

Representation re Dunlop Settlement

Jurisdiction:	Jersey
Judge:	The Bailiff
Judgment Date:	14 July 2011
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Text

[2011] JRC 138

ROYAL COURT

(Samedi)

Before:

M. C. St. J. Birt, Esq., Bailiff, **and** Jurats Tibbo **and** Marett-Crosby.

In The Matter Of The Representation Of Capita Trustees Limited As Trustee Of The Dunlop Settlement

And In The Matter Of Article 51 Of The Trusts (Jersey) Law 1984

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

Advocate E. L. Hollywood **on behalf of the JFCU.**

Authorities

Companies (Jersey) Law 1990.

Investigation of Fraud (Jersey) Law 1991.

Ogier Trustee Limited -v- C I Law Trustees [\[2006\] JRC 158](#).

The Bailiff

- 1 This is an application by Capita Trustees Limited in its capacity as trustee of the Dunlop Settlement. That trust was established in 1999 and is governed by Jersey law. In February 2001 Stirling Trustees Limited was appointed as trustee in place of the former trustee. On 10th September, 2007, a formal merger took place between Stirling and Capita under the Companies (Jersey) Law 1990 and Capita is the continuing company after the merger. Accordingly, Capita has been the trustee of the trust since that date.
- 2 Between 2001 and 2007 the affairs of the trust were dealt with on behalf of Stirling by Mr Richard Arthur. He was a director of Stirling between 2004 and 2007 but he was at all times the person responsible for looking after the trust on behalf of Stirling as trustee.
- 3 Initially when it took the matter on, Capita understood that the trust was dormant and had no assets or liabilities but it transpires that there are or may be some assets and liabilities and various issues have arisen which need resolution. Capita therefore needs to have access to all the records of the trust during the period that Stirling was the trustee. It turns out that the records are incomplete and it seems that Mr Arthur kept many of them at home or at his offices at BDO. Capita wrote to Mr Arthur on 3rd February, 2010, seeking all documentation in his possession which relate to the trust and to its assets, but no response was received to that letter.
- 4 Subsequently the police, in the form of the Jersey Financial Crimes Unit, seized a substantial body of documents from Mr Arthur as part of an investigation under the Investigation of Fraud (Jersey) Law 1991. From enquiries it seems clear that documents relating to the trust are included amongst those which the JFCU seized. Capita has requested copies of the documents which relate to the trust in the possession of the JFCU but, quite reasonably, the JFCU say that they are not willing to release copies of these documents to Capita without Mr Arthur's written consent, failing which without an order of the court.
- 5 Although Mr Arthur has at times indicated a willingness to give an appropriate letter of consent to the JFCU, and specifically said this when he received the representation, he has failed to do so. Accordingly, Capita has now pursued the application and seeks an order that the JFCU deliver up to Capita copies of all documents which it has seized from Mr Arthur which relate to the affairs of the trust and which are not privileged as against Capita.

- 6 In our judgement there can be no doubt that Capita is entitled to these documents. Capita is, in law, now the same company as Stirling which was the trustee of the trust throughout the relevant period. Mr Arthur was at all times either Stirling's director or its employee or its agent and he was carrying out all he did on behalf of Stirling in its capacity as trustee. Capita is therefore entitled to demand these documents or copies from Mr Arthur who is under an obligation to produce them. Now of course the documents are no longer in his possession, they are in the possession of the JFCU who have confirmed that there is no objection, from a criminal investigation point of view, to supplying copies of the documents. Therefore the fact that those documents are now in their possession rather than Mr Arthur's, does not affect the position.
- 7 For those reasons we make the order as requested by Capita.
- 8 Having just made the order which we have, Capita has applied for an order for costs against Mr Arthur. That is clearly justified. The question then is whether the costs be on an indemnity basis as requested. In my judgement they should be. This is a matter where it would have been very simple for Mr Arthur to have produced a letter of consent. He said that he would, he was asked for his consent to the supply of the documents well before the representation and in my judgement he has behaved in a completely unreasonable fashion in failing to engage with the process and failing to issue a letter. As the Court said in the *Ogier Trustee Limited -v- C I Law Trustees* [\[2006\] JRC 158](#) the normal order where a trustee fails in its duty to provide documents and information to an incoming trustee should be an order for indemnity costs. Of course the situation is not exactly the same here because it is the same trustee bringing the matter but it is seeking information and documents from the person who was responsible for the affairs of the trust when the trustee was Stirling, and he was solely responsible.
- 9 In my judgement this is an analogous situation to that in the [Ogier](#) case and the same principle should apply. I do not see why the beneficiaries of this trust should have to bear any of the costs for the bringing of these proceedings and I therefore order indemnity costs.