

ROYAL COURT
(Samedi Division)

217.

20th November, 1996

Before: F.C. Hamon, Esq., Deputy Bailiff, and
Jurats de Veulle and Querée

Between: Khalid Yousuf Al Marzook Plaintiff
And: Faisal Yousuf Al Marzook
Jassim Yousuf Al Marzook First Defendants
And: Bank America Trust Company
(Jersey) Limited Second Defendant
(formerly Woboco Trust
(Jersey) Limited

Representation of the Second Defendant, seeking directions, pursuant to Articles 43, 47(1) and 49 of the Trusts (Jersey) Law, 1984.

Advocate T.J. Le Cocq for the Second Defendant/Representor.
Advocate J.P. Speck for the Plaintiff.
Advocate R.J. Michel for the First Defendants.

JUDGMENT

THE DEPUTY BAILIFF: This is an application by Bank America Trust Company (Jersey) Ltd ("Bank America") as Trustee of the Eagle Trust and Gable Trust. We will not go into the background of this matter, it is well and comprehensively documented. However, the facts record that, sadly, an internecine war has broken out between the beneficiaries of the Trusts, two sides of what had apparently been hitherto a closely-knit, prosperous Kuwaiti family.

10 On 15th October, 1993, a Consent Order was obtained from this Court. All the parties consented to it. It was noted in the course of the debate before the Court that a large number of beneficiaries of the existing Trusts resided within and were subject to the jurisdiction of the Courts of Kuwait. It was also
15 noted that, to the best of the knowledge and belief of Bank America, all the adult beneficiaries of the Trusts had indicated

their desire to be bound by the decision of a Liquidation Committee insofar as it purported to extend to the Trust Funds of the existing Trusts.

5 The parties to the representation agreed that if the Court followed their deliberations, Khalid Yousuf Al Marzook (and we shall refer to him as Mr. Khalid) who was the Plaintiff in certain actions, would withdraw those actions before this Court, subject, of course, to certain safeguards and it was also said that the
10 Orders would cease to be binding upon the givers thereof in the event that the Trustees of the existing Trusts fail to follow any directions given to them by the Liquidation Committee. So that, in a way, Mr. Khalid has doubly endorsed the conclusions that the findings of the Liquidation Committee would be binding upon the
15 parties.

 On 21st March, 1994, the Liquidation Committee in Kuwait issued an Order. That Order was translated and a copy of the Order, with its translation, was delivered by post to Bank
20 America, the Trustees. It is necessary for me to read the material parts of the Order and which, in translation, provided as follows:

25 *"...accordingly the above the Committee's opinion is that Bank America should be charged with dividing up the trust assets managed by it according to the percentages identified by this verdict, i.e. by 36.14% for Khalid Al Marzook, 8.73% for Loulwah Al Nassar, 11.14% for Jassim Yousuf Al Marzook, 16.14% for Faisal Yousef Al Marzook, Badria, Najat, Taibah, Salwa, and Siham Al Marzook, each
30 5.57% taking into consideration that each one will be allocated the houses shared in this verdict and its annexes. Each one of them, in accordance with their percentage of share, shall shoulder his share of the expenses and costs for receiving their percentage of the
35 shares of the trust assets, if they wish".*

 Mr. Speck did say to us that no direction was in fact given to the Trustees, but as we see it from this jurisdiction, the
40 Order was published and sent by post to the Trustees with a translation and we feel that in that regard, as far as we are concerned, he is splitting hairs. The intention of the parties was clear. Subject to certain safeguards they would submit to the wisdom of the Liquidation Committee.

45 However, once the Order had been made certain events took place. Very shortly after the award was taken out the Trustees were appraised of the fact that Mr. Khalid had commenced proceedings in Kuwait to nullify the Order and the Trustees were
50 then met with two separate arguments, the first argument from Mr. Khalid was to the effect that his lodging of an appeal immediately suspended enforcement of the Order of the Liquidation Committee;

and from the other parties the Bank America were told that it was those parties' wish that the award of the Liquidation Committee be implemented immediately. However, apparently the appeal of Mr. Khalid in the first instance was dismissed by the Court of Appeal and what has now happened, as we understand it, is that the matter is now going ahead for the final attack upon the decision of the Liquidation Committee to the Cour de Cassation and the Cour de Cassation will probably make that decision in December, but apparently its findings will only be known by March of next year.

The Trustees are apparently having continuing difficulties and we agree that they are in an impossible situation. What is Mr. Khalid concerned about? He is essentially concerned that he will suffer injustice if the distribution is made now and the basis of that is that all Trust assets in his view should be made available to meet the family guarantees in Kuwait. If a larger proportion is distributed to other members of the family he feels that they will not assist in fulfilling the family guarantees and because he has what was described by counsel as a 'deep pocket' he alone will have to bear this burden if the guarantees come to be called in. The guarantees are still outstanding apparently because the Liquidation Committee, which dealt in its award with the properties situate in Kuwait over which they had jurisdiction, distributed the assets then under their control without discharging any of the liabilities.

We do not profess to have any great knowledge of the matter that the Consent Order dealt with but even so the Appeal Court has apparently - according to Mr. Speck - dismissed the argument already. Nevertheless the matter is going to the Cour de Cassation and, on that basis, Mr. Speck says what prejudice can possibly be suffered by a delay until March. That argument, when we first read the papers, seemed attractive to us but it is answered by the Trustees who say they have continuing expenses - because of the impossibility with the dispute of being able to get any form of consensus to guide their discretion - and they also control residential properties which are either habitable or not.

It is clear that the Trustees cannot happily continue and having read some of the verbal and written exchanges in the files, they have our sympathy.

We have given considerable thought to the matter but because of the historical background to the application and because it is the Trustees who are bringing this application and they above all must know how the problems of the Trust are best to be dealt with, we favour the application made to us today by Mr. Le Cocq. Therefore we are going to order that the distribution should now be made. The Order is to be made in accordance with the award of the Liquidation Committee of 21st March. We can see no reason why Bank America may not require any of the persons to whom the property is to be transferred in accordance with the Order of the

Liquidation Committee to provide Bank America with reasonable security for any liabilities whether existing, future, contingent, or otherwise, before surrendering the Trust property. That of course includes fees which have been incurred to date and need to be paid and continuing fees.

We have had certain undertakings given to us this morning but we would say this: if any beneficiary declines to meet those reasonable fees then of course their assets will be forfeit at the discretion of the Trustees with the right which the beneficiaries have reserved to have the costs taxed if they think they are excessive, but taxed we would say in the terms of the charging clause of the Trust Deed. There is another matter which I think we should include in the Order when it is formulated and that is: if the Cour de Cassation does in fact overturn the earlier verdict of the Liquidation Committee then at that time the Trustees are immediately to stop any distribution which they are in the course of working on and come back to Court and we will give them further directions at that time.

No Authorities.