

# The Representation of RBC Trustees (CI) Ltd; and the Siham Sami Raouf Trust and Articles 51 and 53 of the Trust (Jersey) Law 1984

<b>Jurisdiction:</b>	Jersey
<b>Judge:</b>	Bailiff
<b>Judgment Date:</b>	12 December 2013
<b>Neutral Citation:</b>	[2013] JRC 252
<b>Reported In:</b>	[2013] JRC 252
<b>Court:</b>	Royal Court
<b>Date:</b>	12 December 2013

**vLex Document Id:** VLEX-793721709

**Link:** <https://justis.vlex.com/vid/the-representation-of-rbc-793721709>

## Text

[2013] JRC 252

ROYAL COURT

(Samedi)

Before:

W. J. Bailhache, **Q.C.**, **Deputy**Bailiff, **and**Jurats Kerley**and**Olsen.

In The Matter of the Representation of RBC Trustees (CI) Limited  
And In The Matter of the Siham Sami Raouf Trust and In the Matter of Articles 51 and 53 of  
the Trust (Jersey) Law 1984  
and  
Benjamin Charles MacKenzie

**Advocate J. G. Speck for the Representor.****No Authorities**

Trust — request by the representor to exercise its power to procure forgiveness of the debt owed and terminate the trust if failure to comply by Ms Makar.

Bailiff

**THE DEPUTY**

- 1 By a representation dated 5<sup>th</sup> March, 2013, and considered by the Court on 29<sup>th</sup> August, 2013, the representor sought an order that Amira Makar (usually known as Mira Makar) (“Ms Makar”) exercise her powers and discretions under Clause 15 of the trust deed to appoint within two months of the date of the order a new trustee of the Trust and a new corporate services provider for, the company Conch Limited. The requisite corporate services are the provision of an administrator, a registered office in Jersey and at least two directors. The representor asks that if Ms Makar fails to comply with such order within two months of the order being made, the order should provide that the representor may exercise its powers under the Trust to procure the forgiveness of the debt owed to Conch Limited by Ms Makar and thereafter terminate the Trust. The Court reserved judgment, which is now delivered.
- 2 On 26<sup>th</sup> July, 1995, Abacus (CI) Limited executed a declaration of trust (“the Trust”). The Trust was known as the Siham Sami Raouf Trust. The principal beneficiary was identified as Ms Makar. She was entitled to the income of the trust fund during her lifetime and the trustee had power to appoint the whole or any part of the capital of the trust fund to her free from the trusts and provisions of the Trust, at its discretion. Ms Makar was also given under the Trust the power of appointing new or additional trustees. It was she who was specified in the fifth schedule, and clause 15(1) of the declaration of trust provided as follows:—

*“If any trustee hereof whether original, additional or substituted shall die or being a company shall be dissolved or shall give notice of desire to withdraw and be discharged from the trust hereof under the provisions of sub-clause (2) of this clause or shall refuse or become unfit to act then the persons specified in the fifth schedule hereto in order of priority may by deed appoint one or more persons where so ever resident subject to any exclusions or provisions specified in the fifth schedule to be a trustee hereof in place of the trustee so deceased, dissolved, desiring to withdraw and be discharged refusing or becoming unfit to act”.*

- 3 By a supplemental deed of 21<sup>st</sup> March, 1996, some amendments were made to the Trust,

consistently with the powers conferred upon the trustee by clause 20 of the Trust. The definition of the principal beneficiary as Ms Makar was deleted. The principal trusts were varied so that the trustee stood possessed of the capital and income of the Trust fund for such one or more of the beneficiaries in such shares if more than one and subject to such trusts and generally such conditions and restrictions as the principal beneficiary should in her absolute discretion appoint. There were default appointments if the principal beneficiary did not so appoint. This was a curious drafting style. Under the terms of the Trust, as amended, the principal beneficiary had a number of powers, but there was no apparent way of identifying who the principal beneficiary was. The trustee regarded Ms Makar as continuing to be the principal beneficiary even though she was not identified as such on the face of the Trust because this is how she was described in a letter of wishes signed by the effective settlor. However this may be, the financial statements for the Trust for the year ended 31<sup>st</sup> March, 2012, describe as the introductory notes Ms Makar as the life tenant and indicate her, Ihab Makar and Samia Makar, her brother and mother respectively, as beneficiaries. At all events, the position is that the representor holds the income of the Trust upon trust to pay out the same to Ms Makar during her lifetime, with power to raise capital for her benefit, and, subject to her life interest and any general power of appointment which she exercised, the representor holds the trust fund for her, her mother and brother.

- 4 The main asset of the trust fund is the entire issued share capital of the company Conch Limited, registered in Jersey. That company has loaned to Ms Makar an aggregate amount of £1,987,987. It has security for its loan over property in London owned and resided in by Ms Makar, and over certain shares. There are no liquid assets in the trust fund.
- 5 The representor's application for the orders which are referred to at paragraph 1 above was served on Ms Makar, Samia Makar and Ihab Makar in accordance with the Court's orders. Service of the proceedings has not proved easy. However, the Court is in no doubt that service has not only been effected but has also been effective. Ms Makar has sent a number of emails to the Bailiff's Judicial Secretary and to the Deputy Judicial Greffier. We can be satisfied that these emails truly come from Ms Makar because it is the same email address which she has used to communicate with the representor from time to time.
- 6 We are informed by Advocate Speck that Ms Makar is a Cambridge graduate and a chartered accountant. She has had senior executive positions in business. Unfortunately she has had some difficulties with litigation in England. On 5<sup>th</sup> December, 2012, a civil restraint order was made by Andrew Smith J, lasting for two years, preventing Ms Makar from bringing proceedings in the English courts without leave.
- 7 Judgments had been obtained against her in England by Messrs Russell Jones and Walker. Those successful plaintiffs were intending to enforce their judgments against properties in the Barbican owned by Ms Makar. At that time, the Trust did have some liquidity, and the representor bought out the Russell Jones and Walker claim. They treated the cost of that acquisition as a loan to Ms Makar in the books of the Trust. It is quite plain from the documentation put before us that, although there had been some difficulties

previously, for Ms Maker this was the last straw, and she became very angry with the trustees. Their working relationship with the principal beneficiary in effect collapsed in November 2008.

- 8 Mr Alan Pearce of the representor took over responsibility for this Trust in 2009. He has sworn affidavits in the course of these proceedings. We have read carefully both the affidavits and the correspondence which has been exhibited. The Court commends Mr Pearce on his tolerance and restraint. We are in no doubt that, faced with a relationship with the principal beneficiary which had become unmanageable, he acted with great courtesy and restraint.
- 9 In May 2012, Ms Makar was informed that the representor wished to retire as trustee, and she was requested to appoint someone else to do so. The representor also indicated that if she did not do so, it would bring the Trust to an end and appoint the assets to her.
- 10 It is unnecessary for the purpose of this judgment to detail those features which justify the conclusion that the relationship between trustee and principal beneficiary has completely broken down. We are completely convinced by what we have seen that it has. It is obvious that this Trust should be wound up. Furthermore, forgiving the debt due by Ms Makar to the company Conch Limited will be in her interests because if she sells the Barbican flats which she owns, the proceeds will not be payable to Conch. Although Ms Makar has not appeared before us, we recognise that if the trustee procures that the loans are forgiven, then it may follow that Ms Makar's home in London becomes vulnerable to the claims of other creditors, Conch having a first charge. Nonetheless, we do not think that should prevent us from making the orders requested. We do not think this Court should be a party in any sense to an arrangement whereby the United Kingdom Registry contains a reference to an apparent if somewhat artificial debt which might prevent or deter legitimate creditors of Ms Makar seeking to enforce their claims against her real estate which, in real terms, is unencumbered.
- 11 For the same reason, although this Court's judgments in trust applications are frequently anonymised, it would not be appropriate to anonymise this judgment. It would be unfair to creditors to do so. Furthermore, we have no doubt from reviewing the communications between Ms Makar and the trustee that we should exercise our discretion to ensure the judgment is published because those communications reveal not only the courtesy on the part of the representor, which we have mentioned, but the complete antithesis of that approach from Ms Makar, who has been consistently unreasonable and offensive in what she has said to the representor. Trustees are entitled to be treated with respect when they act professionally and properly, and they can expect the Royal Court to give them support in that connection.
- 12 In her email exchanges with the Bailiff's Judicial Secretary, Ms Makar suggests that Advocate Speck has acted wrongly in a number of respects. It is unnecessary to detail the various allegations which are contained in the email correspondence, which are not

supported by any of the documents which have been put before us, and Ms Makar did not consider it appropriate either to attend in Court herself or instruct an advocate to appear on her behalf to put submissions to us. We are satisfied there is nothing in her complaints in this respect.

- 13 For all these reasons, we make the orders requested in the prayers contained at paragraph 22 of the representor's representation, and we order that the costs of and incidental to this application of the representor should be paid out of the trust funds of the Trust.