

In the Matter of the AE Settlement [2010] JRC085

The case concerned an application for directions made by the corporate trustee (the “Trustee”) in relation to the underlying assets of three Jersey trusts: the AE Settlement, the CE Settlement and the IE Settlement (together, the “Trusts”).

Facts

The Trustee was trustee of each of the Trusts which were settled by three brothers (AE, CE and IE) for their families. The three families were trying to obtain a separation of their interests in the Trusts.

Each of the Trusts indirectly owned shares in three Irish companies, EI, GI and G, the directors of which were members of the CE family. Each of the AE Settlement and the IE Settlement also owned one sixth of the shares in two further Irish companies, M and EL, of which the CE directors were also directors.

Concerns had been raised as to the management of the Irish companies by the CE directors. The trustee procured the appointment of a chartered accountant as a director of EI and GI (which were each wholly owned by the Trusts) for the purpose of investigating the management of the companies. In his draft report, the chartered accountant identified three potential areas of concern:

- 1 Excessive director's remuneration;
- 2 Excessive secretarial and administration costs; and
- 3 Significant unpaid taxes.

The Trustee consequently carried out further investigations in relation to the position of the Irish companies. In order to complete its investigations, the trustee required certain further information in relation to the companies which the CE directors had refused to provide.

The CE directors also brought a representation against the Trustee asserting that the Trustee had not acted in the best interests of the beneficiaries and that its expenses and liabilities have not been reasonably incurred.

Given the potential conflicts of interest surrounding the above, the Trustee surrendered its discretion to the Court.

Issues

The Trustee sought directions from the court as to how to proceed. The hearing had previously been adjourned to allow the parties to resolve the issues by without prejudice discussions and/or mediation. Though a mediation agreement had been concluded, it was conditional upon approval of certain beneficiaries. That approval was not forthcoming, it being noted that as the beneficiaries did not have sufficient information as to the value of the Irish companies, they were “mediating in the dark”.

It was now proposed that, in order to address the potential imbalances between the beneficiaries at trust level, the court order disclosure from the CE directors, permit a report to be finalised and, on completion of the report, consider the amount (if any) by which the CE beneficiaries had improperly benefited from trust assets.

Article 51 of the Trusts (Jersey) Law 1984 gave the court wide powers relating to the administration of trusts, including the power to make an order concerning “a beneficiary of any person having a connection with the trust”.

The Court also considered whether making an order pursuant to Article 51 ordering disclosure of relevant information would amount to pre-action discovery. The Court was concerned about circumventing the general principle that a potential plaintiff was not entitled to the pre-action discovery of documents merely to enable him to establish whether he had a cause of action.

Decision

The court considered that disclosure of the information was inevitable and exercised its discretion to order the disclosure on the basis that:

- 1 The companies were essentially family companies;
- 2 The CE directors had submitted to the jurisdiction of the Court and submitted evidence to justify their actions. Their evidence should be properly tested by:
 - (a) requiring the directors to disclose the information; and
 - (b) orders for cross-examination being made; and

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- 3 The Trustee and all the beneficiaries sought the separation of the interests of the three families in the underlying assets of the Trusts. Such a separation could not be achieved in a just manner without investigating the extent to which the CE directors may have already benefited improperly from those assets.

The interests of justice therefore required that the information be provided.

Comment

A case very much turning on its own facts. Nonetheless, a helpful restatement of the circumstances in which the Royal Court will allow a trustee to surrender its discretion.

Author:
Amy Galley, Trainee Solicitor
Business & Trust Law Group
+44 (0) 1534 504022
amy.galley@ogier.com

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Contact details

NORTH & SOUTH AMERICA

British Virgin Islands

Legal:
Michael Fay
+1 284 852 7301
michael.fay@ogier.com

Fiduciary:
Gareth Thomas
+1 284 852 7322
gareth.thomas@ogier.com

Cayman Islands

Legal:
Giorgio Subiotto
+1 345 815 1872
Giorgio.Subiotto@ogier.com

Fiduciary:
Fiona Barrie
+1 345 945 6264
fiona.barrie@ogier.com

EUROPE, MIDDLE EAST & AFRICA

Bahrain

Paul Perris
+973 1720 0025
paul.perris@ogier.com

Guernsey

Legal:
William Simpson
+44 (0) 1481 737163
william.simpson@ogier.com

Fiduciary :
Bob Banfield
+44 (0) 1481 752327
bob.banfield@ogier.com

Jersey

Legal:
Steve Meiklejohn
+44 (0) 1534 504462
steven.meiklejohn@ogier.com

Fiduciary:
Philip Le Cornu
+44 (0) 1534 504454
philip.lecornu@ogier.com

ASIA & AUSTRALIA

Hong Kong

Legal:
Duncan Smith
+852 3656 6010
duncan.smith@ogier.com

Tokyo

Skip Hashimoto
+813 6430 9500
skip.hashimoto@ogier.com

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