **for the Fourth Respondent**.

Authorities

Cummins -v- Howlands (Furniture) Limited [2014] JRC 165.

Worldwide Corporation Ltd -v- GPT Ltd unreported 2nd December 1998.

Quah -v- Goldman Sachs International [2015] EWHC 759 (Comm).

States Greffier v Les Pas Holdings Limited [1998] JLR 3A

Trust — an application for an adjournment.

THE DEPUTY BAILIFF:

1 By representation dated 31 st May, 2018, ("the Representation") Tanya Marya Dick Stock ("the Representor") applied to the Court to remove GB Trustees Limited ("the First Respondent") as the trustees of the Manor House Trust and the Russian Trust of which the Representor is a beneficiary.

2 John William Dick II ("the Second Respondent") and the minor and unborn beneficiaries represented by Advocate Howard Sharp QC ("the Third Respondent") are beneficiaries of those trusts. John William Dick ("the Fourth Respondent") is described in the Representation as the economic settlor of certain of his property into the trusts.

3 All of the Respondents oppose the Representor's application and wish the First Respondent to remain as trustee of the two trusts.

4 The Representation was preceded by substantial correspondence which, specifically, originated in a detailed letter of complaint dated 20 th April, 2018, ("the April 2018 letter") in which the Representor's then advocates requested that the First Respondent resign as trustee in favour of a named trust company. The summary of the complaints set out in the April 2018 letter included that the First Respondent charged and incurred unreasonable fees, allowed an excluded person (specifically the Fourth Respondent) to benefit from the

trusts; remained as trustee notwithstanding it being a position of conflict; failed to preserve the trust assets; failed to act in good faith and in the best interests of the Representor and had in effect, undermined the trustee/beneficiary relationship so as to make administration of the trusts impossible.

5 The hearing of the Representation was scheduled to take place in December 2018. Shortly before those proceedings were to start the Representor's then legal advisers, Messrs Carey Olsen, ceased to act for her. She instructed her current legal advisers who made an application to vacate the dates set aside for the hearing of the Representation. The Court, with reluctance, acceded to that request and the Representation has been re-scheduled for four days commencing 15 th April, 2019.

6 By summons dated March 2019 entitled “Summons for Directions” the Representor seeks a number of orders from the Court including permission to file and serve an amended Representation, supplemental affidavit evidence, supplemental skeleton arguments and to apply to the Bailiff's Judicial Secretary to fix a new date for trial for the first available date in the week commencing 18 th November, 2019, with a trial estimate of four days. It is clear, therefore, that this is in effect an application to adjourn the trial dates and to seek supplemental directions to enable the Representor to re-plead her case and to file presumably substantial further evidence. Indeed, Advocate Alexander, for the Representor, quite frankly tells the Court that in the event that the Representor's application is refused, she may very well withdraw the Representation and start proceedings afresh which would, he submits, be wasteful of costs. The Representor accepts that she will need to pay the costs of the present application in any event.

7 The Representor's application to adjourn the hearing dates is resisted by all of the Respondents.

The Law

8 The principles applicable to an application to adjourn trial dates are usefully summarised in the judgment of the Master of the case of *Cummins -v- Howlands (Furniture) Limited* [2014] JRC 165 where, at paragraphs 12 and 13, the Master said:—

> ***“12. Having rejected the third party's application to intervene on grounds of liability, which would have led to an adjournment of the trial dates in any event, I then considered the plaintiff's application for an adjournment. The relevant factors for an application for an adjournment of a trial were considered by the Royal Court in*** *T.S. Engineering Limited v Bisson* [1996] JLR N 3b ***and*** *States Greffier v Les Pas Holdings Limited* [1998] JLR 3A. ***The reported note of*** *T.S. Engineering* ***states as follows:-***
>
> > ***“ADJOURNMENT—adjournment—factors to be considered***

In considering whether to adjourn the trial or hearing of any proceedings under r.8/5 of the Royal Court Rules 1992, the following matters should be taken into account: the importance of the proceedings and their likely adverse consequences to the party seeking the adjournment; the risk that that party may be prejudiced in the conduct of the proceedings if the application to adjourn is refused; the risk of prejudice or other disadvantage to the other party if it is granted; the convenience of the court; the interests of justice generally in the efficient dispatch of court business; the desirability of not delaying future litigants by adjourning early and thus leaving the court empty; and the extent to which the party seeking the adjournment has been responsible for creating the difficulty which has led to the application (The Supreme Court Practice 1995, 4th Cum. Supp., para. 35/3/1, at 51, considered)."

13. The note of Les Pas Holdings is as follows:-

"ADJOURNMENT—factors to be considered

In deciding whether to grant an adjournment, the court should consider the following factors: the importance and probable adverse consequences of the proceedings to the party seeking the adjournment; the risk of that party's being prejudiced in his conduct of the proceedings if the application is refused; the risk of prejudice to the other party if the application is granted; the convenience of the court; the interests of justice generally in the efficient dispatch of court business; the desirability of not delaying future litigants by adjourning early and thus leaving the court empty; and the extent to which the party seeking adjournment is responsible for creating the difficulty leading to his application. The party must be allowed adequate time to present his case; however, the potential prejudice to the parties and to the public interest must be balanced. The power to adjourn should be exercised with great care and only when there is a real risk of serious prejudice which may lead to injustice: in practice, this test is difficult to satisfy (1 The Supreme Court Practice 1997, para. 35/3/1, at 617, applied; de Smith, Woolf & Jowell, Judicial Review of Administrative Action, 5th ed., para. 9–05, at 448–449 (1995), considered; *R. v. Thames Magistrates' Ct., ex p. Polemis*, [1974] 1 W.L.R. 1371, ***dicta of Lord Widgery, C.J. considered;*** *R. v. Panel on Take-overs & Mergers, ex p. Guinness PLC*, [1990] 1 Q.B. 146, ***dicta of Lord Donaldson, M.R. considered).***""

9 In addition, the First Respondent drew my attention to a number of English cases including the cases of *Worldwide Corporation Ltd -v- GPT Ltd* unreported 2nd December 1998 and *Quah -v- Goldman Sachs International* [2015] EWHC 759 (Comm).

10 In *Worldwide Corporation Ltd* the Court of Appeal of England and Wales dealt with an application for leave to appeal against the refusal by a trial judge to permit an amendment to points of claim during the course of the trial. At page 3 of the judgment the Court characterised the application in part before it by saying:—

> ***"It was not suggested that the cause of the proposed amendment was the discovery of some fact previously unknown or some change in the law as it had previously been thought to be, but simply that leading counsel to whom a brief had recently been delivered felt that part of the case as previously pleaded would fail, and that he felt that the case as sought to be put by amendment was the only arguable basis on which it could be put."***

11 At page 6 of the judgment the Court said:-

> ***"The appreciation of the injustice to other litigants and the damage to parties and trials being delayed which cannot adequately be compensated by an order for costs has lead the Court to a more interventionist approach in the management of trials, and has furthermore led to the appellate courts being very reluctant to interfere with decisions of judges who with all those interests in mind have taken decisions at interlocutory stages."***

12 And, at page 7:-

> ***"We share Millet LJ's concern that justice must not be sacrificed, but we believe his view does not give sufficient regard to the fact that the courts are concerned to do justice to all litigants, and that it may be necessary to take decisions vis-à-vis one litigant who may, despite all the opportunity he or his advisers have had to plead his case properly, feel some sense of personal injustice, for the sake of doing justice both to his opponent and to other litigants."***

13 The Court refused leave to appeal but, at page 14 of the judgment said:—

> ***"If Mr Brodie [counsel for the applicant] were right that either (a) the possibility of a party bringing a second action or (b) the possibility of the court not allowing a second action to be brought both leave the court without any alternative but to allow the amendment, then it seems to follow that the interests of justice to the other party and to other litigants simply has no place in the exercise by the court of its discretion.*** It would follow that a plaintiff must simply have a right to amend at any time prior to expiry of any relevant period of limitation, provided the pleading was not demurable, however much inconvenience that causes to the opposition and other litigants. We do not believe that to be even arguably the position, and this final point of Mr Brodie's does not persuade us that he has any arguable point on an appeal."

14 In *Quah* Mrs Justice Carr, after referring to a number of authorities dealing with the principles applicable to a very late application to amend, at paragraph 38 of the judgment said:—

> ***"38. Drawing these authorities together, the relevant principles can be stated simply as follows:—***
>
> ***a) whether to allow an amendment is a matter for the discretion of the court.*** In exercising that discretion, the overriding objective is of the greatest importance. Applications always involve the court striking a balance between injustice to the applicant if the amendment is refused, and injustice to the opposing party and other litigants in general, if the amendment is permitted;
>
> ***b) where a very late application to amend is made the correct approach is not that the amendments ought, in general, to be allowed so that the real dispute between the parties can be adjudicated upon.*** Rather, a heavy burden lies on a party seeking a very late amendment to show the strength of the new case and why justice to him, his opponent and other court users requires him to be able to pursue it. The risk to a trial date may mean that the lateness of ***the application to amend will of itself cause the balance to be loaded heavily against the grant of permission;***
>
> ***c) a very late amendment is one made when the trial date has been fixed and where permitting the amendments would cause the trial date to be lost.*** Parties and the court have a legitimate expectation that trial fixtures will be kept;
>
> ***d) lateness is not an absolute, but a relative concept.*** It depends on a review of the nature of the proposed amendment, the quality of the explanation for its timing, and a fair appreciation of the consequences in terms of work wasted and consequential work to be done;
>
> ***e) gone are the days when it was sufficient for the amending party to argue that no prejudice had been suffered, save as to costs.*** In the modern era it is more readily recognised that the payment of costs may not be adequate compensation;
>
> ***f) it is incumbent on a party seeking the indulgence of the court to be allowed to raise a late claim to provide a good explanation for the delay;***
>
> ***g) a much stricter view is taken nowadays of non-compliance with the Civil Procedure Rules and directions of the Court.*** The achievement of justice means something different now. Parties can

> no longer expect indulgence if they fail to comply with their procedural obligations because those obligations not only serve the purpose of ensuring that they conduct the litigation proportionately in order to ensure their own costs are kept within proportionate bounds but also the wider public interest of ensuring that other litigants can obtain justice efficiently and proportionately, and that the courts enable them to do so."

15 Applying those principles the Judge refused the application to amend. At paragraph 96 of the judgment, the learned Judge said:—

> ***"96. For all these reasons, I dismiss the application for permission to amend. This may be seen as a harsh decision given its consequence of Ms Quah. But this is modern-day commercial litigation. Very late applications for permission to amend in circumstances where a) there is no good reason for the delay and b) amendment would result in real disruption or prejudice to the parties and/or the Court are unlikely to be allowed, irrespective of the merits of the proposed amendment. This is such an application. But additionally and in any event, on the facts here the merits of the proposed amendment are not sufficiently compelling as to justify granting permission in all the circumstances."***

16 Although the Court often has regard to the rules of Court in England and Wales where the rules in Jersey are similar, and to how the courts in that jurisdiction have applied those rules, there is not always a direct correspondence between the conditions applicable in the courts of England and of course Wales and those in this Court. Nonetheless, the cases cited are illustrative of the approach to late applications to amend.

Current position

17 The April 2018 letter, after some introductory paragraphs, deals with the Representor's complaints under some 18 numbered headings, each comprising a number of paragraphs seeking to substantiate the complaints. It runs to approximately 11 sides.

18 In response, the First Respondent's legal adviser wrote a substantial letter of some 17 sides responding in detail to each of the numbered allegations set out in the April 2018 letter. This exchange may be contrasted with the Representation itself which, together with the introductory material, comprises no more than five sides and the claims are contained within a single paragraph. That being said, the Representation expressly refers to the April 2018 letter as forming the basis of the claim.

19 The Representation is supported by the affidavit of the Representor of 31 st May, 2018. The affidavit again refers to the April 2018 letter and exhibits that letter together with its

enclosures which in total amount to 389 pages. Other correspondence, comprising many more pages both by way of response by the First Respondent's legal advisers and a further letter from the Representor's then legal advisers, are also exhibited. At paragraph 10 of her affidavit the Representor says:—

> ***"I refer to the two letters from Carey Olsen to Preston Legal dated 20 th April 2018 and 4 th May 2018 which set out my concerns in detail with supporting evidence.*** I shall not repeat the contents of those letters in this affidavit and shall instead address points raised in the letter from Preston Legal to Carey Olsen dated 30 th April 2018."

20 It seems to me clear that the complaints to be dealt with by the Court in April are those set out in the April 2018 letter.

21 It is clear also that the basis for the application before me is that the Representor's current legal advisers have taken the view that the case for the Representor needs to be supplemented. Had there not been a change of legal adviser it is to be supposed that the Representors' case would have been dealt with before this Court in December of 2018 in the form that it then was and, at the present moment, still is. Indeed at paragraph 12 in the letter of 1st March 2019 from Messrs Mourants explaining the basis for the application at paragraph 17 it is stated:—

> ***"… The Representor understands this implication seeks the court's indulgence at a point in the proceedings at which the Representor ought to have been ready to present her case to the court.*** Unfortunately, due to a coincidence of the breakdown in relations with her former advocates and a misaligned, and in our view misjudged, strategy in any event underpinning the presentation of the Representor's case in the proceedings, the Representor has been allowed to get to the doors of the court with a case that remains incomplete in several substantive respects…" .

22 I asked Advocate Alexander for the Representor during the course of the hearing to explain precisely what it was that his client wished to do by way of amending the Representation or filing supplemental evidence. He explained that he wished to amend the prayer of the Representation to provide for an alternative trust company if the named trust company was not acceptable to the Court and, if it would be of assistance to the Court, to particularise the pleadings. He wished also to add new matters to deal with a failure by the First Respondent to obtain a valuation of the St Petersburg flat which is the subject of litigation relating to the Russian Trust in order to determine whether that litigation was cost effective, to consider the approach of the First Respondent in starting those proceedings and its participation in other proceedings elsewhere relating to the Representor. The Representor wished to explore the actions of the First Respondent in connection with a loan granted by HSBC and the effect of any potential fraudulent representation by the previous trustees to show that its actions had been inadequate. It is clear that the Representor wished to give further evidence relating to the breakdown of her relationship with the First Respondent and

its involvement in certain US proceedings and indeed to raise an issue with whether or not it was appropriate for the First Respondent as trustee to raise a question of contempt against the Representor in the proceedings relating to the Russian Trust. It should have been left, so it was argued before me, to the other parties to do so.

23 In addition, the Representor wished to change her expert evidence (which had stood as the evidence that she wished to bring for some significant period), relating to complaints about the First Respondent's charges and fees. I was not referred to that evidence. Advocate Alexander indicated that in his view there were deficiencies within the current expert report including those of arithmetic and understanding of the basis of trustee charges.

24 He also indicated that in his view, notwithstanding the terms of his client's summons, the case as it should be pleaded could not be disposed of in the four days set aside but rather would need to be dealt with within a period of at least seven days.

25 The Representor argues that the proceedings were of the utmost importance to her and she has no option other than to make an application in effect to vacate the dates and to re-plead the case. The prejudice to her would be substantial if her application were refused in as much as she would need to discontinue the case. Because of the dispute between her and her previous legal advisers which indeed had resulted in further proceedings before the Court, she has not had full access to all of their files. The only prejudice to the other parties, so it is argued, would be costs and that it was in the interest of justice to grant her application.

26 The First Respondent, for its part, argues that I should reject this application on the basis that it is in reality simply an application to withdraw and discontinue the proceedings and that is the correct course for the Representor to take. It is pointed out that the application is not supported by any draft amended pleading and although blame is raised by the Representor against her former legal advisers, it is impossible for the Court to know what her instructions to them had been nor indeed their advice to her and therefore to assess who if anyone may be at fault.

27 The First Respondent further argues that the April 2018 letter, which with exhibits was very substantial indeed, raised all the matters to be dealt with, including the US proceedings referred to by the Representor. As to the question of valuation of the St Petersburg property, the Representor's own assessment of value which to the Russian police was approximately US$1.4m and was substantially in excess of the amount that she now suggested. There are a number of steps that need to be taken by the First Respondent in connection with the administration of the Manor House Trust over the next few weeks and months including a number of applications to the Court for blessings relating to the sale of the main property in that Trust and distribution to beneficiaries and the issues relating to its continued trusteeship should be resolved before then. The First Respondent as a regulated entity has had these proceedings hanging over it for a significant period and the continuation of those proceedings when it had an expectation that they would be resolved in December and now

April is an extra burden and prejudice that it should not have to carry. It had twice now prepared for trial, the first dates having as I have mentioned earlier been adjourned, and it should be in a position to proceed. It was funding its own fees as the claim is against it.

28 The Second Respondent pointed out that the amendments proposed by the Representor are limited and the Representor has always relied both in her affidavit and skeleton argument on the April 2018 letter. This is, so it is argued, a simple exercise in avoiding the costs implications in doing what in reality the Representor is seeking to do, namely to withdraw the proceedings and to re-plead them.

29 For the Fourth Respondent, Advocate Le Maistre points to the history of the conduct of this litigation and the connected proceedings relating to the Russian Trust and specifically the number of times that it has gone part heard as a result of further evidence being introduced by the Representor or has had to be adjourned. He also observes that the Fourth Respondent is not in the best of health and that he should not be subject unnecessarily to the stress of further delay when he has to travel from California.

30 Advocate Sharp submits that all the Representor is seeking to do is file new evidence on peripheral points and queries whether they can be relevant to whether or not the trustee should continue. The history relating to the previous trustee is largely irrelevant to the current trustee and whilst the Representor seeks to bring in evidence from her US lawyer it is difficult to know how that could be relevant in connection with the continuation of the trustees. There really is insufficient information for the Court properly to exercise its discretion to delay.

Conclusion

31 As I have said above, the Representation seeks the removal of the First Respondent as trustee of the two trusts. That application is not supported by any of the other beneficiaries who all wish the First Respondent to continue in its trusteeship. There are steps which need to be taken and whilst those steps may be capable of being taken whilst these proceedings are extant, it seems to me that it will inevitably complicate matters and potentially any blessing applications before the Court if the questions relating to the conduct and *bona fides* of the First Respondent and, importantly, whether they are such that the First Respondent should be removed as trustee, remain undetermined.

32 This is the second time that the Representor has sought a delay to her own proceedings. In her first application she was successful. Now, however, more than three months later, we are faced with a further application supported neither by a draft amended pleading nor a full explanation as to what additional evidence is needed and why. By reason of the detail set out in the pre-action correspondence, specifically the April 2018 letter, the issues before the Court have remained unaltered for some considerable period and had been set out in some detail. Now new legal advisers have assessed the position and believe it would be

advantageous and appropriate for the Representor to re-plead her case and file further substantial evidence, so it is suggested, the result of which would be to delay the hearing until the earliest November 2019. It is unlikely in those circumstances that the Court would be in position to deliver a judgment before early 2020. The matter would, accordingly, remain uncertain and unresolved until that time. This in my view is unacceptable when considering the status of a trustee.

33 An application by a beneficiary to remove the trustee is normally dealt with as quickly as possible. It is strange, therefore, that at the instance of the Representor the trustee would remain in situ, discharging all of its duties and obligations of trustee including making significant applications to the Court, for nearly two years after the initial grounds for its removal were deployed in correspondence. It is difficult to see how such a delay at the request of the Representor would support her argument that the trustee should be removed.

34 I am not persuaded that the substance of the changes sought by the Representor are such that they are either essential or in some cases relevant to the removal of the trustees or could not, in any event, to an extent be deployed within the current proceedings as presently formed.

35 As an aside, the Court as constituted to hear the case in April is already well versed in matters relating to the Russian Trust having been the same trial court as dealt with all aspects of those proceedings and will accordingly be able to form a very clear view as to any concerns relating to the Lilianfeld proceedings and the contempt application. All counsel are also well versed in those aspects and to the extent they appear relevant those issues could, I would expect, be addressed in short order. I do not see a difficulty with some limited further evidence on those points and the valuation and submissions on these if that is the Representor's wish.

36 I accept that the proceedings are of importance to the Representor but I am not persuaded on the matters put before me that a refusal to grant an adjournment would be of such prejudice to her in the conduct of the proceedings that weighs against the other matters that I need to consider. There is, in my judgment, substantial prejudice to the other parties, particularly the First Respondent in having this matter hang over its head when it needs to take significant steps to deal with the trusts and indeed to an extent to the Fourth Respondent for the reasons set out above.

37 I am not satisfied that were I to refuse an adjournment in this case, there would be a real risk of serious prejudice which may lead to injustice and I note, from *Les Pas Holdings*, that it is accepted that such a test is “difficult to satisfy”.

38 In balancing the prejudice and indeed the interests of justice in my judgment the application for an adjournment must be refused and the hearing dates maintained.