Disclosure to beneficiaries: In the matter of the B Family Trust [2013]JRC136

This case is a useful refresher on the topic of provision of information by a trustee to a beneficiary. The representor, B, sought disclosure of information in relation to two trusts of which she believed she was a beneficiary. The facts are relatively straightforward, although readers of the accountancy and legal press (or indeed, the Daily Mail) may recognise the names of the respondents from separate litigation brought against them by Paul Hogan, better known to many as "Crocodile Dundee".

The facts

The respondents in this matter comprised Strachans SA (a Swiss firm of tax advisers, now in liquidation), together with Philip Egglishaw (one of Strachans' directors) and Roker Trustees (Switzerland) Limited (a corporate trustee based in Nevis, often used by Strachans and Mr Egglishaw). Another director of Strachans, Philip de Figueiredo, had also been involved in the structure, but by the time of the representation he had been extradited to Australia where he was imprisoned for conspiracy to defraud.

B did not have extensive details of the trusts but had been party to email correspondence between her, her Australian tax adviser and Mr Egglishaw in 2009, at which time assets associated with B's family were going to be placed into the two trusts. B and her adviser assumed (correctly) that Roker was the trustee, on the basis that Roker had been used by Strachans before as the trustee of a separate trust, and also assumed (again, correctly) that the trusts were governed by Jersey law. B had been in the habit of forwarding bills to Strachans to pay for work carried out to the London properties she believed were held within one of the trusts, and requesting funds to be paid to her bank account in Australia.

In May 2012, presumably concerned by the investigation of Strachans by the Australian Crime Commission and the arrest of Mr de Figueiredo, B's Australian legal adviser met with Mr Egglishaw to discuss the trusts. However, Mr Egglishaw claimed he could not deal with the assets of the trusts or even provide B with any information about them without risking exposing himself to money laundering or other proceeds of crime charges. In subsequent correspondence on the matter the respondents demonstrated what the Royal Court described as "a complete lack of constructive response"; effectively, the respondents sought an exculpation from everything they had done in relation to the trusts prior to August 2011 as a pre-condition of allowing B's Swiss adviser to inspect the trust documents.

B therefore brought her representation in order to obtain information on the assets contained in the trusts, not only as a beneficiary seeking to hold her trustee to account but also in order to make her Australian tax returns and avoid being in breach of Australian law. She was also concerned that the assets of the trust had been misappropriated to pay Mr de Figueiredo's legal fees in relation to his extradition proceedings. The order B sought was, in essence, that Roker should make available to B's legal representatives the trust accounts for the trusts and for an underlying company of one of the trusts, with "trust accounts" defined as including not only the accounting records but also the original and supplemental trust deeds. Due to the protracted process that was required for service on them in Switzerland, Strachans and Mr Egglishaw had not successfully been served as at the date of the hearing of the representation, and this was why B sought an order against Roker alone, and only Roker was represented by counsel before the Royal Court.

The judgment

The Royal Court noted that the starting point in terms of disclosure to beneficiaries remained the principle set out in the case of *In the matter of the Rabaiotti (1989) Settlement* [2000] JLR 173. In other words, there is a presumption that beneficiaries

are entitled to see trust documents, including the trust deed, the accounts, bank statements, portfolio valuations and generally documents which show how the assets have been dealt with.

The Royal Court further noted the point made in the Privy Council case of *Schmidt v Rosewood Trust Limited* [2003] 2 AC 709: that although a beneficiary's right to seek disclosure of trust documents could be described as a proprietary right, it was best approached as one aspect of the court's inherent and fundamental jurisdiction to supervise and, if appropriate, intervene in the administration of a trust. The Royal Court acknowledged that Schmidt v Rosewood had considered situations of personal or commercial confidentiality, where the trustee might need to balance competing interests before disclosing information, but went on to state that there were no such competing interests on the present facts. Summing up the position, the Royal Court stated that the:

"obligations of a trustee are therefore clear. As a corollary of its obligation to hold and deal with the trust property for the benefit of the beneficiaries, it is liable to account to them by the provision of information and explanations."

With limited instructions from his client, Advocate Hoy as counsel for Roker had attempted to defend Roker's non-disclosure on the grounds of the "vague nature of some of the assertions" and on the basis that Roker had only been brought into the proceedings for the purposes of disclosure, which was an abuse of process, and that Strachans and Mr Egglishaw were the de facto trustees. The Royal Court dealt with this argument brusquely:

"It is no surprise to us that aspects of the representor's case in respect of the Trusts is vague. They were established on her instructions entirely by Mr Egglishaw, with whom the original documents remain; that is one of the reasons why she requires disclosure, so that she and her advisers can see the documents for themselves. For a trustee to refuse a beneficiary sight of the core trust documents and then criticise that beneficiary for being vague about her position under that trust is to turn trust law on its head."

In relation to Roker's role within the proceedings, the Royal Court went on to say that Roker:

"is a corporate vehicle used by Strachans to provide trusteeships. The "mind" of Roker will be the relevant principals of Strachans, in this case, Mr Egglishaw. Whatever the actual arrangements in place, Roker is the trustee and it cannot avoid its obligations as trustee by seeking to hide behind those who may control it. We unhesitatingly reject the submissions put forward by Mr Hoy as being wholly without merit."

Roker was therefore ordered to make available or to procure that Strachans and Mr Egglishaw would make available the trust documents sought by B, with costs payable on an indemnity basis.

About Ogier

We provide advice on British Virgin Islands, Cayman Islands, Guernsey, Jersey and Luxembourg law through our global network of offices that cover all time zones and key financial markets. We regularly win awards for the quality of our client service, our work and our people.

Author

Robert Dobbyn, Senior Associate, Jersey
T: +44 1534 504331
E: robert.dobbyn@ogier.com

Key Contacts for Jersey Trusts Advisory Group

Jersey

Sally Edwards
Legal
Partner, Jersey

T +44 1534 504482
E sally.edwards@ogier.com

Edward Mackereth
Legal
Partner, Jersey

T +44 1534 504320
E edward.mackereth@ogier.com

Steve Meiklejohn
Legal
Partner, Jersey

T +44 1534 504462
E steve.meiklejohn@ogier.com

Nigel Sanders
Legal
Partner, Jersey

T +44 1534 504285
E nigel.sanders@ogier.com

Nick Williams
Legal
Partner, Jersey

T +44 1534 504318
E nick.williams@ogier.com

Guernsey & Hong Kong

Marcus Leese
Legal
Partner, Guernsey

T +44 1481 737152
E marcus.leese@ogier.com

Lara Mardell
Legal
Senior Associate, Hong Kong

T +852 3656 6067
E lara.mardell@ogier.com