IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN - Civil

CAUSE NO. 271 OF 2005

IN THE MATTER OF a Declaration of Trust made on 1st November 2002 by Barclays Private Bank & Trust (Cayman) Limited known as the Bio Trust

AND IN THE MATTER OF a Declaration of Trust made on 1st November 2002 by Barclays Private Bank & Trust (Cayman) Limited known as the Blue Hill Trust

AND IN THE MATTER OF Section 48 of the Trusts Law (2001 Revision)

BETWEEN:

BARCLAYS PRIVATE BANK & TRUST (CAYMAN) LIMITED

Plaintiff

- and -

1) **VERONIQUE FRANCOIS**
2) **ANNE BEAUFOUR**
3) **HENRI BEAUFOUR**

Defendants

Appearances:	**Ms. Shan Warnock-Smith, Q.C., instructed by Sandie Corbett of Walkers for the Plaintiff/Applicant**
	Mr. John Martin, Q.C. and Mr. Thomas Lowe instructed by Mrs. Linda DaCosta of Myers & Alberga all for the 1st Defendant
	Mr. Simon Taube Q.C. and Mr. Daniel Hochberg instructed by Mrs. Andrea Dunsby with Alan Turner of Turner & Roulstone all for the 2nd and 3rd Defendants
Before:	**Hon. Justice Henderson**
Heard:	**July 27, 28 & 29, 2005**

RULING

The applicant trustee has presented what it characterizes as a *Public Trustee v. Cooper* category 2 question for decision by this Court.

The originating summons asks, in essence, whether the applicant should take steps now to prevent an initial public offering provided for in an agreement dated April 22, 2005. That agreement obliges a number of parties, including entities controlled indirectly by the applicant trustee, to cooperate in effecting the offering before the end of this year.

The 1st defendant, Veronique Francois, is opposed to this course. She is a beneficiary of two of the trusts. The 2nd and 3rd defendants, the other beneficiaries, support it.

On February 4th, 2005, at a time when plans for the IPO were progressing but the agreement had not yet been executed, the 1st defendant wrote to the trustee. She advised

them that she considered the proposed agreement to be "an improper subordination of the trust's interests to those of" the 2nd and 3rd defendants. She called upon the trustee to prevent the IPO and a certain hive down of assets which was to be a preliminary step. She also called upon the trustee to seek directions from this Court before proceeding.

The trustee refused to do so. It responded by saying it was "not bound" to seek directions from the Court unless it had any concerns about the merits of the course of action intended. It had none at that time.

The 1st defendant then obtained an *ex parte* injunction from the Court restraining the trustee from taking any steps to implement the IPO. The injunction, however, has proved ineffective for that purpose. The necessary commitments were made prior to its pronouncement, with one exception which is not material. There is nothing more for the trustee to do but to sit back and let the entities it controls carry into effect the plan to which they had agreed.

An *inter partes* hearing on the injunction is set for August 2nd, 2005. That, of course, is properly characterized as hostile litigation between a beneficiary and a trustee.

The affidavit of Yves Prussen, a corporate commercial lawyer practicing in Luxembourg, speaks to the probable consequences of a failure to proceed with the IPO. In brief, he says that failure to complete the IPO now would give rise to very substantial and

meritorious claims for damages with consequent risk to the trust assets. His evidence is not contradicted.

The argument of the trustee, supported by the 2nd and 3rd defendants, is that there can be only one possible answer to the narrow question posed. The trustee should not now seek to unwind or thwart the April 2005 agreement. It should do nothing.

With that narrow proposition, the 1st defendant does not disagree. She says that the IPO is a fait accompli, the decision by the trustee has already been made, and it would be disastrous now to break the contract. Her fundamental disagreement is with the April 2005 contract itself and the decision of the trustee to support it then. She says there is no appropriate category 2 question for the Court to answer at this stage.

It is worth quoting the definition of a category 2 question found in *Public Trustee v. Cooper [2001]* WTLR 901, p. 923.

> "The second category is where the issue is whether the proposed course of action is a proper exercise of the trustees' powers where there is no real doubt as to nature of the trustees' powers and the trustees have decided how they want to exercise them. But, because the decision is particularly momentous, the trustees wish to obtain the blessing of the Court for the action on which they have resolved and which is within their powers."

I think the words "proposed" and "momentous" deserve some emphasis. This sort of application is intended to provide the guidance of the Court and a measure of protection to trustees who intend or propose to adopt a course of action but have not yet done so.

In the present case, the trustee proposes to do nothing but let the planned IPO, which it decided to support some months ago, run its course. The proposal might be restated this way: "having decided to permit entities controlled by the trusts to adopt this course and enter into very substantial contractual commitments, we propose to refrain from interfering as they proceed to fulfil their legal obligations."

Properly understood, this application presents no true category 2 question at all. It is clear that the trust would be exposed to serious risk if the trustee seeks to unwind what has been done. The trustee's resolve to allow the trust entities to fulfil their obligations without interference is not a "momentous" decision, but the natural consequence of a momentous decision taken much earlier. Indeed, I doubt that it is a "decision" at all. The trustee is simply doing what it now must do.

The real issue between the parties is a category 4 question. The trustee has taken a decision – that is, to support the IPO described in the April 2005 agreement – and that decision has been attacked by the 1st defendant as an improper exercise of the trustee's powers. That has resulted in hostile litigation, and it is within that other forum that the issues must be decided.

My opinion on the narrow question posed in the originating summons must be obvious. However, I decline to give any formal direction to the trustee as I do not consider this to be a true category 2 question at all.

Paragraphs one and two of the originating summons are dismissed. The trustee is, of course, always at liberty to apply for directions.

Dated this 29th day of July, 2005

Henderson, J.

Henderson, J.
Judge of the Grand Court