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## Rathbone Fiduciaries v Mauleverer and Ors

|                          |                 |
|--------------------------|-----------------|
| <b>Jurisdiction:</b>     | Jersey          |
| <b>Judge:</b>            | Deputy Bailiff  |
| <b>Judgment Date:</b>    | 24 January 2007 |
| <b>Neutral Citation:</b> | [2007] JRC 16   |
| <b>Reported In:</b>      | [2007] JRC 16   |
| <b>Court:</b>            | Royal Court     |
| <b>Date:</b>             | 24 January 2007 |

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### Text

[2007] JRC 16

ROYAL COURT

(Samedi Division)

Before:

M C St J Birt, Deputy Bailiff **with** Jurats Bullen **and** King

In the matter of the Palm Trust

Between

Rathbone Fiduciaries Jersey Limited

Representor

and

(1) Lionel Rex Dupre Mauleverer

(2) Global Trading Co (Jersey) Limited

(3) Global Trust Services (Jersey) Limited

(4) Global Sales and Service (Jersey) Limited

(5) Robert Palm  
(6) Rock Forge Limited  
Respondents

**Advocate J. M. P. Gleeson for the Representor.**

**The First Respondent in person and on behalf of Second to Fourth Respondents.**

**The Fifth Respondent in person and on behalf of the Sixth Respondent.**

### **Authorities**

Financial Services (Jersey) Law 1998.

*Re Green GLG Trust* [\[2002\] JLR 571](#).

*Re Duomatic Limited* [\[1969\] 2 Ch 365](#).

In ( *Deakin v Faulding* Unreported 31st July 2001) Hart.

*Jalmoon Pty Limited v Bow* [1997] 15 ACLC 230.

*Domoney v Godinho* [\[2004\] 2 BCLC 15](#).

Deputy Bailiff

- 1 In this matter the representor applies for certain declarations concerning the validity of an appointment of the issued share capital of a company incorporated in Jersey called Basilisk Limited ("Basilisk"). As will be seen in due course, it is ultimately a very straightforward matter and the fact that the parties have been unable to resolve matters despite some five years of correspondence and have had to bring the matter before the Court is a cause for profound regret.
- 2 The Court has been provided with a detailed affidavit from Mr Nigel Bentley, the managing director of the representor, to which is exhibited a very substantial body of correspondence. The first respondent ("Mr Mauleverer") has also produced a bundle of correspondence and other documents. We have read all of the papers submitted to us. However it is not necessary to lengthen this judgment with reference to most of the correspondence. We propose to summarise matters as briefly as possible and to refer only to those matters which are essential in order to explain the decision which we have reached.

### **(i) The background**

- 3 The representor is a company carrying on the business of trust and company

administration. It was formerly known as Lex Nominees International Limited and was owned by Nigel Harris Trust Company Limited ("Nigel Harris Trust"). That company in turn formed part of the trust company business carried on by the firm of English solicitors of which the late Mr Nigel Harris was the senior partner. In March 2000 the business was acquired by Rathbone Brothers Plc and accordingly the representor subsequently changed its name in July 2002.

- 4 It is clear from what he told the Court that Mr Mauleverer had a close working relationship for many years with Mr Nigel Harris. Indeed his wife had worked for Mr Harris. He told us that in about 1971 he had set up a trust and company business of his own under the 'Global' name. The second to fourth respondents ('Global Trading', 'Global Trust' and 'Global Sales' respectively and together "the Global companies") were apparently owned under some form of trust, and a company in the Harris Trust group was the ultimate owner of the company which was trustee of that trust. Although we were not given - and did not ask for - any details, one can probably safely assume that Mr Mauleverer had an interest thereunder. For many years he ran the business from a small office in St Helier but he told us that in 1994 he moved the business to his home and thereafter ran it himself with the assistance of a part-time secretary.
- 5 On 25<sup>th</sup> February 1987 the Palm Trust ("the Trust") was established by deed executed by the fifth respondent as settlor ("the settlor") and Global Trust and the representor as trustees. The Trust was a conventional discretionary trust and the settlor provided a letter of wishes. Although he was not named as a beneficiary initially, he was added as a beneficiary on 28<sup>th</sup> February 2001. The Trust was governed by the law of Jersey. Since 1997 the sole remaining asset of the Trust has been 500 shares (being the entire issued share capital) in Basilisk. The sole asset of Basilisk is a British registered yacht which was used by the settlor. It is not disputed that the registered shareholders of Basilisk at all material times have been Global Trading (holding 494 shares), Global Trust (holding 3 shares) and Global Sales (holding 3 shares). They each held as nominee for the trustees of the Trust.
- 6 It is clear that Mr Mauleverer, through the Global companies, was responsible for the administration of the Trust and Basilisk. Thus, not only were he and two other gentlemen the directors of Basilisk, but the share register and company books were kept at the Global office, which was also the registered office of Basilisk. He prepared an annual trial balance of the Trust which was a simple document showing only the shares in Basilisk and this was approved annually by the representor. We can well understand that the way in which this matter was run historically was based upon the close working relationship between Mr Mauleverer and Mr Nigel Harris.

## **(ii) The purported resignation**

- 7 However, by 2000, changes were afoot. Trust companies would have to register and be regulated under the Financial Services (Jersey) Law 1998 and Rathbone Plc had acquired

the Nigel Harris trust company business of which the representor was part. Correspondence began in 1999 whereby staff of the representor were asking Mr Mauleverer for proper financial accounts in relation to the Trust. It is clear that this also related to other trusts where both Global Trust and the representor were trustees. No satisfactory accommodation appears to have been reached and in due course the representor decided to resign as the trustee of the Trust (and other trusts) on 10<sup>th</sup> November 2000. It executed an instrument of retirement and delivered a copy to Mr Mauleverer on that date.

- 8 There followed considerable correspondence and discussion. Suffice it to say that Mr Mauleverer was not happy with the representor's decision and did not accept that it was entitled to resign unilaterally in this way. It emerged at a meeting on 22<sup>nd</sup> November 2000 that Mr Mauleverer had decided that the Global companies would not apply for registration under the 1998 Law because of an inability to meet the span of control requirements. This meant that Global would be unable to carry on any trust or company administration business lawfully after 1<sup>st</sup> February 2001, which was the date by which application for registration had to be submitted to the Jersey Financial Services Commission ("JFSC") in order to take advantage of the transitional provisions. There was therefore a comparatively short period to find an alternative trustee of the Trust.
- 9 After a while the representor agreed that it would resume its position as trustee provided that it was given appropriate Know Your Customer ("KYC") material but Mr Mauleverer was not happy with this. He began to write to the chairman of Rathbone Brothers Plc complaining of a breach of trust by the representor. By mid-January it was clear that an impasse had been reached and eventually, given the 1st February cut-off date for the registration of trust company business and the need to ensure that the Trust was not left without a trustee, the representor decided to accept its re-appointment as trustee of the Trust notwithstanding that the KYC material had not been provided.
- 10 The representor prepared a draft deed of retirement which did two things. First it declared that the instrument of retirement dated 10<sup>th</sup> November 2000 did not constitute notice of resignation by the representor so that it continued as trustee and secondly, it stated that Global Trust retired as a trustee. The deed was executed by Global Trust and returned to the representor on 31<sup>st</sup> January 2001. In the same letter Mr Mauleverer stated that all the existing directors and secretary of 'each company' had resigned and that "our trustee company and the nominee shareholders have today executed stock transfer forms to transfer all the issued shares of each company to your relevant trustee companies." The reference to 'each company' would seem to be because the letter was written in connection with a number of different trusts and companies administered by Global. The upshot was that from 1<sup>st</sup> February 2001 Basilisk had no directors or secretary and the representor was the sole trustee of the Trust. The Global companies were still the registered shareholders of Basilisk but it would seem that they may have executed forms of transfer in favour of one or more of the Rathbone companies although it is not clear which. In response, by letter dated 1<sup>st</sup> February 2001, Mr Christopher Harris, son of Mr Nigel Harris and a director of the

representor, requested Mr Mauleverer to send the company books for Basilisk to the representor together with the executed transfer forms and resignation letters and up to date contact details for the settlor. He also requested other information. We do not propose to summarise the further correspondence on this aspect. Suffice it to say that Mr Mauleverer did not provide the company books or answer Mr Harris' queries. The company books have remained at Mr Mauleverer's office, which has remained the registered office of Basilisk.

- 11 Mr Mauleverer replied on 2<sup>nd</sup> February. He made no reference to the request for the company books of Basilisk and the other documents requested by the representor. As far as the request for an up to date contact address for the settlor was concerned, Mr Mauleverer stated merely that the settlor's contact details "had not changed for many years but, if you would like me to forward correspondence, please let me know".
- 12 Mr Harris replied on 7<sup>th</sup> February. He summarised the position and went on to request the precise name of the transferee of the shares in Basilisk and gave an address for the settlor taken from the representor's records, which he asked Mr Mauleverer to confirm. In his reply of the same date Mr Mauleverer said that he had been asked not to provide the representor with further information for the time being and merely referred back to his letter of 31<sup>st</sup> January for the identity of the transferees. He repeated both these points in a letter of 9<sup>th</sup> February when he said that he was satisfied that the representor's question as to the identity of the transferees of the shares in Basilisk had been answered by him unambiguously in his letters of 31<sup>st</sup> January and 7<sup>th</sup> February. That was of course simply not so. It is clear that by this time relations between Mr Mauleverer and the representor had begun to deteriorate.

### **(iii) The appointment of April 2001**

- 13 . On 13<sup>th</sup> February 2001 the representor, via Mr Mauleverer, received a written request from the settlor for the appointment of all the shares in Basilisk to a Gibraltar company Rock Forge Limited and for the Trust to be terminated. The settlor's letter was accompanied by a covering letter from Mr Mauleverer which enclosed a stock transfer form transferring 500 shares in Basilisk from the representor to Rock Forge. This was the first indication which the representor had received that all the shares in Basilisk had apparently been transferred by the Global companies to the representor (although this later turned out not to be so). In a reply of 20<sup>th</sup> February, Mrs Bennett of the representor explained that Rock Forge was not a beneficiary and stated that the representor would therefore need to take steps to appoint Rock Forge as a beneficiary of the Trust. She also asked for confirmation as to whether Mr Mauleverer held the original share certificate for the shares in Basilisk.
- 14 . In his reply dated 22<sup>nd</sup> February addressed to Mr Harris, Mr Mauleverer did not deal with these points but complained that Mr Harris was not dealing with matters personally and reiterated that all the information about the holding of shares had been dealt with in his earlier correspondence. This was not so. In fact it remained the position that the representor

had been unable to ascertain, despite a number of requests, who actually were the shareholders of Basilisk and had not yet managed to obtain sight of the company books. On 27<sup>th</sup> February, Mr Mauleverer pressed for the return of the executed stock transfer form from the representor to Rock Forge. On 28<sup>th</sup> February the settlor was added as a beneficiary of the Trust by deed executed by the representor.

- 15 . On 2<sup>nd</sup> March Mrs Bennett wrote to Mr Mauleverer emphasising that, in order to appoint to Rock Forge, the representor had to be satisfied that Rock Forge was in the beneficial ownership of Mr Palm and she asked for confirmation of this from Mr Mauleverer. Mr Mauleverer was not impressed with this point and wrote back to Mr Harris on 5<sup>th</sup> March asking Mr Harris whether he agreed with Mrs Bennett and, if so, whether he would supply a note explaining the reasons. Mr Harris replied on 6<sup>th</sup> March confirming that he shared Mrs Bennett's opinion. Instead of supplying the information requested, Mr Mauleverer addressed his next letter of 8<sup>th</sup> March to the chairman and to the chief executive of Rathbone Brothers Plc complaining about a further apparent breach of trust committed by the representor in Jersey. We should add that it was indeed necessary for the representor to establish the beneficial ownership of Rock Forge before appointing the trust fund to it and the representor's questions of Mr Mauleverer were not only reasonable, they were essential.
- 16 . On 15<sup>th</sup> March Mrs Bennett again emphasised to Mr Mauleverer that the representor wished to resolve matters as soon as possible but that it had to be satisfied that an appointment to Rock Forge would be for the benefit of the settlor. They had asked for confirmation from Mr Mauleverer but emphasised that it had not been forthcoming. She also mentioned that Mr Mauleverer's refusal to countenance a meeting or even a telephone call was making it difficult to take things forward. In a response addressed to Mr Harris on 16<sup>th</sup> March, Mr Mauleverer repeated that he had been asked not to provide the representor with any information and continued to press for the appointment of the shares to Rock Forge. Various correspondence continued until on 2<sup>nd</sup> April Mr Mauleverer wrote to Mr Harris insisting on the transfer but concluding by saying "The shareholders have today executed stock transfer forms (the relevant ones discussed in my 2001 Jan 31 letter having been destroyed) to transfer all the issued shares of the company directly to the acquiring company. In accordance with the 2001 Feb 10 'request', I think you should arrange for this action to be approved and for copies of appropriate resolutions to be sent to me."
- 17 Throughout this period the representor had been trying to make direct contact with the settlor and eventually such contact was made by telephone on 5<sup>th</sup> April. He confirmed to Mr Harris on the telephone that Rock Forge was his personal holding company. Accordingly Mr Harris wrote to Mr Mauleverer on 11<sup>th</sup> April stating that, having obtained clarification of the position from the settlor, the representor, as trustee of the Trust, would now be willing to add Rock Forge as a beneficiary of the Trust and distribute the trust assets to Rock Forge. According to the representor, these actions were taken on 24<sup>th</sup> April. There is a written resolution of the representor resolving that Rock Forge should be added



as a beneficiary; that the deed effecting this should be executed under seal; that 500 shares in Basilisk should, in accordance with Clause 4(b) of the Trust, be appointed to Rock Forge; and that the deed of appointment effecting this appointment should be executed under seal. It was further noted that there were therefore no further assets in the Trust and it was resolved that the Trust be terminated. We have seen the two deeds of 24<sup>th</sup> April, the first of which adds Rock Forge as a beneficiary and the second of which appoints 500 ordinary shares in Basilisk to Rock Forge absolutely. Because of the subsequent queries raised by Mr Mauleverer as to the effect of the second deed we would quote the relevant paragraph of that deed of appointment:-

*"In exercise of the powers for this purpose conferred upon them by Clause 4(b) of the settlement and of all other powers them enabling and in consideration of the covenants and indemnities hereinafter contained the trustee hereby appoints the Appointed Fund to the Beneficiary absolutely and the trustee hereby undertakes to transfer the said assets into the name of the Beneficiary and to perform all acts or deeds pursuant thereto with intent that the Beneficiary shall be absolutely entitled to the Appointed Fund."*

The Appointed Fund is defined as the 500 ordinary shares in Basilisk and the Beneficiary is defined as Rock Forge.

- 18 It is clear that, in order to finalise matters following the appointment, the representor should have written to the Global companies directing them that they were now holding the shares in Basilisk for Rock Forge and to look for Rock Forge for their instructions. Unfortunately, this was not done for some time. On 30<sup>th</sup> April 2001 Mrs Bennett wrote to Mr Mauleverer simply to say that the necessary documentation had now been completed to effect the transfer of the Basilisk shares to Rock Forge and that this had been done on 24<sup>th</sup> April. That was of course rather ambiguous and uninformative. Nevertheless we consider that most nominees would, on receipt of such a letter, have made enquiries and asked for confirmation from the representor that the nominee was now to hold the shares for Rock Forge. However Mr Mauleverer did not take this course. There was subsequent correspondence about the fees charged by the representor and it would appear that Mr Mauleverer made a complaint to the JFSC about the representor. It is clear that Mr Mauleverer and the representor were engaged in finalising other company and trust matters as well as those in relation to the Trust and Basilisk.

#### **(iv) Correspondence since the April 2001 appointment**

- 19 It would appear that the JFSC asked the representor to provide information to Mr Mauleverer about the appointment because on 20<sup>th</sup> May 2003 Mrs Bennett wrote to Mr Mauleverer enclosing three certified copies of the deed of appointment of Rock Forge as a beneficiary of the Trust, the deed of appointment of the shares in Basilisk to Rock Forge, the written resolution of the representor in connection with these appointments and a letter approving the use of stock transfer forms to transfer the shares in Basilisk from the registered shareholders to Rock Forge. We think it appropriate to set out the text of that

letter which was addressed to the three Global companies, which were of course still the registered shareholders of Basilisk:-

*"Dear Sirs*

*The Palm Trust/ Basilisk Limited*

*Rathbone Fiduciaries Jersey Limited hereby ratifies and confirms due authority for the execution of stock transfer forms by Global Trading Company (Jersey) Limited, Global Sales and Service (Jersey) Limited and Global Trust Services (Jersey) Limited in April 2001 relating to the transfer of the issued share capital of Basilisk Limited to Rock Forge Limited."*

It appears that the certified copy of the trustees resolution was dated 26<sup>th</sup> April rather than 24<sup>th</sup> April. According to the affidavit filed by Mr Bentley, the original resolution of 24<sup>th</sup> April had been mislaid at the time of production of the certified copy and a duplicate resolution was apparently signed and erroneously dated 26<sup>th</sup> April. This gave rise to further correspondence at a later date. During the hearing, Mr Gleeson conceded that 20<sup>th</sup> May 2003 was the first occasion upon which Mr Mauleverer had been sent copies of the documents showing what the representor had in fact done on 24<sup>th</sup> April 2001 and notifying the Global companies of the fact that they could now transfer the shares to Rock Forge. Mr Mauleverer acknowledged at the hearing that he had received these documents.

20 The next event referred to in the evidence is a meeting on 19<sup>th</sup> July 2004 between Mr Mauleverer and Mr Bentley, who had become the managing director of the representor. The meeting was essentially about other matters but the position of the Trust and Basilisk was touched upon. Mr Bentley's file note recorded that he would personally investigate the manner in which the Trust had been wound up and would write to Mr Mauleverer with evidence that the Trust had been validly brought to an end by appointing the assets to the client. Following this Mr Bentley sent through further copies of the deeds of appointment dated 24<sup>th</sup> April 2001 and the written resolution (again unfortunately dated 26<sup>th</sup> April) and a further up-dated letter from the representor dated 15<sup>th</sup> July 2004 addressed to the Global companies in the same terms as the letter of 20<sup>th</sup> May 2003 above save that the reference to 'April 2001' becomes a reference to '2<sup>nd</sup> April 2001'. Both references were clearly to the apparent transfers by the Global companies to Rock Forge described in Mr Mauleverer's letter of 2<sup>nd</sup> April 2001 set out at para 16 above.

21 In an effort to bring matters to a conclusion the representor approached the settlor and on 23<sup>rd</sup> December 2004 Mrs Bennett sent him a draft of a letter to send to Mr Mauleverer notifying Mr Mauleverer whom he (the settlor) wished the Global companies (as registered shareholders) to appoint as directors of Basilisk. However the upshot of this was that the settlor wrote to Mr Bentley following a discussion with Mr Mauleverer in which he put the ball back in the representor's court, although it is quite hard to tell exactly what he was asking the representor to do when he referred to ensuring that the representor '*meet its regulatory requirements, especially remedying whatever false or misleading statements it*



*made*'. This expression was repeated in a letter dated 27th January 2005 from Mr Mauleverer to the chairman of the Jersey Financial Services Commission complaining of the representor's conduct. In a letter of 4th February 2005 Mr Bentley wrote to Mr Mauleverer again indicating what he considered was necessary in order to resolve the matter. He said the first step was for new directors and a new secretary of Basilisk to be appointed and he attached a draft resolution in order to regularise the position. The various enclosures Mr Bentley had sent were returned on 5th February by Mr Mauleverer with the simple comment that he had not asked for them and anyway they contained errors and relied on mistaken assumptions. He did not however elaborate on what these errors and mistaken assumptions were. He went on to say that any future prevarication by Mr Bentley would reinforce suspicion that the representor had been in deliberate breach of its duties of trust for four years and that Mr Bentley was personally directing a cover up. By now Mr Mauleverer had begun copying his letters to the Archbishop of Canterbury, the Bishop of Winchester, the Dean of Jersey, the Lieutenant Governor and a number of others. Further correspondence followed which we do not need to rehearse but on 21st March 2005 the representor sent an e-mail to the company administration agents of Rock Forge outlining the actions required to bring finality to the matter. However, by now it was becoming clear that Mr Mauleverer was of the view that the deed of appointment of 24th April 2001 had not successfully appointed beneficial ownership of the shares in Basilisk to Rock Forge because, on 12th April 2005, he took the unusual step, on behalf of Rock Forge, of placing a notice in the Jersey Evening Post which read as follows:-

*"Whereas Mrs Nicola Bennett (of Rathbone Trust Company Jersey Limited) stated in her e-mail dated 22nd March 2005:-*

*' The beneficial ownership of Basilisk was held by a Jersey Trust but was appointed to Rock Forge Limited (which was appointed a beneficiary) in April 2001'*

*and she referred to us (Rock Forge Limited) as 'beneficial owners' of Basilisk Limited.*

**TAKE NOTICE:-**

*1. that ' The beneficial ownership of Basilisk' was not transferred to Rock Forge Limited,*

*2. that MRS BENNETT'S DESCRIPTION (of Rock Forge Limited 'as beneficial owners' of Basilisk Limited) IS FALSE and that Rock Forge Limited has not (until Mrs Bennett's e-mail dated 22<sup>nd</sup> March 2005) been aware that it has been so described,*

*3. that Mrs Bennett appears to be confusing the term:-*

*3.1 ' beneficial owner' (which stands possessed of assets) with the term:-*

*3.2 ' beneficiary' which does not stand possessed of assets held by a trustee of a settlement and*

*4. that ROCK FORGE LIMITED hereby publicly declares:-*

*4.1 that it REJECTS Mrs Bennett's new suggestion that Rock Forge Limited has been 'beneficial owner' of Basilisk Limited for some four years and confirms:-*

*4.1.1 that it does not stand possessed of Basilisk's shares and*

*4.1.2 that it has not accepted the role of their 'beneficial owner' and*

*4.2 that it REQUIRES RATHBONE to honour its previously withheld undertaking (made as trustee and beneficial owner on 24 April 2001) 'to transfer the said assets [the shares of Basilisk Limited] into the name of the Beneficiary [Rock Forge Limited] and to perform all acts or deed pursuant thereto' including 'acts' approving the action of the 'registered shareholders' on 2 April 2001 etc and ensuring that 'such entries be made in the register as are necessary to give effect to this transfer' as requested on 2 April 2001.* **[original emphasis]**

The notice went on to remind the JFSC of their duty to ensure that Rathbones met their regulatory requirements.

22 In the light of the notice, the representor consulted Bedell Cristin. Advocate Dart of that firm wrote to Mr Mauleverer on 1<sup>st</sup> June 2005. The letter set out clearly why the deed of appointment of 24<sup>th</sup> April 2001 was indeed effective to appoint beneficial ownership of the shares in Basilisk to Rock Forge. Given that Mr Mauleverer subsequently complained to the Bâtonnier and the Law Society about Advocate Dart, we consider it right to record that we regard all of Advocate Dart's letters to Mr Mauleverer as models of clarity and restraint. Advocate Dart went on in the first letter to explain in simple terms what was required in order to regularise the position. We will quote two paragraphs as follows:-

*"In paragraph 4.2 of the notice published in the Jersey Evening Post on 12<sup>th</sup> February 2005, Rock Forge Limited requires Rathbone to transfer the shares of Basilisk Limited into the name of Rock Forge Limited and to perform all acts or deeds pursuant thereto. Rathbones have already done everything that it is within their present power to do in this connection. If Rock Forge Limited wishes to become the registered shareholder of the issued shares of Basilisk Limited (which it is entitled to do as the beneficial owner of those shares), this requires Rock Forge Limited to give instructions to the three registered shareholders. As nominees, they should then execute stock transfer forms of their respective shareholdings in Basilisk Limited in favour of Rock Forge Limited. I am sure that you are aware that it is now possible for a Jersey company to have a single shareholder. The difficulty which then arises is that the stock transfers cannot be approved, and entries cannot be made in the register of members of Basilisk Limited to reflect the transfers, without appropriate resolutions of the directors of Basilisk Limited. Once again, therefore, we come back to the need for there to be individuals willing to accept office as directors of Basilisk Limited if this matter is to be concluded.*

*Please can you advise whether or not you are aware that there are any persons presently holding office as directors of Basilisk Limited. If you are not, then a shareholders resolution in the form supplied to you by Nigel Bentley under cover of his letter of 4<sup>th</sup> February 2005 would still appear to be appropriate and the three shareholder companies must look to Rock Forge Limited as beneficial owner of the shares of Basilisk Limited, for instructions as to the individuals to appoint as directors. A further copy of the resolution which needs to be adopted is enclosed. Once directors have been appointed for Basilisk Limited, or if there are directors already in office, the three registered shareholder companies of Basilisk Limited need to execute stock transfer forms in favour of Rock Forge Limited and those forms need to be approved, and authority given for appropriate entries to be made in the register of members of Basilisk Limited, by a meeting of the directors of Basilisk Limited. None of this is within the control of Rathbones, but I am sure that if you so request, they will be happy to provide draft resolutions and minutes, as well as suitable stock transfer forms, for execution."*

The letter ended by saying that, if the matter could not be resolved, the representor might be left with no choice but to seek the directions of the Court.

- 23 At no stage in the subsequent correspondence did Mr Mauleverer address a reply to Advocate Dart but he wrote regularly to the chairman of Rathbone Brothers Plc about Advocate Dart's letters and copied Advocate Dart into that correspondence. On 3<sup>rd</sup> June he wrote to the chairman stating that the deed of appointment had appointed only the shares themselves and not the beneficial ownership of the shares. He went on to say that Global must therefore continue to look to the representor as owner until the shares themselves were transferred to Rock Forge.
- 24 Faced with this assertion on the part of Mr Mauleverer and in a desperate attempt to resolve matters to Mr Mauleverer's satisfaction, Advocate Dart advised the representor, out of an abundance of caution, to execute a further deed of appointment specifically appointing the beneficial ownership of the shares in favour of Rock Forge. This was effected on 15<sup>th</sup> June 2005 ("the 2005 Appointment") and the deed recites that the trustee intended and believed that it had appointed in favour of Rock Forge by the original deed of appointment dated 24<sup>th</sup> April 2001 all ownership rights and entitlement in the shares in Basilisk, including the beneficial ownership thereof, but, if and to the extent that the beneficial ownership had not already been effectively appointed, it expressly appoints that beneficial ownership to Rock Forge. On the same date the representor wrote to the three Global companies confirming that the beneficial interest in the shares in Basilisk owned by the nominees had been appointed to Rock Forge and that accordingly they should henceforward look to Rock Forge for instructions with regard to actions relating to those shares. A copy of the 2005 Appointment was sent to them.

- 25 Unfortunately this did not have the desired effect because, by letter dated 30<sup>th</sup> June 2005

to the chairman of Rathbone Brothers Plc, Mr Mauleverer asked Mr Bentley to confirm that the representor had not ceased to be a trustee of the Trust before 15<sup>th</sup> June 2005. On various occasions thereafter Mr Mauleverer continued to write to the effect that, until the name Rock Forge was entered on Basilisk's register of members, the Global companies had no option but to continue to look to the representor as owner.

- 26 Correspondence continued to take place but all to no avail and eventually the representor issued its current representation on 30<sup>th</sup> August 2006 seeking, *inter alia*, a declaration that the April 2001 Appointment was effective to appoint the entire issued share capital of Basilisk to Rock Forge absolutely.

## Conclusions

- 27 In our judgment the position in this case is elementary and clear beyond doubt. At the request of the settlor, the representor, as trustee of the Trust, exercised its power of appointment under Clause 4(b) of the Trust to appoint the entire issued share capital of Basilisk to Rock Forge absolutely on 24<sup>th</sup> April 2001. The terminology used in the deed of appointment is effective to appoint full beneficial ownership of the shares in Basilisk to Rock Forge. The representor could not transfer legal ownership of the shares to Rock Forge because it did not hold legal ownership itself. That ownership rested with the three Global companies who were the registered shareholders of all the shares in Basilisk. They held the shares as bare nominee for the representor as trustee of the Trust. The deed was however effective to appoint the beneficial interest in those shares absolutely to Rock Forge and, following that appointment, the Global companies held the shares as bare nominee for Rock Forge. We can understand why the representor on advice, felt that it might help to remove any doubt in Mr Mauleverer's mind by executing the 2005 Appointment but that Appointment was not necessary and was of no effect, because the representor had already validly appointed the beneficial ownership of the shares in Basilisk to Rock Forge by virtue of the 2001 Appointment.
- 28 At various points in the correspondence, Mr Mauleverer has queried the fact that certain copies of the written resolution of the representor to effect the deed of appointment were dated 24<sup>th</sup> April whereas others were dated 26<sup>th</sup> April. This was undoubtedly inefficient on the part of the representor but the Court accepts the explanation proffered as to mislaying the original. What the Court is completely satisfied of is that on 24<sup>th</sup> April 2001 the representor decided to and did exercise its power of appointment under Clause 4(b) so as to appoint the shares in Basilisk absolutely to Rock Forge.
- 29 Where we have some sympathy with Mr Mauleverer is that the representor initially failed to communicate its decision properly to the Global companies. It should have notified them of the appointment and directed them that they were now holding the shares as nominee for Rock Forge. The only initial communication in this respect was the letter from Mrs Bennett dated 30<sup>th</sup> April 2001 and that did not explain the position properly. We accept that it was

not until 20<sup>th</sup> May 2003 that Mr Mauleverer was supplied with copies of the deed of appointment and a letter from the representor addressed to the Global companies.

- 30 We further accept that, even in that letter, the wording was perhaps not ideal. Instead of stating simply that the Global companies were now holding to the order of Rock Forge or should look to Rock Forge for their instructions, both the 20<sup>th</sup> May 2003 and 15<sup>th</sup> July 2004 letters referred to the representor ratifying and confirming authority for the execution of share transfer forms by the Global companies to Rock Forge on 2<sup>nd</sup> April 2001. However, when read with the deed of appointment and the various correspondence, it should have been obvious to Mr Mauleverer that the beneficial ownership of the shares in Basilisk had been appointed absolutely to Rock Forge and accordingly the representor intended that the Global companies should henceforth hold those shares to the order of Rock Forge and were authorised to transfer them into the name of Rock Forge. Even if Mr Mauleverer felt that the wording of the 20<sup>th</sup> May 2003 and 15<sup>th</sup> July 2004 letters was not ideal, any reasonable company administrator would simply have asked for specific clarification that the Global companies were now indeed to hold to the order of Rock Forge. In our judgment, once he received the documents sent to him on 20<sup>th</sup> May 2003 Mr Mauleverer should have accepted that the Global companies were holding the shares in Basilisk as bare nominee for Rock Forge and should have acted accordingly.
- 31 Any scintilla of doubt concerning the nature of the communications by the representor to the Global companies on this point was in any event removed by the letter of 15<sup>th</sup> June 2005 which specifically stated that the Global companies should look to Rock Forge for instructions in relation to the Basilisk shares.
- 32 So why did Mr Mauleverer not accept the position even once it was clearly explained to him by the representor and by Advocate Dart? We have had the benefit of hearing Mr Mauleverer's submissions during the hearing and we have concluded that a substantial contributory factor to the situation was a concern on his part that, if the Global companies agreed to hold the shares in Basilisk for a new beneficial owner (i.e. Rock Forge instead of the representor as trustee of the Trust) and if they then appointed new directors, they would be considered to be carrying on trust company business (as defined in the 1998 Law) at a time when they were not registered and would therefore be committing an offence. Indeed, when pressed by the Court as to exactly what it was that he was asking the Court to do, Mr Mauleverer explained that, amongst other things, he wished to Court to procure that the JFSC would grant him an indemnity from prosecution in respect of all the necessary steps to regularise the situation.
- 33 On this aspect, the Court found it inconceivable that, given that Mr Mauleverer's actions would be aimed at getting rid of the administration of Basilisk, the JFSC would ever consider prosecuting him for taking such steps. As it happened, because of the complaints directed to the JFSC in respect of the representor by Mr Mauleverer, Mr Darren Boschat of the JFSC was in Court for the hearing. The Court took the opportunity of outlining to him the sort of steps which would be necessary to resolve the position and enquired of him what



the JFSC's approach to such actions by Mr Mauleverer and the Global companies would be. Mr Boschat confirmed, as one would have expected, that the JFSC was anxious to see this matter brought to a sensible conclusion and that there was no prospect of the JFSC recommending a prosecution against Mr Mauleverer or the Global companies simply by reason of their taking the necessary steps to resolve the position and to procure that the administration of Basilisk was transferred to another service provider. We appreciate that Mr Boschat cannot bind the Director General, who in turn cannot bind the Attorney General, but we are quite happy to place on record our shared incredulity with Mr Boschat that anyone would think it appropriate to take action against Mr Mauleverer or the Global companies for taking the steps to which we shall refer at the end of this judgment, even if such actions would technically amount to carrying on trust business (as to which we express no view, having heard no argument on the point).

- 34 We have already stated our conclusion that the 2001 Appointment was effective to appoint the beneficial interest in the shares in Basilisk to Rock Forge but, in deference to Mr Mauleverer's submissions, we propose to deal briefly with the arguments which he raised as we understood them.
- 35 Firstly, he submitted that the representor should acknowledge that it was still trustee of the Trust and should give authority to the Global companies to execute share transfers transferring the shares in Basilisk to Rock Forge. For the reasons which we have already given, this submission is erroneous. The representor appointed the beneficial interest in the shares to Rock Forge by the 2001 Appointment and, there being no further assets in the Trust, the Trust came to an end at that time. The only procedural matter which needed to be done in order finally to give effect to the 2001 Appointment was for the Global companies, as registered shareholders of the Basilisk shares, to be notified of the appointment to Rock Forge. Although not given in ideal terms, we are satisfied that, to any reasonable nominee, the notices dated 20<sup>th</sup> May 2003 and 15<sup>th</sup> July 2004, accompanied by copies of the deed of appointment dated 24<sup>th</sup> April 2001, were sufficient notification. Even if that were not so, the letter dated 15<sup>th</sup> June 2005 was on any view sufficient.
- 36 Secondly, Mr Mauleverer submitted that the Court should declare that the Hastings-Bass principle was part of the law of Jersey and that application of the principle to the facts of this case should lead to the invalidity of the 2001 Appointment. He submitted that the principle required that the representor should have had regard to the wishes and guidance of both the settlor and Mr Mauleverer in relation to the Trust and this it had failed to do in respect of the 2001 Appointment.
- 37 We agree that the Hastings-Bass principle is part of the law of Jersey (see *Re Green GLG Trust* [2002 JLR 571](#)). However we do not agree that there is any evidence that the representor failed to have regard to the wishes of the settlor and Mr Mauleverer when executing the 2001 Appointment. On the contrary, the settlor had expressed a wish that the representor should appoint the shares in Basilisk to Rock Forge and Mr Mauleverer had supported him strongly in this and had indeed been critical of the representor for its delay in



making the necessary appointment whilst it ascertained the beneficial ownership of Rock Forge. It would appear that Mr Mauleverer was submitting that he and the settlor envisaged that the shares themselves would be transferred into the name of Rock Forge, not simply the beneficial ownership; it was in this respect that the representor had failed to take account of their wishes. However, this is to ignore the fact that the representor was simply not in a position to transfer the legal ownership of the shares because they were still registered in the names of the Global companies. In retrospect, what should have happened was that, immediately before Mr Mauleverer and his two co-directors resigned from Basilisk on 31<sup>st</sup> January 2001, they should have held a board meeting at which duly executed share transfers by the Global companies in favour of the representor were tabled and approved by the directors, with the appropriate entry in the share register being made. This would have resulted in the representor being the sole registered shareholder. The representor could then have passed the necessary shareholder resolution to appoint new directors and the legal ownership of the shares could then have been transferred by the representor to Rock Forge pursuant to the deed of appointment following approval from the new directors. However, this did not happen because registered ownership of the shares remained with the Global companies. Given that he knew that this was the case and that he continued to hold the company books and share register of Basilisk, it is hard to see why Mr Mauleverer thought that the representor would be able to transfer legal ownership of the shares to Rock Forge.

- 38 Thirdly, Mr Mauleverer submitted that the Court should declare that the Duomatic principle should be applied so as to obviate the need to appoint new directors of Basilisk. The Duomatic principle derives from the case of *Re Duomatic Limited* [1969] 2 Ch 365 where it was held that, where it could be shown that all the shareholders with the right to attend and vote at a general meeting had assented to some matter which a general meeting of the company could carry into effect, the assent was as binding as a resolution in general meeting.
- 39 In (*Deakin v Faulding* Unreported 31st July 2001) Hart J held that, on the particular facts of that case, the Duomatic principle could be extended to cover the unanimous decision of the beneficial owners as opposed to the registered shareholders. Mr Mauleverer submitted that that principle should be applied in the present case.
- 40 However, it is far from clear that the decision in *Deakin* is a legitimate development of the Duomatic principle. In the Australian case of *Jalmoon Pty Limited v Bow* [1997] 15 ACLC 230, the Queensland Court of Appeal confined the principle to registered shareholders, as did Lindsay J in *Domoney v Godinho* [2004] 2 BCLC 15. Suffice it to say that it is clearly for consideration on a future occasion as to whether the Duomatic principle is capable of being applied to beneficial owners as well as registered shareholders, but the matter was not fully argued on this occasion.
- 41 However, we do not need to resolve the matter for two reasons. First, it would not avail Mr Mauleverer because we have held that the beneficial owner of the shares in Basilisk is and

has been since 24<sup>th</sup> April 2001, Rock Forge. There is therefore no action that the representor could take pursuant to the Duomatic principle. Secondly, the principle only applies to matters which a general meeting of shareholders could carry into effect. Under the articles of association of Basilisk, the directors have an absolute discretion as to whether to approve any share transfer and accordingly the transfer of shares from the Global companies to Rock Forge is not a matter which could be dealt with by a shareholders meeting.

- 42 Mr Mauleverer raised a number of other submissions (e.g. the difference in dates between 24<sup>th</sup> and 26<sup>th</sup> April 2001 on the trustee resolution and the alleged lack of instructions to the Global shareholders to hold the shares for Rock Forge), but we do not think that we can usefully add in this respect to what has been said earlier in the judgment.
- 43 In summary, we declare that the appointment of 24<sup>th</sup> April 2001 was a good and valid appointment in accordance with its terms and that accordingly the Global companies have since that date been holding the shares in Basilisk registered in their respective names as bare nominees for Rock Forge from whom they should take their instructions in connection with such shares.

### **The way forward**

- 44 It is in everyone's interest that this matter be brought to a final conclusion as speedily and cheaply as possible. In an effort to assist we propose to set out the steps which would need to be taken, although these are essentially those originally suggested by both the representor and Advocate Dart. We would emphasise that the list is not meant to be prescriptive or definitive; ultimately those administering Basilisk must take their own advice as necessary. However, it would seem to us that the following are the appropriate steps:-
- (i) The Global companies should execute declarations of trust in favour of Rock Forge in respect of the shares in Basilisk.
  - (ii) The Global companies should obtain instructions from Rock Forge (whose sole director is apparently the settlor who can therefore give instructions on behalf of Rock Forge) as to:-
    - (iii) who should be appointed as director(s) of Basilisk;
    - (iv) to whom the shares in Basilisk should be transferred i.e. Rock Forge itself or some other new (duly licensed) trust company in Jersey; and
    - (v) subject to paragraph 45, the choice of a new secretary and registered office.
  - (vi) The present articles of association of Basilisk require two directors but Article 94 allows the number to be reduced by the shareholders in general meeting. It follows

that, if Rock Forge wishes the settlor to be the sole director of Basilisk, this can be achieved by the necessary resolution of the Global companies as shareholders.

(vii) The Global companies should pass the necessary shareholder resolution to appoint the person(s) nominated by Rock Forge as director(s).

(viii) The Global companies should execute share transfers in favour of Rock Forge or the transferee(s) nominated by Rock Forge.

(ix) The new director(s) of Basilisk should hold a meeting to approve the transfer of shares from the Global companies to the new transferee(s). Subject to paragraph 45 below, they could at the same meeting appoint a new secretary and registered office.

(x) The various share transfers and appointments made by the directors should be written up in the share register and company books and records which, if there is to be a new registered office, should then be passed to the new service provider. At that stage the Global companies would be out of the picture entirely.

45 There is perhaps one variation to this which could be considered. The settlor described to us how he has been unable to use the yacht for some time because of ill health and that it may well be that the right course is for the yacht to be sold. In that event there may well be no continuing need for Basilisk. Indeed, even if the yacht is retained, the settlor may well consider it appropriate for it to be transferred to the ownership of Rock Forge, as there seems little need for two companies simply for the purpose of holding a yacht. This will of course be a matter for the settlor to decide. However, if he decides to wind up Basilisk, we raise the possibility that it might be most convenient for this to be arranged by Mr Mauleverer and the Global companies. It would seem that comparatively little would be involved. Either the yacht could be sold by Basilisk (acting through its new director(s)) and the proceeds distributed to Rock Forge as shareholder on a winding up, or alternatively Basilisk could be wound up before sale with the yacht being distributed in *specie* to Rock Forge as shareholder. It seems only fair that, in the light of what has occurred, the cost should be kept to a minimum and this might best be achieved by Mr Mauleverer and the Global companies taking these few extra steps rather than introducing a new service provider. We appreciate that, when we discussed the matter with Mr Boschat during the course of the hearing, we were considering merely the appointment of directors, the transfer of shares to Rock Forge and the subsequent actions necessary to transfer the administration of Basilisk to a new service provider as set out in para 44, but the additional work involved in winding up Basilisk seems extremely modest. We therefore invite Mr Mauleverer to consult with the JFSC with a view to seeing whether they would have any objection to his procuring the winding up as we have described rather than a new service provider having to undertake this. This will however require Mr Mauleverer to meet with the JFSC and generally talk to them rather more constructively than appears to have been the case hitherto. It is entirely a matter for the JFSC as to the attitude which they adopt towards these extra matters.

46 In its representation the representor seeks an order that the Global companies execute new declarations of trust in favour of Rock Forge in respect of the shares in Basilisk,

alternatively that the Viscount be authorised to do so on their behalf. We do not consider that this is appropriate. We are granting a declaration that the Global companies have been holding the shares in Basilisk as bare nominees for Rock Forge since 24<sup>th</sup> April 2001 and that is sufficient. It is now for the Global companies and Rock Forge (as it has been since 24<sup>th</sup> April 2001) to decide how to take matters forward. Paras 44 and 45 above constitute advice and guidance, not directions.

## Postscript

47 In his skeleton argument Mr Gleeson has given advance notice that, should the representor be successful, he will be asking for an order for indemnity costs against Mr Mauleverer and/or the Global companies and/or the settlor and/or Rock Forge. The representor has been successful and no doubt that application will be pursued. Although the decision on costs will be for the Deputy Bailiff alone, that decision must be made against the factual background found by the Court and we consider it may be helpful to the parties if we set out the Court's findings in this respect.

48 In an internal memo dated 16<sup>th</sup> July 2002 Mrs Bennett wrote to Mr Harris as follows:-

*"Our objective is to take matters forward in a positive and non-confrontational way. We are however severely constrained by Rex Mauleverer's policy of:-*

*(i) Not answering telephone calls;*

*(2) Declining to discuss matters on the telephone;*

*(3) The opaque and unclear nature of his written responses."*

49 Paragraphs 135 and 136 of Mr Bentley's affidavit say as follows:-

*"135 The legal issues raised in this application for directions are remarkably simple. The representor contends that on 24 April 2001, it took all the steps necessary to implement the settlor's wishes as expressed in his letter to the representor dated 10 February 2001 to appoint the shares to Rock Forge. The representor seeks the assistance of the Court in ratifying the 2001 Appointment and directing all requisite steps to achieve the vesting of ownership of shares in Rock Forge, consistently with the settlor's wishes.*

*136 Several straightforward practical steps could and should have flowed from the 2001 Appointment. Mr Mauleverer could have caused the Global companies to execute new nominee declarations of trust in favour of Rock Forge and thereafter the Global companies acting through Mr Mauleverer could have accepted the instructions of Rock Forge in all matters regarding the Basilisk shares. Those instructions might have included the appointment of new directors for Basilisk and, if required by Rock Forge, the transfer of the shares*

into the name of Rock Forge or other nominees on its behalf. None of these perfectly simple steps have been carried out. Instead, Mr Mauleverer has engaged the representor in several years of *fruitless and astonishingly frustrating correspondence*. The correspondence has been littered with wide-ranging, wholly unfounded allegations against not just the representor, but also its advocate and even officers of the JFSC. The necessity for this application, to assist in the implementation of a routine administrative matter, has come about purely as a result of the irrational and intransigent stance taken by Mr Mauleverer."

- 50 The Court appreciates that this matter may have become mixed up in Mr Mauleverer's mind with disputes between him and the representor concerning other trusts and companies and nothing we say is to be taken as referring to such matters, as we have heard only passing reference to them. However, Mr Bentley is correct in stating that the issues in this case are simple and should have been speedily resolved. Having seen all the exhibited correspondence in this case and having heard the parties' oral submissions this Court has come to the clear conclusion that the last sentence of para 136 of Mr Bentley's affidavit is an accurate statement and that Mrs Bennett's memo is an accurate description of Mr Mauleverer's approach to this whole matter, which has undoubtedly made it extremely difficult to resolve the position. Mr Mauleverer and the Global companies should have accepted the position following receipt of the documents sent on 20<sup>th</sup> May 2003. Responsibility for the fact that matters have dragged on since then without being resolved lies entirely with Mr Mauleverer.
- 51 We would add that, having read the settlor's submissions and having had the opportunity of hearing him address the Court briefly, we consider that he relied on Mr Mauleverer's advice and that accordingly the fault for this debacle does not lie at his door.