

**Judgment 29/2007  
(Re-issued)\***

**Fidelity Management Limited v Royal Bank of  
Canada (Channel Islands) Limited – Royal Court  
(Civil Action File 1102) – 20<sup>th</sup> September 2007**

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**Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 – fiduciary deposit account held by the defendant bank – disclosure made to the Financial Intelligence Service under the 1999 Law – plaintiff’s application for a declaration that a request to transfer those funds was validly made on behalf of the plaintiff – Law Officers invited to be heard as Partie Publique – jurisdiction – circumstances in which the Court can make a factual finding in the absence of the Jurats – declaratory relief is granted as a discretionary remedy – application granted**

*\*[Revised judgment – correction re reference to which Advocates acting for respective parties]*

**IN THE ROYAL COURT IN THE ISLAND OF GUERNSEY**

**Civil 1102**

**The 20<sup>th</sup> day of September 2007 before Richard John Collas, Esquire,  
Deputy Bailiff**

Between

**FIDELITY MANAGEMENT LIMITED**

**Plaintiff**

**-v-**

**ROYAL BANK OF CANADA (CHANNEL ISLANDS) LIMITED**

**Defendant**

On the application of the Plaintiff, dated 15<sup>th</sup> June 2007, for Summary Judgment, in the matter of proceedings which were placed on the Pleading List on the 1<sup>st</sup> June 2007;

WHEREAS THE COURT, on 17<sup>th</sup> September 2007, having heard Advocate I.C. Swan, Counsel for the Plaintiff, Advocate G.S.K. Dawes Counsel for the Defendant and Crown Advocate R.M. Titterington on behalf

of the Law Officers of the Crown as Partie Publique, GRANTED the application for Summary Judgment, DECLARED that the request to transfer funds contained within the letter of 25<sup>th</sup> May, was a request validly made on behalf of the Plaintiff and ADJOURNED the issue of costs;

THE COURT this day ISSUED JUDGMENT in  
the attached terms.

M A TOSTEVIN  
Her Majesty Deputy Greffier

**Approved Text  
20 September 2007**

**IN THE ROYAL COURT OF GUERNSEY  
ORDINARY DIVISION**

**In the matter of  
Application for Summary Judgment**

<b>Between:</b>	<b>FIDELITY MANAGEMENT LIMITED</b>	<b>Plaintiff</b>
	<b>-and-</b>	
	<b>ROYAL BANK OF CANADA (CHANNEL ISLANDS) LIMITED</b>	<b>Defendant</b>

**Date of hearing: 17 September 2007**

**Judgment handed down: 20 September 2007**

**Before: Richard John COLLAS Esq., Deputy-Bailiff**

Advocate for Plaintiff:	Advocate I C Swan
Advocate for Defendant:	Advocate G S K Dawes
Crown Advocate R M Titterton on behalf of HM Procureur as Partie Publique	

**Cases and statutes referred to:-**

1. The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law 1999.
2. Spiliada Maritime Corporation v Cansulex Ltd [1987] 1AC 460.
3. Fir Trading Ltd v McKenzie & McKenzie (Royal Court 1999) (27 GLJ. 65)
4. Technocom Ltd v Rosscorn Ltd and Mark Klabin (Royal Court 2003)
5. Healthspan Ltd. V Healthy Direct Limited (Royal Court 2004)
6. Colussi v Investec Trust (Guernsey Limited) and Colussi (Royal Court 25 May 2007).
7. Trinity Investments Limited v Longport Properties Limited Guernsey Court of Appeal 2001).
8. Champion v Paint (Royal Court 25 September 1995)
9. Mann v St Pierre Park Hotel (No.1) Royal Court 30 October 1998
10. Fairhurst v Siteweld Ltd (Royal Court 28 April 2000)
11. Butt v Brannan (Royal Court 31 March 2004)
12. Re The Westbury Property Fund Ltd (Royal Court 4 July 2005)
13. Financial Services Authority v Rourke [2001]

**Factual Background**

1. The facts can be summarised very briefly.

2. Fidelity Management Limited (“Fidelity”), a company incorporated in the Turks and Caicos Islands is the holder of a fiduciary deposit account at the Defendant, Royal Bank of Canada (Channel Islands) Limited in Guernsey (“the Bank”). The account was opened in about 1995 by the then sole director of Fidelity, a US citizen, who misled the Bank as to his identity by using a passport issued to him by the Canadian authorities under a false name. I will refer to him by reference to his true name as “Mr Laport”. Following the death of Mr Laport, certain facts came to the knowledge of the Bank which led it to make a disclosure to the Financial Intelligence Service under the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law 1999. I do not need to describe in detail what those facts are. I need only say that a substantial amount of information has been disclosed to the Court by way of Affidavits, including one from the Bank’s compliance officer and, most notably, from George B Collins (“Mr Collins”), a US Attorney and former friend of Mr Laport.
3. The share capital in Fidelity was originally issued in the form of bearer shares which were in the possession of Mr Collins. He described in his Affidavit how on 11 May 2005, in the presence of Owen Foley (“Mr Foley”) an Attorney in the Turks and Caicos Islands, meetings of the company were held to convert the bearer shares to registered shares in the names of the two daughters of Mr Laport who, in their capacity as shareholders, elected Mr Collins as the sole director of Fidelity.
4. By letter dated 25 May 2007, Mr Collins, as sole director of Fidelity, instructed the Bank to transfer the funds held in Fidelity’s fiduciary deposit account to an account in Fidelity’s name at a bank in Switzerland. The Bank failed to act upon those instructions. Mr Collins now knows that the reason, or one of the reasons, for its refusal to act was a concern that it might thereby commit an offence under the Proceeds of Crime Law. The Bank has requested that the FIS consent to the transfer but the FIS has not seen fit either to give its consent or to say that it refuses consent.

### **The Application**

5. Fidelity issued proceedings in the Royal Court seeking the following relief:

- “(1) *A declaration that the request to transfer funds contained within the letter of 25 May 2007 referred to at paragraph 6 above was a request validly made on behalf of the Plaintiff.*
- (2) *An Order that the Defendant do within 7 days of the date of the Order pay such sums as at that date stand to the credit of the Plaintiff’s account with the Defendant to the Plaintiff’s account at Union Bank of Switzerland, Zurich, Switzerland and that prior to making such payment the Defendant shall convert the relevant sums from US dollars to Sterling at the conversion rate then applicable.”*

6. There have been a number of interlocutory hearings in connection with this matter during which Advocates Edwards and Dawes, appearing on behalf of the Bank, have said the Bank adopts a neutral stance and will not act on the transfer request without an Order of the Court and/or without the consent of the FIS. Advocate Raffray also appeared on behalf of the FIS and provided information to the Court but did not wish to become a party to the proceedings.
7. In the light of the Bank's neutral stance and in view of the nature of the circumstances of the matter, I requested the Law Officers to participate in the proceedings as *Partie Publique* and I am very grateful to Advocate Titterington for the thorough and diligent manner in which he has discharged that role.
8. As a result of the various hearings and following discussions between the parties and the FIS, it was decided that the best way to proceed is to take paragraph 1 of the application as a preliminary point. I believe the parties hope that following a decision on that paragraph, the FIS may indicate whether it will issue, or refuse, its consent to the transfer. If so, further proceedings may not be required. For that reason, I agree that it is entirely appropriate to take the first part of the application as a preliminary issue. I will refer to it as the "First Declaration".

## Jurisdiction

9. The claim is properly justiciable before the Royal Court. The Bank is a Guernsey registered company. The bank account is in Guernsey. The Fiduciary Account Agreement between Fidelity and the Bank which governs the operation of the account is governed by Guernsey law. Furthermore, it is the duties and responsibilities of the Bank arising under the Proceeds of Crime Law, a Guernsey Law, which has caused the Bank to require a decision from the Court, before acting on the transfer request. The involvement of the FIS is an important element in the case and the FIS is based in Guernsey.
10. Whilst accepting that the Royal Court has jurisdiction over the claim as a whole, Advocate Titterington invited me to address my mind to the question of whether the courts of the Turks and Caicos Islands might be a more convenient forum to decide who has the authority to give instructions to the Bank on behalf of Fidelity. He referred me to the principles in *Spiliada Maritime Corporation v Cansulex Ltd [1987] 1 AC 460* and to a number of decisions of the Royal Court in which those principles have been applied, including *Fir Trading Ltd v McKenzie & McKenzie (Royal Court 1999) (27 GLJ. 65)*, *Technocom Ltd v Rosscorn Ltd and Mark Klabin (Royal Court 2003)* and *Healthspan Ltd. V Healthy Direct Limited (Royal Court 2004)*. I also applied the *Spiliada* principles in *Colussi v Investec Trust (Guernsey Limited) and Colussi (Royal Court 25 May 2007)*.

11. An important distinction in this case is that the parties before the Court are all happy for the issue to be determined in Guernsey. There is no application to refer it to another court. An interesting question was raised as to whether the Royal Court could, of its own motion, refer the issue for decision by another forum. I do not need to make a decision on that interesting issue because I am satisfied it can be properly tried in Guernsey with the assistance of expert evidence on the law of the Turks and Caicos Islands which has been provided in Affidavits sworn by Mr Foley.

### **Should the Courts give the Declarations Sought?**

12. I accept the submission made by Advocate Swan that it is unlikely any additional evidence would be heard by the Court if the matter went to a hearing. Everything that is relevant is already contained within the Affidavits. He accepted that the Court might have some lingering doubts as to what exactly occurred when the account was established at the Bank, but those are not germane to the First Declaration. The actions and decisions taken in the Turks and Caicos Islands on 11 May 2005 are relevant and they have been fully disclosed.

### **Exercise of the Court's Discretion**

13. I also accept Advocate Swan's submission that before it can finally dispose of the case, the Court will have to decide whether Mr Collins was authorised on behalf of Fidelity to issue the transfer request. I agree there is no reason why that should not be decided as a preliminary point.
14. I was concerned as to whether I could make the necessary factual findings on my own and without Jurats. I see a distinction between a summary judgment in, on the one hand, an application for Declaratory Relief and, on the other hand, summary judgment in other matters, for example a damages claim. In the latter case, the Court has to consider whether there is no defence and also no fairly arguable point to be argued on behalf of the Defendants (*Trinity Investments Limited v Longport Properties Limited Guernsey Court of Appeal 2001*). That is a somewhat negative decision whereas when granting Declaratory Relief, the Court has to make positive findings of fact.
15. In the present case, the main factual issues are not disputed. They are: the transactions that took place on 11 May 2005 resulting in the appointment of Mr Collins as the sole director of Fidelity; and the relevant provisions of the Company Law of the Turks and Caicos Islands which have to be proved as a factual matter in the Guernsey Court but are not contested. All that evidence is contained in Affidavits sworn for the purpose of these proceedings which are unlikely to be contradicted by the deponents if they are required to attend Court. So, there are no disputes for the Jurats to decide on what might be considered the primary facts in the case. If there was such a dispute, the Jurats would be required.

16. The decision or decisions that have to be made concern the consequences that flow, as a matter of law or as a matter of mixed law and fact, from that primary evidence.
17. In raising with Counsel, at the hearing on 17 September, the question of whether I could sit alone I had in mind a number of the prescription cases where a similar issue had arisen. In Champion v Paint (Royal Court 25 September 1995) and Mann v St Pierre Park Hotel (No.1) Royal Court 30 October 1998 Deputy-Bailiff Carey (as he then was) sat without Jurats to decide when a Plaintiff's date of knowledge arose. Whereas in Fairhurst v Siteweld Ltd (Royal Court 28 April 2000) Deputy-Bailiff Day decided that a similar question required the involvement of Jurats apparently because there was a considerable amount of evidence to be assessed and the issues included the credibility of the witnesses. I recall that the same line of reasoning led Lieutenant-Bailiff Talbot to decide in the case of Butt v Brannan (Royal Court 31 March 2004) (where I was appearing as counsel) that the factual issues were for determination by the Jurats and not by him sitting alone. In the latter case, after the Jurats had delivered their decision on the Plaintiff's relevant knowledge the Lt-Bailiff sat alone to decide whether to exercise the Court's discretion to over-ride the limitation period under section 8 of the Law Reform (Tort) (Guernsey) 1979.
18. In Fairhurst, Lt-Bailiff Day concluded that in some interlocutory cases where evidence is necessary to determine a matter in point it may be appropriate for a judge to sit alone. He said this was "merely an example of trite law, namely that each case must always depend upon its own facts".
19. In Re The Westbury Property Fund Ltd (Royal Court 4 July 2005) Lieutenant-Bailiff Hancox sat without Jurats and made a declaratory order after hearing from Counsel and from H M Procureur as *amicus curiae*.
20. I would not like to state all the circumstances where it is appropriate to sit alone. In the present case, as there are no conflicts of evidence to be resolved and no questions of witness credibility I am satisfied there is no need to involve the Jurats. I can decide what conclusions to draw from the primary evidence.
21. Declaratory relief is granted as a discretionary remedy and only when the court is satisfied on its own view that it is appropriate to make the order. I am mindful of the cautionary words expressed by Neuberger J in Financial Services Authority v Rourke [2001] that:

*"of course the court has to be particularly careful before it grants a remedy which is discretionary and which can have a wide ranging effect at a summary stage"*.

However I am satisfied that there is only one conclusion that can be reached on the application for the First Declaration.

## Conclusion

22. I am very grateful to all Counsel for their very helpful submissions. The issues have been fully argued and properly considered.
23. Having regard to the wishes of all parties, including the FIS, and of the need to save costs and Court time wherever possible, I am satisfied that it is appropriate to determine the First Declaration as a preliminary point.
24. Furthermore, I am satisfied that there is no arguable issue that would need to be resolved at trial and no other justification for ordering the trial of the preliminary point.
25. Having regard to the Affidavit evidence presented to me, I am satisfied that Mr Collins was duly appointed in accordance with the law of the Turks and Caicos Islands and the Articles of Association of Fidelity as sole director of Fidelity on 11 May 2005. In his capacity as sole director, Mr Collins has the authority to issue instructions on behalf of the Company in relation to the account held at the Bank.
26. Consequently, it is appropriate for me to make a declaration in the terms sought in the Cause, namely, *“that the request to transfer funds contained within the letter of 25 May 2007 (from Mr Collins to the Bank), was a request validly made on behalf of Fidelity”*.