# EE and The Royal Bank of Canada Trust Company (Jersey) Ltd

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| **Jurisdiction:** | Jersey |
| **Judge:** | Matthew John Thompson |
| **Judgment Date:** | 01 May 2014 |
| **Neutral Citation:** | [2014] JRC 101A |
| **Reported In:** | [2014] JRC 101A |
| **Court:** | Royal Court |
| **Date:** | 01 May 2014 |



**Text**

[2014] JRC 101A

ROYAL COURT

(Samedi)

Before:

**Advocate** Matthew John Thompson, **Master of the Royal Court**.

Between
EE
Representors
RDE
MHE
NE
RE
LM

and

The Royal Bank of Canada Trust Company (Jersey) Limited

Respondent

**Advocate** A. D. Hoy **for the Representors**.

**Advocate** D. M. Cadin **for the Respondent**.

**Authorities**

*Alhamrani v J P Morgan Trust Company (Jersey) Limited* [2007] JLR 527 .

*Re Rabaiotti 1989 Settlement* [2000] JLR 173 .

*Schmidt v Rosewood* [2003] 2 AC 709 .

*Re Internine Trust* [2004] JLR 325 .

*Alhamrani v Morgan and Ors* [2007] JRC 053 .

Trusts (Jersey) Law 1984.

*Vieira v Kordas* [2013] JRC 251 .

Settlement — application for directions.

**THE MASTER**:

1 This hearing is an application for directions in respect of a long running dispute between some of the former beneficiaries (“the beneficiaries”) of the A settlement (“the settlement”), and the respondent who was trustee of the settlement at all relevant times (“the trustee”). While the substantive dispute has been resolved, the beneficiaries still seek to challenge the fees of the trustee on the basis they are unreasonable. This judgment sets out how the fee dispute is to be addressed.

2 By way of background the settlement came to an end in 2012, following a series of orders made by the Royal Court. As part of those orders the trustee was entitled to recover its costs out of the Trust Fund on an indemnity basis.

3 During the dispute, in 2009 the beneficiaries issued a representation seeking to challenge the quantum of fees incurred on the basis that the trustee had incurred such costs including professional fees unreasonably or in breach of trust. It is clear that the beneficiaries cannot challenge the principle of the trustee recovering its costs in this matter because the Royal Court has already allowed the trustees to recover those costs. However the beneficiaries

are entitled to challenge the amount of costs incurred by the trustee by reference to the decision of the Court of Appeal in *Alhamrani v J P Morgan Trust Company (Jersey) Limited* [2007] JLR 527.

4 The issue before me is that the trustee complains that the representation and a draft amended representation produced for the hearing today are insufficiently particularised and they wish to apply to strike out the representation on a number of grounds and oppose any application to amend. The beneficiaries in response complain they have not had sufficient information to plead any further than they have already why the costs incurred are unreasonable. The beneficiaries also seek letters of engagement, estimates provided and any correspondence about fees received to review whether the trustee had discharged the duty referred to at paragraph 66(ii) of the Court of Appeal decision in *Alhamrani*.

5 During the hearing I was informed that invoices of the trustee's own costs had been provided to the beneficiaries together with detailed time records. Invoices of the various law firms and other professionals involved had also been provided but without any narratives because of the present ongoing dispute about fees and because of concerns about privilege. Some of the other information requested had also not been provided although certain specific criticisms in correspondence had been replied to supported by documents. The trustee also expressed concern about who would pay for the costs of any additional information, should it have to be provided.

6 The view I have formed in this case is that the issue of what information the beneficiaries are entitled to, in order to decide whether or not to pursue their claim that costs have been unreasonably incurred, needs to be resolved first in this case.

7 This issue is important because, as noted by the Court of Appeal in *Alhamrani*, it is for the beneficiaries to assert why costs incurred by the trustee were unreasonable. The beneficiaries therefore have to particularise their case in respect of any aspect of the trustee's costs they wish to challenge. The beneficiaries complain that they do not have all the information they need to do so.

8 It is also right that I observe in passing that neither the representation nor the draft amended representation particularise why it is said costs were unreasonably incurred. Both pleadings, in particular the draft amended representation, instead seek to transfer the onus onto the trustee to justify its costs. This is not the approach contemplated by the Court of Appeal in *Alhamrani* see paragraph 69 of the judgment of Vos J.A.

9 What does not appear to have been considered in *Alhamrani* is to what extent a beneficiary may exercise a beneficiary's right to information as considered in *Re Rabaiotti 1989 Settlement* [2000] JLR 173, (subject to how far *Rabaiotti* has been modified by *Schmidt v Rosewood* [2003] 2 AC. 709 considered in *Re Internine Trust* [2004] JLR 325) to obtain information in order to make a challenge that a trustee's fees were unreasonable. In an

earlier judgment in the *Alhamrani* litigation, dated 1 st March, 2007, and reported at [2007] JRC 053, Sir Philip Bailhache, Bailiff, in recognising that a beneficiary should have sufficient opportunity to examine the costs claimed by a trustee to take a reasonably informed view of them, also stated "it does not follow however, in my judgment, that there is a right vested in the beneficiary to call for or inspect a trustee's correspondence, notes of meetings, nor a right to ferret the Trustees' files seeking some casus belli".

10 The view I have reached is the extent of a beneficiary's right to information, in order to consider whether or not to challenge fees on the basis that they have been unreasonably incurred and the scope of the right to the information, is an issue that needs to be determined by the Royal Court. The jurisdiction to order production of such documents is one that arises under Article 51 of the Trusts (Jersey) Law 1984, as amended, or under the court's inherent jurisdiction. It is not a jurisdiction that I possess as Master (see *Vieira v Kordas* [2013] JRC 251). I further consider that the issue of the extent of any disclosure required needs to be resolved before I can consider whether the beneficiaries should be allowed to amend their representation or whether all or any part of the representation including any proposed amendment, should be struck out either on the basis that it discloses no reasonable cause of action, or for want of prosecution.

11 I therefore refer to the Royal Court the issue of what documents the trustee may be required to produce to the beneficiaries to enable the beneficiaries to review the trustee's fees to decide whether or not they may be unreasonable. I also invite the parties to address the Royal Court on two subsidiary issues, following on from the general principle, namely, to what extent can narratives be withheld on the basis they may contain information that is privileged and further, if information is to be provided, who should pay for the costs of providing that information.

12 Once the Royal Court rules on what information is to be provided and within what time frame, subject to any other orders the Royal Court may make, the parties shall then bring the representation back before me for further directions where I will consider what period of time the beneficiaries should be allowed to reformulate their representation in the light of any further information ordered to be provided, or whether or any part of the existing or any amended representation should be struck out and, to the extent that any part of the claim is not struck out, what directions should be given to dispose of the claim.

13 I therefore order the beneficiaries to produce their skeleton argument and any affidavit relied upon in support of the issue I have referred to the Royal Court within 21 days. The trustee has 21 days to produce a skeleton argument and any affidavit upon on which it wishes to rely within a further 21 days. The beneficiaries will have 7 days to produce an affidavit in reply to any affidavit filed by the trustee. The matter should be listed for hearing for half a day on the first available date two weeks after the time limit for filing any affidavit in reply has occurred. Unless there is any disputed evidence between the parties the matter may be heard by a Judge of the Royal Court sitting alone. In the view of the involvement of Commissioner Clyde-Smith in this matter previously, it may be helpful for him to preside

over this application, if he is available to do so.