# BENEFICIAL OWNERSHIP CASE

MARCH 2017

**The Jersey Court will not use its equitable jurisdiction to assist those who have failed accurately to disclose beneficial ownership interests to the financial services regulator.**

In a recent judgment (*Al Tamimi v Al Charmaa [2017]JRC 033*) concerning the ultimate ownership of two Jersey companies, the Royal Court (the Bailiff and Jurats) has sent a strong message that attempts to hide beneficial ownership will not be rewarded - and may even be criminal.

The claimant (husband) and the defendant (wife) had been married in the UAE. Divorce and financial provision proceedings were under way in the UAE following the breakdown of the marriage. The husband brought separate proceedings in Jersey alleging that the shares in two Jersey companies, which owned valuable property in the UK and which were registered in the wife's name, were in fact held by the wife as nominee or as trustee for him, either under an express trust or otherwise under resulting or constructive trusts.

The husband argued in the alternative that, given he had transferred properties to the companies and contributed all the relevant funds to the companies and the wife had made no financial contribution, the wife had been unjustly enriched at his expense. He therefore sought an order that the shares in the two Jersey companies be transferred to him.

The husband alleged that the two companies had been incorporated with his wife as shareholder and the properties transferred to them in accordance with advice he had received in order to keep assets out of his name. This was to avoid a claim to the properties by his first wife, who was bringing financial provision claims against him in Italy at the time. On the husband's case, the true arrangement was that his wife held the shares in the companies as his nominee and that he retained beneficial ownership. He also relied on wide-ranging powers of attorney granted to him by his wife to deal with all of the affairs of the companies on her behalf as being consistent with the nominee arrangement.

The wife denied all of the claims. Part of her defence was to the effect that, because the husband had (through his agents) knowingly made false declarations to the JFSC on incorporation of the companies and as to their beneficial ownership, he was asking for the Court's help relying on an illegality and without 'clean hands' and his claims should therefore be refused.

The Court dismissed the husband's claim on other grounds before turning to comment on this defence. It said that in the exercise of a judicial discretion as to whether or not relief should be given in respect of an equitable claim, whether in trust or unjust enrichment, it would be entitled to take public interest factors into account.

Referring to Jersey's place in the international community and to the international organisations that review financial services industries including our own, the Court spoke to the importance of the JFSC maintaining accurate beneficial ownership records and, therefore, to the importance of applications to the JFSC being complete and accurate. The Bailiff said as follows:

*'There is an obligation on those applying to the [JFSC] for permission to incorporate a company under the control of borrowing legislation to make complete and accurate answers to the questions which are raised. A failure to do so would amount in our judgment to a criminal offence, if the failure were dishonest.'*

The Court further stressed the *'very strong'* public interest in the Island and its authorities being able to demonstrate to the same international organisations its ability accurately to identify beneficial owners of companies and beneficiaries under trusts. The Bailiff added:

*'In our judgment, this Court should not recognise any arrangement which detracts from the ability of regulators or law enforcement authorities to do so, and, even if we had been satisfied that the shares were held as a nominee or on trust for the [husband], or that the [wife] had been unjustly enriched at the expense of the [husband], we would not have been prepared to grant relief in the exercise of our equitable discretion on that basis.'*

This judgment gives a very clear message that those who fail accurately to disclose to the regulator beneficial ownership interests in Jersey companies or trusts do so at their peril, in the context of both the civil law and the criminal law.

This case involved an alleged beneficial ownership agreement made by persons residing outside of Jersey. Corporate service providers in the process of updating their beneficial ownership disclosures to the JFSC should take the opportunity to remind their clients of the potentially very serious financial and personal consequences of failing accurately to disclose ownership arrangements even where they are made outside Jersey.

**FOR MORE INFORMATION PLEASE CONTACT:**

NUNO SANTOS-COSTA
Senior Partner, Jersey // Jersey
t:+44 (0) 1534 601731 // e:nuno.santoscosta@collascrill.com