8 pages.

ROYAL COURT
(Probate Division) 24.

7th February, 1997

Before: F.C. Hamon, Esq., Deputy Bailiff and
Jurats Le Ruez and Vibert

In the matter of the Estate of Peter Kelway Tregunna (Deceased);
And in the matter of the Representation of
Sigma Design Team Incorporated;
And in the matter of an application
under Article 25 of the Probate (Jersey) Law 1949;
And in the matter of an application
under Rule 4/7 of the Royal Court Rules 1992.

Advocate A.P. Begg for the Representor.
Advocate J.G.P. Wheeler for the Viscount.
Advocate C.G.P. Lakeman for Mrs. Tregunna.
Advocate W.J.Bailhache for the named executives.

JUDGMENT

THE DEPUTY BAILIFF: This is a representation brought by Sigma Team Design Incorporated concerning the will of the late Peter Kelway Tregunna (the deceased). The will has not been admitted to probate and the named executors were released from the proceedings at trial. The question of costs was left over.

The representation is novel in many respects. It defines the facts as follows:-

The deceased died on 21st November, 1988, leaving a widow and a daughter. Sigma is beneficially owned by a Jersey settlement called "The Pita Settlement". Prior to 18th December, 1987 the deceased owned Tremarble Trustee Company Limited, which was the trustee of Pita. Then PNM Trust Company (a wholly owned company of Peat Marwick) became trustee until 6th December 1966 when Blenheim Trust Company Limited became trustee.

It is pleaded that *"in breach of his obligations to the beneficiaries of the Pita Settlement and/or to the trustee of the Pita Settlement the deceased invested in unauthorised investments the sum of*

£763,415.70 from funds belonging to Pita. Alternatively, it is pleaded, the deceased diverted those monies for his own use."

The representation goes on to express that on 17th June, 1987, the deceased acknowledged his indebtedness to Sigma in that sum and undertook to repay in instalments of £100,000 on 31st July, 15th September and 30th October 1987 with the remaining balance to be paid in equal instalments over the course of the following twelve months period. There is then an assertion that while £113,018.36 was paid on account of the claim to the representor no further payments were made.

We now come to the nub of the representation. Sigma wishes to pursue its claim against the deceased's estate but no personal representative of any kind has been appointed so that there is no one whom Sigma can serve. The executors are named. They attempted to renounce within days of the death of the deceased but the Registrar of Probate declined to accept the renunciation.

There is then a concern expressed by Sigma that the widow or the daughter of the deceased may have intermeddled in the estate.

The parties were convened, the will was produced and Sigma asked the Court, once the named executors had been permitted to renounce, to make the following order:-

(v) to appoint or give directions to the Assistant Judicial Greffier for the appointment of Mrs. Tregunna, and/or Mrs. Fogg and/or the Viscount and/or such other person as the Court shall deem fit as Executor or Executor Dative of the Will or Administrator of the Estate of the deceased;

(vi) to appoint the Executor, Executor Dative or Administrator (appointed pursuant to sub-paragraph (v) hereof) and/or Mrs. Tregunna and/or Miss Fogg and/or the Viscount and/or such other person as the Court shall deem fit to represent the Estate for the purpose of the proceedings relating to the claim referred to in paragraph 7 hereof;

(vii) to direct that the proceedings relating to the claim referred to in paragraph 7 hereof shall be served on the Estate of the deceased in such manner as the Court shall deem fit; in the alternative

(viii) to direct that the Representor may commence the said proceedings without serving them on the Estate of the deceased or a representative thereof;

(ix) to make such other Orders and give such directions as the circumstances of the case may require;

(x) to order that the costs of this application will be met out of the Estate of the Deceased; in the alternative

(xi) to make such order as the Court shall deem fit in respect of costs."

That was how the facts were understood before the hearing. Now we have had the benefit of documentation and argument. By way of example, the acknowledgement of indebtedness is dated not 17th but 18th June and is only a photocopy of a document entitled "Heads of Agreement". It is signed (apparently) by the deceased. The document is not witnessed by anyone and there are no other signatures on the document.

Before we examine Advocate Begg's argument let us look for a moment at the Viscount's position. The Viscount strongly opposed the application to appoint him to administer the estate.

Advocate Wheeler, for the Viscount, addressed us, helpfully, on the law in this jurisdiction. Advocate Begg had compared the function of the Viscount with that of the Official Solicitor in England. Article 14(2) of the Probate (Jersey) Law, 1949, draws a distinction between the two offices:-

> *"As from the commencement of this Law, the power of the "Samedi" division of the Royal Court to place the estate of a deceased person in the possession of the Viscount shall be abolished."*

That article removed the preservation action which the Official Solicitor still undertakes and which he was undertaking in Jersey when he appeared in the case of In the Estate of Sir Charles Clore, deceased (1980). That function was similar to the situation that prevailed in a "succession vacante" where if the heirs of an estate renounced, the Viscount would carry out minor administration under the system.

The Viscount can still take under the provisions of Article 15 of the Probate Law. The wording of the article is not unimportant.

> *"VISCOUNT IN POSSESSION PENDENTE LITE"*
>
> *Where any legal proceedings touching the validity of the will of a deceased person or for obtaining, recalling or revoking any grant are pending, the Court may place the estate in the possession of the Viscount, who shall act under the direction of the Court."*

That provision would apply where there are, for example, conflicting claims between children taking under a will or where a caveat has been lodged to prevent a named executor from taking. There are no legal proceedings in train in this matter.

The Viscount takes a strong line. He has no funds and he has a conflict of interests.

Mr. Wheeler began by criticising Sigma's Representation. We shared his confusion. The Representation shows that a settlement with a trustee owns a company. There is an allegation of monies diverted from a trust and yet we have an application by an incorporated body. We have no indication of where it is incorporated. It is certainly not incorporated in this jurisdiction. The Heads of Agreement refer to the "obligees" being Sigma and the (un-named) beneficiaries of the Pita Trust. We have already said that the document is signed only by the deceased. There is

confusion worse confounded when the representation states that £113,018.36 was paid "on account of the claim" to Sigma. Advocate Wheeler had some better information to hand. In the PTK Consultants Limited *désastre* (the company beneficially owned by the deceased) there were claims lodged in the *désastre* both by Sigma and by a Mr. Cain. It appears that Mr. Cain is a beneficiary of the Pita Settlement. The sum of £113,018.36 was available and was divided and paid out by the Viscount. However, the Viscount rejected Sigma's claim in total and accepted Mr. Cain's claim "in full and final settlement."

The £113,018.36 paid to Mr. Cain was a dividend of 24.5 pence in the pound on a claim admitted in the sum of £371,951.47 and the admitted claim represented the monetary loss of Mr. Cain on the basis of a promised return of approximately 100 per cent. This gave rise to the figure of £763,415.70.

The mention of this Mr. Cain only came out at the hearing, but Advocate Begg for some time during 1995 was corresponding with the Viscount on behalf of Mr. Cain. Then, on 9th July, 1996, Advocate Begg appeared to change his horse in midstream and to be acting in the same matter for Sigma. We became more convinced as the hearing proceeded that the Representor had deep suspicion rather than hard evidence on which to base its claim. In that earlier correspondence (when Advocate Begg was acting for Mr. Cain rather than Sigma) questions were asked concerning a company called Dominion Trust Company Limited, which the deceased apparently used to deposit such funds of Mr. Cain as he had misappropriated. Dominion was registered in Liberia and the Viscount somewhat enigmatically replied that he could not prove that the deceased did not own it. The *désastre* of PTK Consultants Ltd. ran for seven years, was complex, employed Touche Ross and cost some £54,000. At its end, the Viscount had no idea where the books, records and share certificates of Dominion were to be found. The Viscount, if he took a grant, would not know where to exercise the grant, particularly where Liberia can issue bearer shares and where, as we heard from Advocate Lakeman, Mrs. Tregunna has destroyed (and we have no comment to make on this) so many of her late husband's papers. We also heard of shadowy figures allowed by Mrs. Tregunna at some stage to have a free hand to inspect her late husband's papers at a time before she destroyed them.

Perhaps the Viscount's attitude (and we believe it to be a proper attitude) can best be understood in this letter that he sent to Advocate Begg:-

> *"I have your letter of 14 December, but an appointment of the Viscount under Article 15 of the 1949 Law is only appropriate where the validity of a will or the obtaining of a grant is in question. Under Article 15, the Viscount's rôle is generally protective and passive.*
>
> *Article 15 does not have application in the circumstances you describe and you are also seeking to impose an active rôle upon the Viscount.*
>
> *In any event, the Viscount is not specifically funded in order to fulfil functions in virtue of an appointment under Article 15: this funding is always out of the assets of the estate in question."*

We have seen that on 9th July, 1996, Advocate Begg changed horses. Thereafter he was acting not for Mr. Cain, but for Sigma. However, on 18th September, 1996, Advocate Begg wrote to the Viscount in these terms:-

> *"I wonder whether, by any chance, the Viscount's Department has any information about Sigma Design Team Incorporated? To remind you of the position, Sigma Design Team Incorporated is an asset of the Pita Settlement, of which Tremarbel Trustee Company Limited was formerly the Trustee. Whilst I am aware that the concern of your Department was primarily with P.K.T. Consultants (Jersey) Limited (since it was that company which had been declared en desastre), I am hopeful that you or Mr. de Gruchy might have some knowledge or information about Sigma. (I believe that, amongst the documentation taken by the Viscount's Department at the time of the desastre were the books of Sigma). In particular, I am anxious to ascertain the whereabouts of the company shares."*

When asked by the Court how he was receiving instructions Advocate Begg told us that he was in fact instructed by the company called Blenheim Trust Company which is apparently the trustee of the settlement that controls Sigma. The matter gets no easier. As Advocate Wheeler picturesquely puts it - "the Viscount is not an astro physicist who is a master of black holes" - which in more mundane terms is an argument that the executive officer of the Court should not be asked to expend limitless amounts of public money in order to set out on what he considers to be a wild-goose chase. We have insofar as the Viscount is concerned no difficulty. There is no estate in Jersey and no real evidence of where he should go in order to obtain better information. Where, if he were granted probate here would he have to obtain registration of his grant: in Liberia to obtain books and share certificates? - In Switzerland to obtain access to allegedly salted funds? This, of course, when he has dismissed the identical claim in the *désastre* made by Sigma albeit not in the personal *désastre* of the deceased, but in the *désastre* of a beneficially owned company.

Advocate Begg used a broad brush approach. He produced an affidavit from a former partner of the deceased, Raymond Norman Bellows. Mr. Bellows named five companies. In his concern in the way that the deceased was carrying out his business he had signed over all his interest in these companies to the deceased. That was in 1995. There is also mention of a Maureen Rondel who was the personal assistant of the deceased and who administered the companies for him. Advocate Begg showed us a photocopy affidavit sworn by a private investigator, David Martin Watkins. There is in that affidavit (prepared not for this matter but for other matters, including a criminal investigation) mention on hearsay evidence only that the deceased had assets in Dominion amounting to £60,000,000. Banks and assets are named, mainly Swiss.

It is all very vague and convoluted. Mr. Watkins deposed that he held copies of "a Bank Account". We also saw an affidavit of Richard Haig Martin an English Solicitor practising in Jersey. It was he who produced as an exhibit to his affidavit the "Heads of Agreement" and the minute of a meeting where a retired English Solicitor met with Mr. Cain and the deceased. The retired English Solicitor's minute (dated at the

time the Agreement was signed) has wording which is uniquely strange. For example, it reads:- *"for the abolition of doubt I can confirm"* and *"the tenor of the meeting was convivial"*.

We also read the affidavit of the widow of the deceased, Mrs. Alison Betty Tregunna (née Waldron). That affidavit mentions "Cityguide Group" a company in Swindon which apparently carried out investigations for Mrs. Tregunna which led to them telling her that there were no assets held by or on behalf of her husband.

Advocate Begg regarded Mrs. Tregunna's affidavit as suspicious for what it left out. That is always an argument that cannot be answered It may be true. It may be false.

If the Viscount is not the proper person to take a grant, who is?

Advocate Begg called in aid the application made in the Rahman case on 19th July 1991. In that case a company with trust corporation status was by agreement of the contesting parties allowed to apply to Court for a grant under Article 14 of the Probate (Jersey) Law 1949 for Letters of Administration. It is important to note that all the parties consented and two Jersey solicitors were appointed directors of the company. In accordance with a Superior Number Direction of 6th March, 1985 they each gave a written undertaking that they would not avail themselves of the protection afforded by the limited liability of the company.

We must however bear in mind that in Clapham v. Le Mesurier (1991) JLR 5 the Court held that the application of Article 14 of the Law was not restricted to situations in which there was no principal heir or competent executor nominate. As the Court said at page 28:

> ***"There is an abundance of authority which we have cited to show that the Court has a very wide discretion to do what is convenient - and in this the Court includes expedient. The discretion vested in this Court cannot be narrower or more restricted than that given by similar legislative provisions in other jurisdictions."***

We saw two examples where the Viscount had been appointed by the Court. Re Heyting (1974) 2PD 6, 55 and (1975) 2PD 205 and Re Vasselin Ex parte Gruchy (1973) 1PD 544. Those cases turn on their facts, however, and their facts are not on all fours with this case.

Advocate Begg agreed with us that Sigma (not being based in Jersey) would not be the appropriate body to take out probate.

It seems to us that the case of Heyting confirms that the whole purpose of Article 14 is a preserving and passive rôle for the Viscount whilst a matter is resolved - as it was in the Heyting case, a resolution which led to a discharge of the Viscount. The case of Vasselin appears not to have been argued in any depth. We have moved on in this jurisdiction in any event to far more complex fields. So it was that on 16th December, 1988 the Court sat *in camera* to hear the application of Roanne Trust Company (Jersey) Limited where the company sought to retire and where an application was made to appoint the Viscount, but on an adjourned hearing the Court declared that it would be inappropriate to appoint the Viscount to be the new trustee.

Interestingly, the Court requested the settlor (after hearing the Attorney General on a further adjourned hearing) to give the matter further consideration.

That is precisely what we are going to do today. The hearing will be adjourned to enable Advocate Begg to take better instructions. If he can come back to this court (and we suggest that the case be adjourned for one month) with a sensible alternative as to who could be appointed and we have reviewed all the possibilities we may be minded to grant probate. But we will not order the Viscount to go on a fishing expedition of the type envisaged by Advocate Begg. Whoever is appointed would have to be under the control of the Court.

We accept the six grounds of objection of the Viscount.

1. The provision of Articles 14 and 15 of the Probate (Jersey) Law 1949 are not appropriate articles to invoke in this case.

2. The appointment of the Viscount would lead directly or indirectly to considerable public expense.

3. The precedent created would on these facts be undesirable.

4. There is only shadowy rather than real evidence of assets.

5. If we were to appoint the Viscount, he must know precisely how he is going to act.

6. He has, in this case, a conflict of interest having reached the conclusions that he did in the désastre of the deceased's company.

We have sympathy with Advocate Lakeman. The bundle in this case was only received in the late afternoon before trial. This is not satisfactory. Advocate Lakeman's client lives in South Africa. Advocate Lakeman told us (and he did not have time to obtain affidavits) that he had in any event been informed that the monies in the Swiss Bank accounts have been paid out to a party unconnected with these proceedings. We know no more than that. We say that because we allowed Advocate Lakeman to give us that information in an unacceptable form as an indulgence. It was unacceptable because evidence cannot be given in this way. It is not permissible for Counsel to seek to give evidence himself in his oral address to the Court or in his written submissions. Counsel's duty is to comment on matters which are already in evidence.

We formed the impression that the Representor needed more time. We will adjourn the case for one month.

Authorities

Royal Court Rules 1992: Rule 4/5: "Representation of Interested Persons who cannot be ascertained, etc"; Rule 4/7: "Representation of Deceased Person interested in Proceedings".

RSC (1997 Ed'n): S.15/6A: Proceedings against estates; S.15/6A/2: Action against estate without grant; S.15/6A(7): Application of Official Solicitors.

Probate (Jersey) Law 1949: Art. 7: "Application for Grants"; Art. 12: "Power to Grant Probate or Administration to a Trust Corporation"; Art. 13: "Grant to Executor Dative"; Art. 14: "Power as to Appointment of Executor Dative or Administrator; Art. 15: "Viscount in Possession `pendente lite'"; Art. 23: "Penalty of Intermeddling"; Art. 25: "Proceedings to compel acceptance or refusal of a Grant; Art. 29: "Power to Fix Fees".

The Probate (General) (Jersey) Rules, 1949: Rule 13: "Costs".

4 Halsbury 17 Paras. 701, 780-787, 793-805.

Tristram and Cootes Probate Practice (1995) (28th Ed'n): Chap. 14 (pp.450-454): "Right of the Court to Select an Administrator"; Chap. 15 (pp.461-468): "Renunciation and Retraction"; Chap. 24 (pp.544-558): "Citations"; Chap. 39 (pp.696-706): "Costs"; Rules, Orders and Regulations: pp.923-924; 936-938; Forms: pp.1006-1007; 1013-1015.

Clapham -v- Le Masurier (1991) JLR 5.

Re: Heyting Ex parte Royal Trust Company of Canada (CI) Limited (1974) 2PD 6, 55.

Re: Heyting Ex parte Bayley née Heyting (1975) 2PD 20, 55.

Re: Vasselin Ex parte Gruchy (1973) 1PD 354.

Wills and Succession (Jersey) Law, 1993: Articles 14 & 15.

La Cloche -v- La Cloche (5th March, 1870) LR 3 PC 125.