

# B v Roker Trustees (Switzerland) Ltd and Strachans SA ((in Liquidation)) and Philip Jepson Egglshaw

<b>Jurisdiction:</b>	Jersey
<b>Judge:</b>	J. A. Clyde-Smith, Jurats Clapham, Blampied
<b>Judgment Date:</b>	05 July 2013
<b>Neutral Citation:</b>	[2013] JRC 136
<b>Reported In:</b>	[2013] JRC 136
<b>Court:</b>	Royal Court
<b>Date:</b>	05 July 2013

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## Text

[2013] JRC 136

ROYAL COURT

(Samedi)

Before:

J. A. Clyde-Smith, **Commissioner**, and Jurats Clapham and Blampied.

IN THE MATTER OF THE B FAMILY TRUST AND IN THE MATTER OF THE B  
CHILDREN'S TRUST

AND IN THE MATTER OF THE TRUSTS (JERSEY) LAW 1984 AS AMENDED

Between  
B  
Representor

and  
Roker Trustees (Switzerland) Limited  
First Respondent

and  
Strachans SA (in liquidation)  
Second Respondent

and  
Philip Jepson Egglshaw  
Third Respondent

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

**Advocate A. D. Hoy for the First Respondent.**

### **Authorities**

Service of Process Rules 1994.

*Re B Settlement* [\[2011\] JLR 236](#) .

*In the matter of the Rabaiotti (1989) Settlement* [\[2000\] JLR 173](#) .

*Schmidt -v- Rosewood Trust Limited* [\[2003\] 2 AC 709](#) .

*Spellson -v- George* [1987] NSWLR 300 .

Trust — representation seeking disclosure of information in relation to two trusts.

### **THE COMMISSIONER:**

- 1 By her representation dated 20<sup>th</sup> March, 2013, the representor seeks disclosure of information from the respondents in relation to two trusts of which she believes she is a beneficiary, named (it is thought) the B Family Trust and the B Children's Trust (together "the Trusts).
- 2 The background (which we set out in very broad terms) is taken from the representation and supporting affidavits, the latter being the only evidence currently before the Court.
- 3 In or about 1986, offshore structures were set up for the representor's father.

- 4 The representor's father became a client of the predecessor of the second respondent Strachans SA ("Strachans") in 1995, dealing principally with the third respondent Mr Philip Jepson Egglshaw ("Mr Egglshaw") and Mr Philip de Figueiredo ("Mr de Figueiredo"). Strachans were at that time running their operations in Jersey. These were moved in the late 1990s early 2000s to Switzerland.
- 5 A number of trusts were established for the representor's father and his family, including on 1<sup>st</sup> September, 1995, the C Trust, which wholly owned a BVI company called D Limited, which in turn owned certain property in London and cash.
- 6 In 1999 the representor's father wished to return to Australia. Mr Egglshaw was instructed to act exclusively on the guidance of the representor, who remained in London and was not subject to any attribution laws.
- 7 E-mail correspondence between the representor, her Australian tax adviser and Mr Egglshaw in 2009 shows that assets associated with the representor's family were to be placed into two new trusts, to be established by Mr Egglshaw. The first would hold primarily the available funds and the second to hold the shares in D Limited. The representor was to be a beneficiary of both trusts and at the suggestion of Mr Egglshaw, they were to be called the B Family Trust and the B Children's Trust. All of the trust documentation was retained by Strachans in Switzerland.
- 8 The representor and her advisers have assumed that the trustee of the Trusts is the first respondent, Roker Trustees (Switzerland) Limited ("Roker"). It was known that Roker was used as a corporate trustee by Mr Egglshaw and Strachans when setting up trusts and it had been trustee of the C Trust. Despite its name, it is incorporated in Nevis with two corporate directors, which are also Nevis companies. They have also assumed that the Trusts are governed by Jersey law and that belief is supported by the correspondence between Bedell Cristin and Mr Egglshaw's Swiss legal advisors Schellenberg Wittmer in 2013 which we refer to later.
- 9 Subsequent e-mails during 2010, 2011, 2012 and 2013 passing between the representor and Strachans evidence the representor's beneficial interest, for example her forwarding bills to Strachans to pay for work carried out to the London properties and requesting funds to be paid to her bank account in Australia.
- 10 In the meantime in 2005, the Australian Crime Commission had started an investigation into the misuse of tax havens by Strachans and its clients, including the representor's father. However, in late 2010, the Australian Crime Commission abandoned its investigation into the affairs of the representor's father, and he reached a "*without admission*" settlement over the government's civil claims.
- 11 In 2009, Mr de Figueiredo was arrested in Jersey and extradition proceedings commenced

against him. He was extradited to Australia in December 2010, and pleaded guilty to conspiracy to defraud in October 2012, for which he was sentenced to 6 years' imprisonment. An Interpol warrant for the arrest of Mr Egglshaw has been issued and remains current.

- 12 In May 2012, the representor's Australian legal advisor Mr Andrew Robinson ("Mr Robinson") met with Mr Egglshaw and his legal advisors Schellenberg Wittmer in Geneva and during the meeting Mr Egglshaw claimed that he could not deal with the assets of the Trusts nor even provide the representor with information about them, without the risk of exposing himself to money laundering or proceeds of crime charges. We pause to comment that even if in 2012 there remained a concern over the status of the funds held by the Trusts, we struggle to see how that would exonerate Roker from its duty to account for what it was holding; and no such contention was made before us.
- 13 Bedell Cristin were instructed on behalf of the representor in this matter in October 2012 and in his affidavit of 14<sup>th</sup> March, 2013, Mr Robinson fairly, in our view, describes the correspondence between Bedell Cristin and Schellenberg Wittmer, as demonstrating a complete lack of any constructive response from the respondents. In effect, the respondents sought an exculpation from everything they had done in relation to the Trusts prior to August 2011 as a pre-condition of allowing the representor's nominated Swiss adviser to inspect the trust documents.
- 14 In August 2011, Anthony Stewart, an Australian accountant retained on behalf of the representor's family, attended a meeting at the offices of Schellenberg Wittmer in Geneva. He was allowed to see the trust documentation on screen, but was not allowed to see or take away any hard copies or original documents. His statement of 21<sup>st</sup> February, 2013, shows that he was concerned that the opening balance was lower than he thought it should have been. When he questioned certain legal costs that had been paid, he was told they related to the legal costs incurred by Mr de Figueiredo in his extradition proceedings which had been paid out of trust assets in order, it was said, to protect those assets.
- 15 The representor requires information on the assets contained in the Trusts, not only as a beneficiary seeking to hold her trustee to account but also to properly make her Australian tax returns and avoid being in breach of Australian law. On the case presented to us there has been a wholesale refusal by Roker to account to her.
- 16 Furthermore, the representor, having been informed that trust funds had been used to pay the legal fees of Mr de Figueiredo, has reasonable grounds for concern that misappropriation of trust funds has taken place.

### **Process to date**

- 17 On 22<sup>nd</sup> March, 2013, the Court convened Roker, Strachans and Mr Egglshaw to the representation and gave leave to serve summonses out of the jurisdiction for their appearance before the Court on 24<sup>th</sup> May, 2013. Roker was to be served by ordinary post and, on the advice of the representor's Swiss lawyers, Strachans and Mr Egglshaw through official channels, namely in accordance with Article 3 of the Convention on the Service Abroad of Judicial and Extra-judicial Documents in Civil or Commercial Matters (the "Hague Convention"). The transmission of documents under Article 3 of the Hague Convention is governed by Section 13 of the Service of Process Rules 1994 which provide that documents for service must be lodged with the Bailiff's office for stamping and sealing and will then be forwarded to Her Majesty's Secretary of State for the Home Department for transmission to the foreign country.
- 18 Miss Jessica Jane Bermingham, an English solicitor at Bedell Cristin, explains in her affidavit of 26<sup>th</sup> June, 2013, how she has tried to track the progress of the documents in a route which she described as highly protracted. The documents have to pass from the Bailiff's office to the Lieutenant Governor, to the Ministry of Justice in London, to the Foreign and Commonwealth Office in London, and then, as she understands it, to the Ministry of Foreign Affairs in Switzerland (the Federal Office) possibly via the Ministry of Justice in Switzerland and then ultimately to the Ministère Publique in Geneva for service. It would appear that at least six months should be allowed for this process but it was clear that the documents had not reached the Ministère Publique in time for service to be effected for the hearing on 24<sup>th</sup> May, 2013. Apparently the way the Hague Convention operates it will now be necessary for a new summons and Act of Court to be issued and served and, adopting a cautious approach, a new hearing date of January next year would need to be proposed in respect of these respondents.
- 19 At the request of the Court Miss Bermingham has sworn another affidavit explaining in detail why service in this way was required in this case. Time does not permit us to set out that explanation in full but suffice it to say that they were advised by their Swiss lawyers that under Swiss law service under the Hague Convention operates to the exclusion of all other methods of service of foreign proceedings in Switzerland and any attempt to do otherwise could lay the representor or her advisors open to criminal charges under Article 271 of the Swiss Criminal Code. We do not know how widespread such protective provisions are internationally but it makes convening Swiss residents to foreign proceedings very difficult and impossible in any case involving urgency.
- 20 The representor has decided at this stage not to attempt service through this tortuous route again with the further substantial delays that will entail but to seek orders against Roker. At the hearing on 1<sup>st</sup> July, 2013, the order sought was that Roker would make available to the representor's legal representatives for inspection and copying the information detailed in a schedule by noon on 22<sup>nd</sup> July, 2013. The schedule is in the following terms:—

*"SCHEDULE*

- 1. The trust accounts for the Trusts and/or such other trust or trusts as may*

*have been established for and/or on the representor's behalf from inception of the said trust or trusts to the date hereof.*

*2. The accounts and other constituent documents for D Limited including without prejudice to the generality of the foregoing all accounting records whether in the form of accounts, ledgers, bank statements, correspondence or otherwise together with the memorandum and articles of association and any other constituent documents.*

*3. Without prejudice to the generality of the foregoing the term "trust accounts" shall include all documents, accounts and records (electronically held or otherwise) comprising:—*

*(a) all original and supplemental trust deeds;*

*(b) all accounting records whether in the form of accounts, ledgers, bank statements, correspondence or otherwise, and including all such information for any underlying companies, as may be required in order to give a full account of all dealings with the assets of the Trusts from inception of the said trust arrangements to date hereof."*

## **Submissions of Roker**

21 Mr Hoy appeared for Roker. He did not seek to challenge the service of the proceedings upon Roker out of the jurisdiction or the Court's jurisdiction over it, accepting that under Article 5 of the Trusts (Jersey) Law 1984 the Court has jurisdiction where the trust is a "Jersey trust". He had been instructed to present whatever arguments for Roker appeared to him from the papers. He appeared to have been given no other instructions and was not able to assist the Court in any way in its supervisory role over the Trusts. Implicit however in his position was an acceptance on behalf of Roker that the Trusts existed, were governed by Jersey law, and that the representor was a beneficiary entitled to require Roker to account.

22 Mr Hoy first pointed to what he described as the "vague nature of some of the assertions made in the affidavit supporting the representation and the lack of clarity as to the representor's role in the Trusts." Her role must, he said, be within her knowledge and as she was seeking equitable disclosure remedies, it was necessary for her to demonstrate clean hands. It was possible, he suggested, from the papers that the representation had been brought by the representor on behalf of her father. He then submitted that it was unclear why Roker had been convened to the proceedings. He referred to paragraph 30 of Mr Robinson's affidavit, where he states that Strachans and Mr Egglisshaw are the *de facto* trustees of the Trusts and continues:—

*"Roker happens to be a corporate trustee that I know to have been used by Strachans for new trusts such as for the C Trust. I do not know why he chose a Nevis company for that purpose although I understand from other offshore*

lawyers I have worked with on this matter that Nevis is an especially impenetrable offshore jurisdiction to deal with. Any order we manage to obtain against Roker for disclosure of trust documents would be useless unless backed by similar orders against Strachans and Egglishaw. Enforcement of an order against Roker in Nevis would be a dead end road. In any event, Strachans' office is based in Geneva which is where Egglishaw lives. The documents we wish to see are located there.”

- 23 Convening Roker, he submitted, runs plainly contrary to the representor's own case that Strachans and Mr Egglishaw, not Roker, are the trustees. Roker has been brought into the proceedings on an assumption made by Mr Robinson of the role of Roker because it has corporate status. It is settled law, he said, that it is an abuse to seek to make a person (natural or legal) a party to proceedings purely for the purposes of disclosure. In addition, paragraph 30 of Mr Robinson's affidavit clearly shows that any disclosure order against Roker would be “*useless*” without a similar order against Strachans and Mr Egglishaw, the alleged actual trustees. At this stage of the proceedings, it is only Roker that has been served and the making of any order would therefore be premature.
- 24 Mr Hoy pointed to the possibility of hostile proceedings against Roker and the need for the Court to take care to ensure that disclosure did not stray beyond the limits of the disclosure that the Court would order, if disclosure was sought in isolation of the potential hostile claim (citing *Re B Settlement* [\[2011\] JLR 236](#) and the factors set out in that case which the Court should take into account when exercising its discretion in relation to disclosure of trust documents).
- 25 When pressed as to who it was that was instructing him in relation to Roker, he informed the Court that his instructions came from Mr Egglishaw, either directly or through Mr Egglishaw's Australian lawyers; it is Mr Egglishaw therefore who is the “*mind*” of Roker.

## Legal principles

- 26 In the case of *In the matter of the Rabaiotti (1989) Settlement* [\[2000\] JLR 173](#), it was held that the starting point in terms of disclosure to beneficiaries is the presumption that they are entitled to see trust documents, including the trust deed, the accounts, bank statements, portfolio valuations and generally documents which show how the assets have been dealt with. Quoting from paragraph 67:—

**“A beneficiary is normally entitled to inspect trust documents such as the trust deed and documents which show the nature and value of the trust property, the trust income and how the trustees have been investing and distributing the trust property.”**

- 27 In *Schmidt -v- Rosewood Trust Limited* [\[2003\] 2 AC 709](#), the Privy Council held that



although a beneficiary's right to seek disclosure of trust documents could be described as a proprietary right, it was best approached as one aspect of the court's inherent and fundamental jurisdiction to supervise and if appropriate, intervene in the administration of a trust, including a discretionary trust. The case refers to situations of personal or commercial confidentiality where the trustee may need to balance competing interests. There would not appear to be any competing interests here; the representor is simply trying to ascertain how the trust assets have been dealt with since inception and obtain information for use in filing her own tax returns.

- 28 In *Schmidt -v- Rosewood*, the Privy Council approved the judgment of Powell J in *Spellson -v- George* [1987] NSWLR 300 at pages 315–316, the whole of which it said merited study. The Privy Council quoted this passage:–

***“At the risk of being regarded as overly simplistic, it is as well to start with the fundamental proposition that one of the essential elements of a private trust, be it a discretionary trust or some other form of trust, is that the Trustee is subject to a personal obligation to hold, and to deal with, the trust property for the benefit of some identified, or identifiable, person or groups of persons.”***

The judgment of Powell J goes on to say:–

***“It is, so it seems to me, a necessary corollary of the existence of that obligation that the Trustee is liable to account to the person, or group of persons for whose benefit he holds the trust property ... and, that being so, the Trustee is obliged not only to keep proper accounts and allow a cestui que trust to inspect them, but he must also, on demand, give a cestui que trust information and explanations as to the investment of, and dealings with, the trust property.”***

The obligations of a trustee are therefore clear. As a corollary of its obligation to hold and deal with the trust property for the benefit of the beneficiaries, it is liable to account to them by the provision of information and explanations.

### Decision in respect of Roker

- 29 It is no surprise to us that aspects of the representor's case in respect of the Trusts is vague. They were established on her instructions entirely by Mr Egglshaw, with whom the original documents remain; that is one of the reasons why she requires disclosure, so that she and her advisers can see the documents for themselves. For a trustee to refuse a beneficiary sight of the core trust documents and then criticise that beneficiary for being vague about her position under that trust is to turn trust law on its head.
- 30 The evidence is unequivocal that the Trusts were established and that the representor has been treated as a beneficiary. It is as we have said implicit in Mr Hoy's submissions to us



on behalf of Roker that it is the trustee and that the Trusts are governed by Jersey law. Roker has not sought to argue to the contrary.

- 31 The duty of Roker to account to the representor as a beneficiary for its stewardship of the assets of the Trusts goes to the core of the trustee/beneficiary relationship. It is fundamental and it is a duty that the Court will enforce vigorously.
- 32 It would seem that Roker has no presence in Nevis, but is a corporate vehicle used by Strachans to provide trusteeships. The "*mind*" of Roker will be the relevant principals of Strachans, in this case, Mr Egglshaw. Whatever the actual arrangements in place, Roker is the trustee and it cannot avoid its obligations as trustee by seeking to hide behind those who may control it. We unhesitatingly reject the submissions put forward by Mr Hoy as being wholly without merit.
- 33 Subject to the points we make below, we will order Roker to provide or to procure the provision of the documentation sought by the representor under pain of contempt. Turning to the order sought by the representor:—
- (i) In view of the slight delay in handing down this judgment, we are going to extend the deadline for compliance to close of business on 29<sup>th</sup> July, 2013.
  - (ii) We are conscious that paragraph 2 (other than in respect of the bank statements and accounts of D Limited and its constituent documents) and 3(b) of the Schedule produced by Mr Cadin are drawn in very wide terms and involve the production of information going back to the inception of the Trusts in 2009 and further in relation to D Limited. In addition to a general liberty to apply, we are therefore going to give Roker a specific liberty to apply for an extension of time for it to comply with paragraphs 2 (other than in respect of the bank statements and accounts of D Limited and its constituent documents) and 3(b), provided that:—
    - (a) any such application is made before 29<sup>th</sup> July, 2013; and
    - (b) the application is supported by an affidavit setting out in detail what steps Roker has taken to comply with all of the orders made for disclosure against it and what steps need to be taken and the time frame required for compliance with paragraphs 2 and 3(b).
- 34 Thus, in relation to Roker, the order of the Court is that it shall make available or shall procure that Strachans and Mr Egglshaw shall make available to the representor's legal representatives (for the avoidance of doubt those legal representatives include any of Bedell Cristin — Jersey, Lenz & Stachelin — Geneva and Robinson Legal — Sydney) for inspection and copying the information detailed in the schedule below by close of business on the 29<sup>th</sup> July, 2013, on pain of contempt.

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**"SCHEDULE**

*1. The trust accounts for the B Family Trust and the B Children's Trust and/or such other trust or trusts as may have been established for or on her behalf (for the purpose of this schedule "the Trusts") from inception of the Trusts to the date hereof.*

*2. The accounts and other constituent documents for D Limited including without prejudice to the generality of the foregoing all accounting records whether in the form of accounts, ledgers, bank statements, correspondence or otherwise together with the memorandum and articles of association and any other constituent documents.*

*3. Without prejudice to the generality of the foregoing the term "trust accounts" shall include all documents, accounts and records (electronically held or otherwise) comprising:—*

*(a) all original and supplemental trust deeds relating to the Trusts;*

*(b) all accounting records whether in the form of accounts, ledgers, bank statements, correspondence or otherwise, and including all such information for any underlying companies as may be required in order to give a full account of all dealings with the assets of the Trusts from inception of the said trust arrangements to the date hereof."*

35 Roker shall have liberty to apply for an extension of time for its compliance with paragraphs 2 and 3(b) of the Schedule (other than in respect of the bank statements and accounts of D Limited and its constituent documents), provided that (a) any such application is made before the 29<sup>th</sup> July, 2013, and (b) the application is supported by an affidavit setting out in detail what steps Roker has taken to comply with all of the orders made for disclosure against it and what steps need to be taken and the timeframe required for compliance with paragraphs 2 and 3(b).

36 Roker shall pay the costs of and incidental to this application on an indemnity basis to be taxed if not agreed.

37 The representor shall have leave to disclose to such person or persons (whether parties hereto or not) such copies of and/or such of the contents of the representation, the affidavits in support and any orders made in these proceedings as she thinks fit to facilitate enforcement of this order.

38 The representation shall be adjourned generally to 18<sup>th</sup> September, 2013, at 2:30pm with liberty to apply in chambers to fix an earlier date should one become available.

39 There shall be liberty to apply generally.

40 Even with these orders the Court is deeply troubled by this failure to account by the trustee of a Jersey trust. Roker is a corporate vehicle clearly controlled by Mr Egglshaw and on his instructions it has appeared before us with the sole aim of delaying any order for disclosure that may be made. Such conduct inevitably creates suspicion as to its motives and the motives of those who control it. That suspicion is only heightened by Mr Egglshaw apparently informing the representor's accountant that trust funds have been used to pay the legal fees of Mr de Figueiredo. If true, that brings into question Mr Egglshaw's honesty.

41 Until such time (at least) as full disclosure is achieved, as surely it will be, we are minded in our supervisory capacity to order that Roker shall not make and shall procure that Strachans and Egglshaw or any other person shall not make or permit any dispositions out of the assets of the Trusts and any underlying company including D Limited other than what is strictly required to preserve those assets and maintain them in good order and standing, without the prior written consent of the representor or her advisers or without the leave of the Court. In particular, no fees are to be paid to Strachans or to Mr Egglshaw or to any advisors without the prior written consent of the representor or her advisers or without the leave of the Court. Having jurisdiction over Roker, as we do, the effect of this will be to make any such dispositions not only a breach of the Court's order but an actionable breach of trust. To the extent, for example, that Mr Egglshaw may have used trust funds in the past to pay the legal fees of advisors, then any further payments to such advisors from that source will render them liable to account. Before making such an order we will first hear from counsel when this judgment is handed down.

42 When informed that Mr Hoy was receiving his instructions from Mr Egglshaw, the Court asked Mr Hoy, on the basis that the Court was going to make the disclosure orders sought, to take instructions as to whether Mr Egglshaw would assist the Court in its supervisory capacity over the Trusts by ensuring that Roker discharges its basic duty as a trustee in giving this information to the representor. In his response to Mr Hoy, Mr Egglshaw has confirmed that he and Strachans will give the Court such assistance. That is an encouraging response but in view of the history of this matter not one which in any way alters the orders that we propose to make. We look to Mr Egglshaw to demonstrate his cooperation by ensuring a full and timely response by Roker to those orders.