

Tanya Marya Dick Stock v G.B. Trustees Ltd

Jurisdiction:	Jersey
Judge:	T. J. Le Cocq
Judgment Date:	10 May 2019
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Text

[2019] JRC 84A

Royal Court

(Samedi)

Before:

T. J. Le Cocq, **Esq., Deputy Bailiff, sitting alone.**

Between
Tanya Marya Dick Stock
Representor
and

G.B. Trustees Limited
First Respondent
John William Dick II
Second Respondent
Advocate Howard Sharp QC (acting for minor and unborn beneficiaries)
Third Respondent
John William Dick

Fourth Respondent

Advocate S J Alexander for the Representor.

Advocate M L Preston for the First Respondent.

Advocate D Evans for the Second Respondent

Advocate H Sharp QC, Third Respondent for the minor and unborn beneficiaries, in person

Advocate D P Le Maistre for the Fourth Respondent

Authorities

Pell Frischmann Engineering Limited -v- Bow Valley Iran Limited [\[2007\] JLR 479](#)

Crociani -v- Crociani [\[2013\] JRC 250](#)

Dick -v- Dick (née Naranjo) [1990/048a]

Hague Plant Limited -v- Hague and Others [\[2014\] EWCA Civ 1609](#) at 60

Trust — The Representor applies to withdraw the proceedings — decision.

THE DEPUTY BAILIFF:

- 1 Following my judgment dated 10th April, 2019, in which I refused to permit an amendment and re-pleading of the Representor's case and an adjournment of the trial dates, the Representor applies to withdraw the proceedings. It is clear that she anticipates the possibility of starting proceedings afresh for the removal of the First Respondent as trustee of the Manor House Trust and the Russian Trust (Trustee) at some point in the future.
- 2 The other parties do not oppose such a withdrawal but say that it should be on the basis that:—
 - (a) The Representor should meet the Respondents' costs on the indemnity basis;
 - (b) There should be an interim payment on account of costs at some 70% of that figure within an appropriate period;
 - (c) There should be a prohibition preventing the Representor from commencing proceedings against the Trustee without first obtaining the leave of the Court; and

(d) The Representor should not be able to apply to commence proceedings without first having discharged all costs liabilities under a) and b) above.

- 3 The Representor accepts the condition under d) above but argues that the costs should be paid on a standard basis – interim costs should be no more than 40% if ordered at all and there should be no threshold imposed against the Representor starting proceedings afresh.

Basis for payment of costs

- 4 The law with regard to the payment of costs on an indemnity basis is, in my view, clear. It is to be found in a number of cases but it is usefully found in *Pell Frischmann Engineering Limited -v- Bow Valley Iran Limited* [\[2007\] JLR 479](#) and *Crociani -v- Crociani* [\[2013\] JRC 250](#).

Interim payment

- 5 It was argued by the Representor that the cases do not speak with one voice on the matter of interim payments. In my view the Court clearly has a discretion to order an interim payment on account of costs and in my experience is doing so with increasing frequency.
- 6 I can see no reason not to make such an order in this case.

Threshold requirement

- 7 The ability of the Court to apply conditions to its leave for proceedings to be withdrawn is to be found within Rule 6/31 of the Royal Court Rules which is in the following terms:—

“(1) Except with the consent of the other parties to the action, a party may not discontinue an action or counterclaim, or withdraw any particular claim made by that party therein, or withdraw his or her defence or any part of it, without the leave of the Court, and any such leave may be given on such terms as to costs, the bringing of a subsequent action or otherwise as the justice of the case may require .

(2) Subject to the terms imposed by the Court in granting such leave, the fact that a party has discontinued an action or counterclaim or withdrawn a particular claim made by that party therein shall not be a defence to a subsequent action for the same, or substantially the same, cause of action

(3) When a party is liable to pay any costs under paragraph (1), then if, before payment of such costs, that party subsequently brings an action for the same, or substantially the same, cause of action, the Court may

order the proceedings in that action to be stayed until those costs are paid.”

- 8 Advocate Alexander for the Representor says that the Court should not impose a condition requiring the Representor to apply to the Court for leave should she wish to start proceedings against the Trustee. He says to do so would be to infringe the rights of a beneficiary set out in Article 51 of the Trusts (Jersey) Law 1984:—

“(1) A trustee may apply to the court for direction concerning the manner in which the trustee may or should act in connection with any matter concerning the trust and the court may make such order, if any, as it thinks fit .

(2) The court may, if it thinks fit –

(a) make an order concerning –

(i) the execution or the administration of any trust ,

(ii) the trustee of any trust, including an order relating to the exercise of any power, discretion or duty of the trustee, the appointment or removal of a trustee, the remuneration of a trustee, the submission of accounts, the conduct of the trustee and payments, whether payments into court or otherwise ,

(iii) a beneficiary or any person having a connection with the trust, or

(iv) the appointment or removal of an enforcer in relation to any non-charitable purposes of the trust;

b) make a declaration as to the validity or the enforceability of a trust;

(c) rescind or vary any order or declaration made under this Law, or make any new or further order or declaration .

(3) An application to the court for an order or declaration under paragraph (2) may be made by the Attorney General or by the trustee, the enforcer or a beneficiary or, with leave of the court, by any other person .

(4) Where the court makes an order for the appointment of a trustee it may impose such conditions as it thinks fit, including conditions as to the vesting of trust property .

(5) Subject to any order of the court, a trustee appointed under this Article shall have the same powers, discretions and duties and may act as if the

trustee had been originally appointed as a trustee.”

- 9 I do not agree. I do not think that the Court is denying the Representor the ability to apply to the Court under its supervisory jurisdiction by placing before her the requirement to seek the leave of the Court in order to do so. If there were not such a requirement then, the Representor having commenced proceedings afresh, would be faced with the very real possibility of an application to strike them out and it does not seem to me to be different in principle in appropriate circumstances to apply a jurisdiction clearly available under Rule 6/31.

Discussion

- 10 The argument for the imposition of indemnity costs is basically that the Representor has behaved unreasonably in bringing the proceedings in the first place because they were in effect doomed to failure or fatally flawed.
- 11 The Representor's lawyers sent a letter to the Trustee's lawyers dated 20th April, 2018, detailing various allegations made against the Trustee. Within 10 days of that letter, the Trustee had written at length challenging all of the claims and that remained the position for the duration of the proceedings. Mr Fitzgerald's report had been fundamentally flawed – it did not even achieve the levels of correct arithmetic, so I was informed, and it was completely unreasonable of the Representor, so it was argued, to keep the matter in existence for so long.
- 12 Furthermore, it was argued that the Representor had behaved tactically by her withdrawal of the proceedings.
- 13 In the case of *Dick -v- Dick (née Naranjo)* [1990/048a] the Court of Appeal stated:—

“The appellant instituted proceedings in the Matrimonial Division of the Royal Court. When the time came for those proceedings to be heard, he withdrew them at the eleventh hour. That meant that the costs that the respondent had necessarily incurred in preparing to defend the proceedings turned out to have been wasted .

Mr. Scholefield has explained to us the circumstances which led the appellant to take this decision. We appreciate those circumstances but it appears to us that if for reasons of his own, whether good or bad, a party who has instituted proceedings subsequently decides to drop them before they come into Court, it is fair that he should pay for that conduct the price of compensating the other party by way of indemnity costs.”

- 14 The Representor argues that she strongly believes and maintains that there is a proper

basis for seeking the removal of the. She appears, in submissions from counsel, to accept however that her case in its current form is very weak and would likely fail.

- 15 It seems to me that I am dealing with this case and not any potential future articulation of a different and strengthened case. In the circumstances it seems to me that there is an acknowledgment that the case is weak and that it was weak from inception. This has caused expense to the Trustee and indeed to the other parties and to start and maintain the proceedings was in my view unreasonable.
- 16 In my judgment this should be met with an order for indemnity costs and I so order.
- 17 On the matter of an interim payment, in my judgment the correct sum should be 60% of the costs quantified on an indemnity basis and I so order. This, it seems to me, will remove any argument relating to overpayment or potential misallocation of costs lines and those issues can be clarified on taxation on an indemnity basis.
- 18 On the matter of the imposition of a requirement to come before the Court as a condition to the commencement of further proceedings by the Representor I do not think there should be a general prohibition, as Advocate Preston for the Trustee appears to suggest. I do think, however, that in the circumstances, particularly where the Trustee is about to undertake a significant exercise of discretion and to make applications to the Court for blessings in connection with the trust assets, it should not do so under an inappropriate threat of litigation as to its status. This threat has been hanging over it for the last year or so and it would not, in my judgment, be just to expose the Trustee to another threat on substantially the same or similar grounds without the Court first having been satisfied that there was a good reason for doing so.
- 19 Applying *Hague Plant Limited -v- Hague and Others* [\[2014\] EWCA Civ 1609](#) at 60–62, in my judgment, as part of the condition for withdrawal, the Representor may not commence proceedings against the Trustee seeking its removal as Trustee or the appointment of any additional trustee without first having the leave of the Court to do so. Inevitably that may mean an *inter partes* hearing at a threshold stage but that, in the circumstances of this case, seems to be appropriate.
- 20 Accordingly, to summarise, I order:—
 - (i) The Representor shall have the leave of the Court to withdraw and discontinue the proceedings;
 - (ii) The Representor shall pay the Respondents' costs of and incidental to the proceedings and this withdrawal on an indemnity basis to be taxed if not agreed;
 - (iii) The Representor shall pay 60% of those costs on an interim basis, such payment

to be made by close of business 30 days from the issuing of this decision in draft;

(iv) The Representor may not make any application for the removal of the Trustee without first having obtained the Court's leave to do so;

(v) For any application that may be made to the Court under the preceding paragraph, all of the Representor's obligations to pay costs must have been discharged in full.

21 I also direct that there shall be liberty to apply on the matter of quantum should that be necessary.