

Yashvina Parujan v Atlantic Western Trustees Ltd

Jurisdiction:	Jersey
Judge:	Bailiff
Judgment Date:	19 August 2002
Neutral Citation:	[2002] JRC 155
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Text

[2002] JRC 155

ROYAL COURT

(Samedi Division)

Before:

Sir Philip Bailhache, Bailiff, **sitting alone**

Between
Yashvina Parujan
Representor
and
Atlantic Western Trustees Limited
Respondent

Advocate M. H. D. Taylor for the Representor;

Advocate D. F. Le Quesne for the Respondent.**Authorities.**

In re Esteem (2000) JLR N-41 .

Directions for progressing action to trial.

Bailiff

THE

- 1 This representation comes before the Court at the instance of the Representor for further directions. The original representation was brought in August 2000. The Representor sought, *inter alia*, the removal of the trustee from office and an audit of the fees charged by the trustee. The original representation has been adjourned on a number of occasions while negotiations continued between the Representor and the trustee in an attempt to agree upon the identity of an independent third party who would review the files and records of the trustees in relation to the trusts and companies under the administration of the trustee for the Representor's family. Eventually agreement was reached that Mr. Royan Ellis would conduct the review. His task, as set out in the preamble to the agreed terms of reference, was

“to consider the fees raised by the company for managing and administering the structures and to use his experience in trust matters to consider whether those fees were reasonable and therefore justifiably charged”.

- 2 Mr. Ellis has completed his review and has submitted his report dated 27th April 2002.
- 3 The Representor now seeks directions pursuant to this representation in the following terms –

“1. The Court should not make such directions as are necessary and desirable to ensure a fair hearing of the outstanding matters raised in the Representation and those to be raised by the Trustee in answer thereto and in particular to consider and direct if necessary as follows:-

(1) That the hearing of the Representation shall be fixed on a date within eight weeks of the hearing of this summons.

(2) That the Independent Reviewer be convened before the Royal Court on the date fixed for the hearing of the Representation in order that he may be cross examined on the contents on his Report.

(3) That the Trustee provide, within three working days of the date of this hearing, an affidavit setting out:-

(i) the fee notes which the Trustee or any of its nominees have issued to the Maple Trust, Acacia, Lom, the Pan American Trust and Shearson since the creation (which in respect of the Pan American Trust is denied) and incorporation of each entity.

(ii) the fee notes which the Trustee or any of its nominees have issued to the Kapadia family.

(iii) confirmation of the exact sums and the dates on which those have been paid to the Trustee and/or its nominees and the precise source of the funds which were used to settle those fee notes (setting out bank account details in full).

(iv) for the avoidance of any doubt confirmation of the outstanding sums which the Trustee claims are due in respect of its fees;

(v) confirmation of the legal costs which have been incurred by the Trustee on an annual basis since January 1999.

(4) That the division between the parties and the liability for the payment of the costs of the Independent Reviewer should be determined by the substantive hearing of the Representation.

(5) That the Court make any other order as it sees fit."

4 Mr. Le Quesne, who was appointed to act for the trustee some three months ago, has submitted that such directions are inappropriate. He contends that Mr. Ellis should not be convened by the Court and that Mr. Ellis is no more than a witness who could be called by either side. Counsel objected to an intimation from the Court that evidence might be reduced to affidavit form and contended that it was the right of a party to call *viva voce* evidence. Counsel suggested that a trial of the issues might take up to two weeks. He was, however, agreeable to an order in the form of paragraph (5) to the prayer of the original representation which sought "an order that the outstanding and disputed costs of the Trustee are not paid until an independent audit has been undertaken by the New Trustee". When asked whether the review by Mr. Ellis was not such an independent audit counsel demurred and contended that it should be conducted by a chartered accountant. Even then Counsel was of the view that such an audit would not be binding on the parties and could be rejected by either of them.

5 I bear in mind the injunction of the Court of Appeal in *in re Esteem* (2000) JLR N-41 in the following terms:

“The objective of all involved in civil proceedings is to progress to trial in accordance with an agreed or ordered timetable, at a reasonable level of cost, and within a reasonably short time”.

6 This representation was brought two years ago and needs now to be brought to an orderly conclusion. My directions are as follows:-

(i) Counsel will attend forthwith before the Bailiff's Judicial Secretary with a view to finding two days for trial in November or December 2002.

(ii) The Court will convene Mr. Royan Ellis to appear on that day for cross-examination upon his report by either party.

(iii) The trustee will prepare and file with the Court an affidavit setting out the matters contained in paragraph (3) of the summons on or before 30th September 2002.

(iv) The trustee will be at liberty to file another or other affidavits in relation to Mr. Ellis' report or any other matter relevant to the determination of paragraphs (3), (4), (5) of the representation as it sees fit on or before 30th September 2002.

(v) The representor will be at liberty to file an affidavit or affidavits in response to any affidavit filed pursuant to paragraphs 3 and 4 above on or before 21st October 2002.

(vi) The trustee will be at liberty to file an affidavit in response to any matters raised in the affidavit or affidavits filed pursuant to paragraph 5 above on or before 31st October 2002.

(vii) Counsel will obtain a date from the Bailiff's Judicial Secretary for a further short directions' hearing in the first week of November 2002 at which time limits for cross-examination and submissions will be ordered, if not already agreed.