



In re the Tchenguiz Discretionary Trust
Royal Court
15th March 2017

JUDGMENT
11/2017

Judgment on Remuneration Reasons for Release of Judgment

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

Civil No. 1505/2010

IN RE THE TCHENGUIZ DISCRETIONARY TRUST (“the TDT”)

**JUDGMENT ON REMUNERATION
REASONS FOR RELEASE OF JUDGMENT**

Before Patrick John Talbot, Esq., QC, Lieutenant Bailiff – sitting alone

Oral hearing 6 March 2017

(Judgment handed down in private: 1 December 2016)

Advocate Nick Robison for the Current Trustee of the TDT, Rawlinson & Hunter Trustees S.A.

Advocate Elaine Gray for the Joint Liquidators of four BVI companies, creditors of the Former Trustees of the TDT

Advocate Paul Richardson for the Protector, Robert Tchenguiz, who is also joined as a party as an adult member of the class of Beneficiaries under the TDT

(Advocate Christian Hay is the appointed representative of the minor, unascertained and unborn Beneficiaries under the TDT, including the two minor children of Robert Tchenguiz)

1. I handed down my second judgment on remuneration, in which I decided the claims of the Current Trustee and the present Protector, on 1 December 2016. When I did so, I indicated that I was minded to release the judgment into the public domain, but that, before I did so, I would consider any submissions from those of the parties who might object to my releasing the judgment.
2. By letters from their advocates to the Court dated 5 December 2016, both the Current Trustee and the present Protector raised limited objections to me doing so.
3. The Current Trustee objected to the release of those parts of the judgment where I recorded the nature and details of the affidavit evidence filed on behalf of the Current Trustee, in which the deponents calculated the basis of the Current Trustee’s claim and summarised its approach to raising charges within its trust administration business, and, more particularly, its approach to charging in the case of the TDT.

4. The Current Trustee argued that its witnesses swore their affidavits on the basis that the contents were in some way confidential or commercially sensitive and in the expectation, (which was not communicated to the Court,) that the proceedings would continue to be heard *in camera* (in private) and that any judgment delivered by me on the remuneration issues, which was to be released into the public domain, would not include the detailed evidence of their charging rates and the numbers of hours worked by its directors and staff. The present Protector presented a similar argument in relation to the affidavits filed on his behalf, including two affidavits sworn by him in which he set out the charging rate which he suggested as reasonable and, approximately, the time which he had spent in his work as Protector of the TDT.
5. In the usual course, applications brought by trustees for directions are invariably heard *in camera* and that is the standard practice of the Royal Court. Accordingly, the many applications brought by either the Former Trustees or the Current Trustee within these proceedings have been heard by me *in camera*.
6. As was set out carefully by Lieutenant Bailiff Day, C.B.E., in *IFS Investments Limited v Manor Park (Guernsey) Limited* (2004) Judgment 13/2004, in a much-cited passage from his judgment at paragraphs 21-39, the principle of open justice

“.. is and always has been a fundamental principle of our administration of justice.

...

I expressed the view, with which Counsel concurred, that, in simple terms, legal principle required that justice must be done in public, but that where justice itself would be thus frustrated, privacy should prevail, but only to the extent necessary.”
7. It is generally accepted that in trustees’ applications for directions justice itself would be frustrated if the hearings took place in open court – see, *e.g.*, the helpful exposition of the Royal Court of Jersey in *In A,B and C: re Rozel Trustees (Channel Islands) Limited* (2012) 2 JLR 51, at [13] to [17].
8. But claims by trustees or other fiduciaries, including protectors, for orders relating to their remuneration are not of the same nature and are usually heard in open court. The remuneration applications were, therefore, largely heard in open court, subject to an embargo imposed by me which imposed a degree of privacy achieved, in part, by the sealing of the Court file relating to those applications.
9. The reason seems to me to be that justice has not been frustrated by such claims being heard and determined in open court. I have not mentioned the names, gender and ages of minor beneficiaries of the TDT in the judgment to be released into the public domain determining the Current Trustee’s and the present Protector’s claims for remuneration. I have decided that it is not appropriate for me to anonymise any other part of my judgment before releasing it into the public domain. In particular, there is, in my judgment, no reason for me to anonymise those parts of the evidence which were identified by the Current Trustee and the present Protector in the letters from their respective advocates dated 5 December 2016.
10. I would add that in these circumstances no question of discretion arises for me to exercise one way or other. It is my duty to preserve the fundamental principle of open justice and to deliver my judgment into the public domain.
11. Accordingly, I direct that my second judgment on remuneration be released to the Bar and into the public domain in the form which Deputy Greffier Robilliard is authorised by me to send to the parties. (This form includes two typographical corrections, but is otherwise in the same form handed down to the parties on 1 December 2016.)

Lieutenant Bailiff

15 March 2017