

JERSEY / JUDGMENT

In the matter of the Russian Trust

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Trust - forum for the determination of the issues in the proceedings. [2018]JRC188 Royal Court (Samedi) 8 October 2018 Before : T. J. Le Cocq, Esq., Deputy Bailiff, and Jurats Ramsden and Christensen Between G.B. Trustees Limited Representor And Tanya Marya Dick Stock First Respondent John William Dick II Second Respondent Advocate Howard Sharp (acting for minor and unborn beneficiaries) Third Respondent Lilianfeld Holdings Limited Fourth Respondent John William Dick Fifth Respondent IN THE MATTER OF THE RUSSIAN TRUST AND IN THE MATTER OF ARTICLE 51 OF THE TRUSTS (JERSEY) LAW 1984 (AS AMENDED) Advocate M L Preston for the Representor. Advocate M C Goulborn for the First Respondent. Advocate D Evans for the Second Respondent Advocate H Sharp for the Third Respondent Advocate D P Le Maistre for the Fifth Respondent

judgment

the deputy bailiff: 1. On 5th June, 2018, the Court heard an application brought by Tanya Marya Dick Stock (“the First Respondent”) to set aside the representation of G.B. Trustees Limited (“the Representor”) of 15th March, 2018 (“the Representation”) and of the order of the Court ordering service and service out of the jurisdiction of the Representation on the First Respondent. The First Respondent also sought orders or declarations to the effect that the Royal Court had no jurisdiction concerning the subject matter of the Representation and/or a declaration that the proper forum for the subject matter of the representation is wholly or in part the courts of Cyprus. 2. On the same date the Court rejected the First Respondent’s application and said that it would give more elaborate reasons for doing so later. These are those reasons. 3. The application by the First Respondent was part of a number of disputes, applications before the Court and judgments relating to two Jersey trusts. One of the trusts, that which is the subject matter of the Representation, is called “The Russian Trust” (“the Trust”). It is not necessary to set out at any great length the background to the Representation. This is well set out in a number of judgments of the Court. In short the Representation itself seeks a determination as to whether the shares in Lilianfeld Holdings Limited (“the Fourth Respondent”) should be considered as an asset of the Trust or as held on trust for the First Respondent or others. 4. Since the Representation was commenced a number of orders have been made by this Court relating to the filing of evidence and, having dismissed the First Respondent’s application on jurisdiction, evidence in the matters raised by the Representation is at the present date part heard. 5. The Trust is a discretionary settlement created on 20th April, 1974, stating that the proper law of the settlement was that of Jersey. John William Dick (“the Fifth Respondent”) was the economic settlor of the Trust. In 1989, the Fifth Respondent was excluded from benefit and the First Respondent and John William Dick

II (“the Second Respondent”) and their respective children and remoter issue were appointed, in effect, as primary beneficiaries. The First Respondent has no children. The Second Respondent has three sons. The minor and unborn beneficiaries are represented by Advocate Sharp as Third Respondent. 6. On 6th November, 2015, this Court appointed the Representor as trustee of the Trust further to a representation brought before that Court by the First Respondent. On 6th September, 2016, this Court determined that the proper law of the Trust is, and has always been, the law of Jersey. 7. The asset of the Trust in question is the Fourth Respondent, Lilianfeld Holdings Limited. The Fourth Respondent is a company registered in Cyprus and its directors are entities connected with the Representor. Both are companies registered in Jersey. The only shareholders in the Fifth Respondent are two companies registered in Cyprus which hold the shares in the Fourth Respondent as nominees of the Representor. 8. The only asset of the Fourth Respondent is a flat in St Petersburg, Russia (“the flat”). There are, at present, proceedings taking place in Russia relating to the ownership of the flat which, it is understood, has been the subject of fraudulent activity and the transfer into a name of an individual unknown to the Representor or indeed to the First Respondent. 9. On the basis of information that it holds, the Representor was of the view that the shares in the Fourth Respondent were purchased as and remain an asset of the Trust. That is no longer a view shared by the First Respondent, if indeed it ever was, and she asserts that she is the beneficial owner of the shares and the Representor holds the shares in the Fourth Respondent for her and not as trustee of the Trust. It is this issue that is currently before the Court.

10. In February 2018 the First Respondent commenced proceedings in the courts of Cyprus for interim relief and orders on the basis that she is the beneficial owner of the shares in the Fourth Respondent. In that same month, the courts of Cyprus ordered that her writ and application must be served on the Fourth Respondent and she must make an application to serve three other defendants outside of the jurisdiction. Service was effected in March 2018. In April 2018 the Fourth Respondent applied to the courts in Cyprus to set aside those proceedings on the grounds that they were either an abuse of process or alternatively should be stayed on the basis that Jersey was the appropriate jurisdiction for determining the beneficial ownership of the shares in the Fourth Defendant. The Law
11. The matter of service out of proceedings in Jersey is governed by the Service of Process Rules 1994 which states, at Rule 9:- “Every application for leave to serve such summons on a defendant out of the jurisdiction shall be supported by affidavit or other evidence, stating that in the belief of the deponent the plaintiff has a good course of action, showing in what place or country such defendant is or probably may be found, and the grounds upon which the application is made; and no leave shall be granted unless it shall be made sufficiently to appear to the Court that the case is a proper one for service out of the jurisdiction in this Part.”

12. The Court has issued a Practice Direction RC 15/01 which sets out a number of requirements for an affidavit filed in support of such an application. It is the First Respondent's case that the affidavit filed in support of the Representation fails to comply with Rule 9 of the Service of Process Rules and with the Practice Direction and accordingly no valid service had been affected on the First Respondent. Service had been ordered on her by this Court on 16th March, 2018. The Act of Court reflecting that order provides:- "...
 2. Order to the extent necessary that orders for service out of the jurisdiction are made in respect of convened parties and in respect of each convened party the following orders are made:
 - (a) order that Tanya Marya Dick Stock shall be served with a copy of the said representation and any evidence in support, such service to be affected by substitute to service on Messrs Carey Olsen..."
13. A review of the transcript of the convening hearing before the Learned Bailiff makes it clear that the Bailiff considered the question of service out of the jurisdiction and so ordered service on those parties in respect of which service was necessary.
14. There does not appear to be any dispute that this Court has jurisdiction in this matter by virtue of Article 5 of the Trusts (Jersey) Law 1984 which provides:- "The court has jurisdiction where-
 - (a) the trust is a Jersey trust;
 - (b) a trustee of a foreign trust is resident in Jersey;
 - (c) any trust property of a foreign trust is situated in Jersey; or
 - (d) administration of any trust property of a foreign trust is carried out in Jersey."
15. It is apparent, therefore, that if the Representor holds the shares in the Fourth Respondent for the purposes of the Trust then jurisdiction arises under Article 5(a) or, if the Representor holds the shares in the Fourth Respondent for the benefit of the First Respondent then jurisdiction arises under Article 5(b).
16. The jurisdiction of the Court in connection with Jersey trusts and the matter of service out are dealt with by the Service of Process Rules 1994 at Rule 7(j) which provides: "Service out of the jurisdiction of a summons may be allowed by the court whenever - ... (j) the claim or application is brought within the terms of Article 5 of the Trusts (Jersey) Law 1984."
17. It is not, accordingly, argued before us that had the affidavit in support of the Representation met the requirements of Rule 9 of the Service of Process Rules and the Practice Direction that this Court could not have made an order for service out of the jurisdiction. We would go further and say that the Court would, in the circumstances, inevitably have done so.

18. The First Respondent raises the issue of forum conveniens and in effect says that it is not in the interests of justice to have parallel proceedings in both Cyprus and Jersey in respect of the same subject matter. The proceedings in Cyprus having been commenced first and relevant witnesses are located in Cyprus with regard to Cypriot accountancy and company law then the courts of Cyprus are best placed to deal with the dispute and the courts of Jersey should in the circumstances decline jurisdiction. In essence, therefore, the First Respondent is arguing that there is a technical but important failure on the part of the Representors in their application to seek leave to serve out of the jurisdiction but, even if there had not been, in the light of the proceedings in Cyprus, the Royal Court should have declined jurisdiction in the exercise of its discretion.
19. In the case of *Virani –v- Virani and another* [2000] JLR 203 the Royal Court had to consider an application challenging the court’s jurisdiction on the basis that no leave to serve the order of justice outside the jurisdiction had been obtained and that the purported service on was accordingly invalid. The court characterised the defendant’s case, at page 212, in the following way:- “The defendants’ case is simple. Service out of the jurisdiction is not permitted without leave of the court. Not only was no leave granted in this case, but no application for leave to serve the second Order of Justice out of the jurisdiction was ever made. The affidavit presented to the Deputy Bailiff at the time of signature of the second Order of Justice did not comply with the requirements of r.9 of the Service of Process (Jersey) Rules 1994. The order in the second Order of Justice was merely one for substituted service. It follows, say the defendants, that there has been no valid service of the second Order of Justice on the defendants. Mr Sinel responds that this is a wholly technical point which is devoid of merit in relation to the justice of the case and is also wrong in law....”
20. The Court went on to agree with the defendant’s argument saying:- “The court is in no doubt that the defendants’ arguments are correct. Article 2 of the Service of Process and Taking of Evidence (Jersey) Law 1960 provides that any process summoning a person outside the Island to appear before the courts of the Island may be served on that person in such cases and in such manner as may be prescribed by the Rules of Court. The relevant Rules are the Service of Process (Jersey) Rules 1994. Rule 5 is in very clear terms: “No summons shall be served outside the island without the leave of the court.” Rule 7 specifies those circumstances in which service out of the jurisdiction may be allowed. They are set out in paras (a) to (s) of r.7. Rule 8 makes it clear that the parties to a contract may agree to confer jurisdiction even in circumstances which do not fall within r.7. Rule 9 sets out what must be produced in support of an application to serve out of the jurisdiction and is in the following terms: “9. Every application for leave to serve such summons on a defendant out of the jurisdiction shall be supported by affidavit or other evidence, stating that in the belief of the deponent, the plaintiff has a good cause of action, and showing in what place or country such defendant is, or probably may be found, and the grounds upon which the application is made; and no such leave shall be granted unless it be made sufficiently to appear to the court that the case is a proper one for service out of the jurisdiction under this Part of these Rules.” Rule 10 goes on to provide that any order giving leave to serve out of the jurisdiction

shall specify the day upon which the defendant is to appear before the Royal Court. Rule 16 confers power to make such orders for substituted service as may be necessary to give effect to the Rules. In general, courts assume jurisdiction on a territorial basis, i.e. over those persons physically in the territory in which the court is situated. It is a strong thing to purport to exercise jurisdiction over persons who do not reside in the territory. In Jersey, as in England, the grounds upon which the court is able to assume jurisdiction over non-resident persons are clearly defined and limited. Furthermore, it is made clear that the Rules that the applicant must specify the ground upon which he relies and that the court should not grant leave unless it is sufficiently persuaded that the case is a proper one for service out of the jurisdiction. The whole tenor of the 1994 rules is that any application for leave to serve out of the jurisdiction must be adequately Rules presented by the applicant and carefully considered by the court. “

21. The Court then, however, went on to determine the effect of a failure in the affidavit in support of an application to serve out of the jurisdiction. At page 213 (line 25 et seq) of the judgment, the Court said: “The fact that an affidavit in support of an application for leave to serve out of the jurisdiction is defective (in that it does not comply with r.9) does not of itself necessarily invalidate any order for leave to serve out. It is primarily for the judge considering the application to serve out of the jurisdiction to consider whether the affidavit is in sufficient form and whether it gives him sufficient information to make a decision. The success of an application to set aside leave on grounds of failure to comply with the requirements of r.9 will depend upon the facts of the case, including any prejudice to the defendant, the extent and effect of any non-disclosure by the plaintiff and whether the court is satisfied that, notwithstanding the failure, there are clearly valid grounds for leave to serve out. However, this case goes further. It is not simply a case of a defective affidavit in support of an application to serve out of the jurisdiction. There was no such application. Nowhere in any of the documents produced to the Deputy Bailiff is there a paragraph which states that application is sought for leave to serve out of the jurisdiction. Given that there is no application, it is hardly surprising to find that neither is there any order granting leave to serve out of the jurisdiction as required by r.5. Because there is no order granting leave, there is no specific return date, as required by r.10. The court cannot accept the contention that, because the defendants must have been known to the Deputy Bailiff to be resident in the United States (because it says so in para.2 of the draft Order of Justice) and he made an order for substituted service, his decision is to be taken as granting leave to serve out of the jurisdiction. The exercise by the court of the exorbitant jurisdiction to convene a non-resident person to its process is not to be implied from some different order (in this case an order for substituted service) interpreted against a detailed knowledge of the relevant facts. An order granting leave to serve out of the jurisdiction must be stated in clear terms, pursuant to r.5. An application for leave must not only be made clearly and unambiguously, but it must also be supported by an affidavit complying with r.9, so that the court’s attention is directed towards the issue and towards the relevant facts and principles necessary to decide that issue.” The test for service out of the jurisdiction

22. The test applicable for the giving of leave to serve process out of the jurisdiction was set out by the Court of Appeal in *Maywal Limited –v- Nautech Limited* [2014] JLR (2) 527 in which, at paragraph 23, the Court said: “On an application for leave to serve out there are three hurdles for a plaintiff to surmount. (i) First, the Royal Court needs to be satisfied that there is a good arguable case that the claim meets the requirements of at least one of the various permissible gateways set out in Rule 7 [of the Service of Process Rules 1994]. (ii) Secondly, the Royal Court needs to be satisfied that on the merits of the claim there is a serious issue to be tried. (iii) Thirdly, the Royal Court needs to be satisfied that Jersey is the suitable forum for the trial of the claim.” The affidavit in support of the of the Representation
23. The Representation was supported by an affidavit of Oliver Paul Egerton-Vernon, a director of the Representor, of 15th March, 2018.
24. The position with regard to the location of the First Respondent was made clear in the affidavit. For example, at paragraph 16, Mr Egerton-Vernon states:- “The First Respondent was born in Colorado in 4th March 1966. She is married to Darrin Stock. There are no children of the marriage. The First Respondent is represented in Jersey by Carey Olsen and when seeking an order convening the First Respondent to these proceedings, the Representor seeks an order that service of the representation be effected upon Carey Olsen. This can be seen from the letter exhibited at page 472, Carey Olsen is actively engaged in representing the First Respondent. It is not known where service may be affected upon the First Respondent as she, to my knowledge, travels widely. Given the animosity that the First Respondent has expressed towards the Representor, I anticipate that the First Respondent may seek to avoid service. The possibility that the only asset of Lilianfeld may have been sold or that an attempt may have been made to sell it imports an urgency to the resolution of these matters and I consider that it will be appropriate, in all the circumstances, including consideration of the overriding objective, for an order for substituted service to be made pursuant to Royal Court Rule 5/10.”
25. The affidavit goes on to explain the fact that proceedings had started by the First Respondent in Cyprus and what criticisms may be made of it. It is not necessary for our purposes to set out what is contained in the affidavit in that regard.
26. In the concluding paragraphs of Mr Egerton-Vernon’s affidavit, specifically at paragraph 81, he says:- “The Representor is therefore seeking the relief set out in the prayer of the representation. In the first instance, being convening orders so that the interested parties may participate in these proceedings. No date has yet been identified as available for the hearing of this representation but that parties will no doubt liaise in order to fix a hearing date at which directions can be given leading to a final hearing date. Insofar as possible it is hoped that there can be agreement reached in respect of such matters.”
27. There is nothing in the affidavit which meets the procedural requirements of Practice Direction RC 15/01. Those are procedural requirements and it is clear that they should have been complied with.

28. Representations relating to Jersey trust matters that are to be served on parties outside of the jurisdiction should be supported by an affidavit that accords with the Practice Direction. It may be thought of as obvious that beneficiaries should be joined to any such representation. It may well be the case that in the vast majority of cases where a Jersey trust is concerned, the Court will have little difficulty in recognising its jurisdiction and requiring interested parties to come before it. However, in our view, the Service of Process Rules and the Practice Direction should be complied with.
29. That being said, it is equally clear from a consideration of the Representation, the accompanying affidavit and the submissions of counsel and indeed the Court's own observations from the transcript, that the Court was fully aware that it needed to make an order for service out of the jurisdiction and did so. It was aware that the proceedings related to a Jersey trust (and would accordingly have been aware that they fell within Rule 7(j) of the Service of Process Rules) and that some of the parties to be convened were resident outside of the Island and accordingly an order for service out of the jurisdiction was necessary. The Court raised no technical point with the Representor through counsel concerning the deficit in the affidavit and whether or not the Court had in mind the Practice Direction or overlooked it, it is not possible now to say. What is clear, however, and it would have been clear to the Court in the plainest terms that this matter related to a Jersey trust, the Court obviously had jurisdiction, the parties to be convened were beneficiaries of the trust and some of them were resident outside of the jurisdiction. The Court accordingly made the order in the terms set out above.

Conclusion

30. In our judgment, this is not a case in which it is appropriate to dismiss the Representation or to stay it.
31. Firstly, notwithstanding the failings in the affidavit to which we have made reference, these failings which are relied upon in part by the First Respondent in the circumstances of this case, which is somewhat unusual, are technical. It is very different to Virani where no consideration to serve out of the jurisdiction took place at all. As we have said it seems to us that it must have been obvious to the Court granting orders for service on the various parties to the Representation, including the First Respondent, that the Court must have had jurisdiction pursuant to Rule 7(j) of the Service of Process Rules 1994 and Article 5 of the Trusts (Jersey) Law 1984. The Representation concerned the Jersey trust, and the assets held by a Jersey trustee, and quite clearly it was appropriate for the Royal Court to assume jurisdiction.
32. The Court was aware of the existence of proceedings in Cyprus but clearly took the view that the forum with the most real connection to the dispute in the proceedings was Jersey.

33. In any event the Court now has before it the relevant information relating to the proceedings in Cyprus and it is clear to the Court that the connection with Jersey is more real than the connection with Cyprus. The owner of the shares is the Representor through entities connected with it. There is a dispute as to whether or not the shares are held on the trusts of a Jersey trust. The Representor and its directors are in Jersey. No parties have any substantial connection with Cyprus other than the nominee companies mentioned above and any matters of Cypriot law, which seem to us to be unlikely to be either disputed or ultimately determinative of the issue contained in the Representation, can be, if necessary, proved as a fact in any hearing before this Court.
34. As we have said the matter has no connection whatever with Cyprus except for the fact that the Fourth Respondent and its registered shareholders are registered there and, technically, as a result the shares are there. Neither parties who assert rival beneficial ownership has any connection and, as we have said, the Representor is resident in Jersey. It is difficult to find what, if any, disputes may exist as to Cypriot law nor does the First Respondent explain what issues of Cypriot law must arise.
35. The proper law of the Trust is that of Jersey.
36. Furthermore, Article 9(1)(g) of the Trusts (Jersey) Law 1984 as amended provides:- “(1) Subject to paragraph (3) any question concerning – ...
- (g) the nature and extent of any beneficial rights or interests in the property, shall be determined in accordance with the law of Jersey and no rule of foreign law shall effect such question.”
37. It would appear to us that were any orders to be made by the courts in Cyprus they may well not be enforceable in Jersey.
38. Furthermore, it is not clear that the courts of Cyprus could in any event make a determination in relation to the ownership of the shares in the Fourth Respondent. Whereas, as we have said above, our understanding is that the First Respondent has commenced proceedings in Cyprus on the basis that she is the owner, that is a simple assertion and is not yet in issue before the courts of Cyprus. The Representor has not been made a party to the proceedings nor indeed has the Second Respondent or any representative of the children. There appears to be no party before the courts in Cyprus who is in a position to assert that the First Respondent is not as she simply claims, the owner of the shares in the Fourth Respondent.
39. In any event we were advised that the evidence of Jersey had been assembled and the issue of the ownership of the shares was ready to proceed before this Court.
40. It is worthwhile noting that this Court has dealt with questions relating to the ownership of the shares in the Fourth Respondent previously. On 22nd January 2016 in the case of *Stock – v- Pan trust International SA and others* [2016] JRC 021 the Court said this, of a case in which the first respondent was the representor, at paragraph 2(iii):- “Lilianfeld Holdings Limited

(“Lilianfeld”). This is a company incorporated in Cyprus which owns a property in St Petersburg. The new trustee contends that Lilianfeld is an asset of The Russian Trust, whilst the former trustees contend it is an asset beneficially owned by the Representor to whom it is offered to transfer the same. As the Representor supports the transfer to the new trustees rather than to her, it was agreed that it would be a waste of time and cost to further debate the issue. With the consent of the Representor, therefore, the former trustees would procure the transfer of the shares in Lilianfeld to the new trustee.”

41. We hold that the Royal Court is the appropriate forum for the determination of the issues in the proceedings. Authorities Service of Process Rules 1994. Practice Direction RC 15/01 Trusts (Jersey) Law 1984 Virani –v- Virani and another [2000] JLR 203 Maywal Limited –v- Nautech Limited [2014] JLR
- (2) 527 Stock –v- Pantrust International SA and others [2016] JRC 021
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