



Trusts and Fiduciary Group

In the Matter of the Representation of Capita Trustees Limited as Trustee of the Dunlop Settlement [2011] JRC138



Summary

This is a slightly unusual case in that the well-established principles regarding the duty of an outgoing trustee to deliver trust documents to the new trustee were applied in circumstances where (i) there had been a merger of corporate trustees rather than a formal appointment of a new trustee (ii) the documents in question were in the hands of the Jersey Financial Crimes Unit and (iii) the order for costs on an indemnity basis was made against the individual solely responsible rather than against the corporate trustee.

Facts

The Dunlop Settlement (the "**Trust**") was established in 1991 and Sterling Trustees Limited ("**Sterling**") were appointed as trustees of the Trust in September 2001. Mr Richard Arthur dealt with the affairs of the Trust on behalf of Sterling from 2001 until 2007 – the year in which Sterling merged with Capita Trustees Limited ("**Capita**") who, as the continuing company, subsequently became the trustee of the Trust.

Capita discovered various issues with the Trust that needed to be resolved and therefore Capita needed access to all of the records of the Trust during the period in which Sterling was the trustee. It was discovered that the records were incomplete as Mr Arthur had kept them at his home or at his office. Capita wrote to Mr Arthur on 3 February 2010 requesting these documents but received no reply.

A large volume of paperwork (including the documents relating to the Trust) was subsequently seized from Mr Arthur by the Jersey Financial Crimes Unit pursuant to a fraud investigation. Capita requested that the JFCU provide them with copies of the Trust documents but the JFCU was not willing to release these to Capita without Mr Arthur's written consent, failing which an order of the Royal Court.

Although Mr Arthur indicated a willingness to provide such consent, he failed in fact to do so and Capita therefore sought an order that the JFCU deliver up to Capita copies of all of the documents seized from Mr Arthur which related to the Trust.

Decision

The Court held that Capita, being in law the same company as Sterling, was entitled to the Trust documents and Mr Arthur was obliged to provide them to Capita. The fact that the documents were in the hands of the JFCU did not alter the principle and, as there was no objection from the JFCU (pursuant to the criminal investigation), the Royal Court ordered that the JFCU provide Capita with the documents.

Costs

Capita sought costs on an indemnity basis against Mr Arthur and the Court said that this was "*clearly justified*". Citing *Ogier Trustee Limited v C.I. Law Trustee [2006] JRC 158*, the Royal Court highlighted that the normal order where a trustee (or, in this case, the individual responsible for the affairs of the Trust when Sterling was the trustee) has failed in its or his duty to provide documents and information to the incoming trustee should be an order for indemnity costs. It would have been very simple for Mr Arthur to produce a letter of consent but he had failed to do so. The Court did not see why the beneficiaries should have to bear the costs of the application and ordered indemnity costs against Mr Arthur.

For further information, please contact Robert MacRae, Victoria Connolly or Bryony Bird (contact details on the next page).

Please note that this briefing is only intended to provide a very general overview of the matters to which it relates. It is not intended as legal advice and should not be relied on as such.

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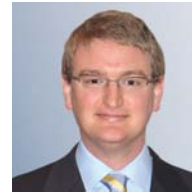
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