

# Oleg Chvetsov v BNP Paribas Jersey Trust Corporation Limited and Maison Anley Property Nominee Limited [2009] JRC 120

## Does a beneficiary of a trust have a claim against an agent or delegate appointed by the trustee of a trust?

## Held Claim in Trust

### Facts

In May 1996 Mr Chvetsov (the "Claimant") established a Jersey discretionary trust (the "Trust") of which he was also a named beneficiary. The Trust Fund included a property situated in North London (the "Property") which was occupied by the Claimant and his family. The first defendant, BNP Paribas Jersey Trust Corporation Limited (the "Trustee") was at all times sole trustee of the Trust. The second defendant Maison Anley Property Nominee Limited (the "Nominee"), was a wholly owned subsidiary of the Trustee and held the legal title to the Property as nominee for the Trustee.

It was held that the Nominee was simply an agent or delegate appointed by the Trustee in its capacity as trustee of the Trust and therefore as a matter of law, the Nominee did not owe duties to the Claimant or other beneficiaries of the Trust. Accordingly, the provisions of the Trusts (Jersey) Law 1984 did not apply to the Nominee. If the Nominee was deemed to have acted negligently or beyond its authority, the cause of action would lie with the Trustee and not the beneficiaries. There was no legal principle by which a nominee or agent in these circumstances owed duties to the beneficiaries imposed upon such nominee. The duty was to the trustee of the Trust who could bring a claim against the Nominee if the Nominee had been negligent. If the Trustee refused to pursue such a claim, the beneficiaries may institute an administrative action seeking a direction from the Court that the Trustee take the necessary action against the Nominee or possibly the beneficiaries may institute a derivative action on behalf of the trust if the circumstances warranted it.

Around 2001, the Claimant wished to renovate the Property. The Trustee authorised the Nominee to execute a contract with a named firm of architects to effect the renovations on the Trustee's behalf. The Claimant claimed that the renovations carried out were, in the event, more expensive than they should have been. The Claimant brought a claim against both the Trustee and the Nominee by reasons of their alleged failure to exercise proper control over the costs incurred in renovating the Property. As a result, it was argued that the Trust and its beneficiaries had suffered loss. The remedy sought was the reconstitution of the Trust Fund.

In conclusion, the Court held that the Claimant's claim for breach of trust against the Nominee was flawed and 'doomed to failure'.

### The Claim

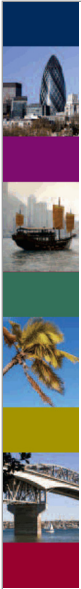
### Claim in Tort

In essence, two claims were laid before the Royal Court. Firstly, a conventional claim for breach of trust against the Trustee in its failure to exercise the requisite skill and care to monitor, control and supervise the renovation works. No legal questions arose in respect of this claim and therefore it was left but to be adjudicated at trial at a later date.

The Court found that there appeared to be no arguable grounds that the Nominee owed a duty in tort to the beneficiaries. The Court noted that an agent or a delegate of a trustee owes a duty in contract (and potentially in tort) to the trustee, but owes no duty of care towards the beneficiaries of the trust.

The second claim against the Nominee was pleaded as both a breach of trust under the Trusts (Jersey) Law 1984 and a breach of duty in tort. The Nominee sought an order striking out the claim on the grounds that it disclosed no reasonable cause of action.

The Court canvassed the notion that there may be circumstances in which beneficiaries may have a claim against an agent of a trustee for economic loss sustained by the trust fund where the agent is aware that the beneficiaries are relying on that agent and the agent has assumed responsibility towards the beneficiaries. However, this was not the case here. The claims against the Nominee were struck out.



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## Comment

This case clearly demonstrates that obligations and duties pursuant to the Trusts (Jersey) Law, 1984 imposed on a trustee do not transfer to an agent or a delegate appointed by the trustee. Accordingly, a beneficiary of a trust cannot claim directly against an agent or delegate appointed by the trustee of the trust. If such a situation arises whereby beneficiaries feel aggrieved as a result of the actions of an agent or delegate, the right of recourse lies against the trustee and not the agent or delegate. If the trustee fails to pursue an action against the agent or delegate, the beneficiaries must proceed against the trustee by way of either an administrative action to force the trustee to take such necessary action, a derivative action on behalf of the trust, or, seek to have the trustee removed.

Similarly there is no duty of care owed by the agent or delegate to the beneficiaries (save in limited exceptional circumstances) and therefore the beneficiaries have no cause of action against that agent or delegate.

This case should provide comfort to agents or delegates in that they are not prejudiced by having additional duties imposed on them just by reason of the fact that they are the agent or delegate of a trustee as opposed to being the agent or delegate of any other person.

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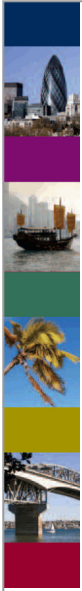
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