# Knowledge is power, information is liberating: With help from the Guernsey Court

**October 2015**

In 2014, following an interesting decision from the Guernsey Court of Appeal, the Guernsey Court has confirmed that, in rare circumstances, it is appropriate for trustees to demand information from beneficiaries in order for the trustees to be able to administer a trust in an equitable manner.

In the Matter of the R and RA Trusts (Judgment 25/2014) concerned an application for an Order to be made against various beneficiaries for disclosure of certain information connected to the trusts.

By way of background, a trust structure comprising four trusts ("Trusts") had been established to benefit one branch of a family. For various reasons, the trustee of the Trusts ("Trustee") had decided to establish a separate trust to house the interests of one of the beneficiaries, a daughter of the family, and the Trustee wished to appoint an appropriate share out of the Trusts into her new trust.

In order to decide upon the sum to be appointed to the daughter's trust in a just and equitable manner for all of the beneficiaries, the Trustee had instructed an international advisory firm to value the assets of the Trusts. The advisors needed further information from the other beneficiaries in order to be able to complete their valuation. However, the beneficiaries were reluctant to comply.

In particular, information was required to establish whether funds transferred into the Trusts were by way of a loan or an outright transfer and information was also required to explain a significant drop in the value of a company owned by the Trusts. Without this information, the advisors were somewhat hamstrung and could only give an approximate range in which they believed the value of the Trusts fell. The range spanned a $200 million difference in value!

It was, therefore, extremely important to obtain the outstanding information to ensure that the appointment to the daughter was just and equitable to all of the beneficiaries in all of the circumstances.

Both the Trustee and the daughter made an application for disclosure of relevant information from the other beneficiaries under Section 69(1)(a)(iii) of the Trusts (Guernsey) Law, 2007 ("Law"), which allows the Guernsey Court to make an Order in respect of any beneficiary as part of its supervisory jurisdiction. However, at first instance, the Guernsey Royal Court refused to order disclosure.

The daughter subsequently appealed to the Court of Appeal, who reversed the first instance decision and ordered that the beneficiaries provided the Trustee and the daughter with the requisite information.

The Guernsey Court highlighted the flexibility of the rules in place, following Schmidt v Rosewood, as to when a trustee should provide disclosure and adopted a similarly common approach in this decision.

The Court of Appeal concluded that an Order could be made against a beneficiary, in accordance with its supervisory jurisdiction to ensure the best interests of the beneficiaries are met, if there is a sufficiently close connection between the position of the beneficiary as a beneficiary of the trust whose affairs are being supervised and the relief being sought to justify the exercise of the Court's supervisory jurisdiction.



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In this particular case, the beneficiaries were significantly involved in the issues being determined in their capacity as beneficiaries of the Trusts and not in some other capacity, such as a director of an underlying company, and so the Court was satisfied that disclosure was appropriate on this occasion.

Interestingly, the Trustee did not appeal the first instance decision of the Guernsey Royal Court, nor did the Trustee provide any active support to the daughter in her appeal. It appears that the Trustee may have been advised that, on the basis of the Re Londonderry principle, a Trustee is protected by a Court Order and it is not for the trustee, but for beneficiaries, to challenge any decision of the Court. However, the Guernsey Court considered this and stated that, if a Trustee believes that an appeal against an Order of the Court is in the best interests of the beneficiaries, then it should appeal the decision.

This decision is also interesting as it is extremely rare for a Court to make an Order against a beneficiary to provide information to a trustee. However, the Court has an important supervisory jurisdiction in Guernsey and it is clear that the Court is prepared to utilise it pragmatically and to the full.

For more information about the implications of this case or for help with any other Guernsey trust matters please do not hesitate to contact us.



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For more information please contact:

**Angela Calnan**

Partner // Guernsey

t:+44 (0) 1481 734233 // e:angela.calnan@collascrill.com



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