

PPLEBY



IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 179 OF 2011

In Chambers
24 April 2012
Hon Justice Cresswell

IN THE MATTER OF a Deed of Trust between Norman Echavarría Olózaga and Rothschild Trust Guernsey Limited dated 29 December 1995 (known as the "Elsa Trust") as amended and restated on 25 September 2004

AND IN THE MATTER of the Trusts Law (2011 Revision) and GCR Order 85, Rule 2

BETWEEN:

ROTHSCHILD TRUST GUERNSEY LIMITED

Plaintiff

AND

1. MARY ELSA SONIA ECHAVARRÍA LINCE
2. DANIEL ECHAVARRÍA ARANGO
3. VALENTINA ECHAVARRÍA ARELLANO (A MINOR)
4. CAMILA ECHAVARRÍA ARELLANO (A MINOR)
5. PAULA ECHAVARRÍA ARANGO
6. SALVADOR VIDAL ECHAVARRÍA (A MINOR)
7. BAUTISTA VIDAL ECHAVARRÍA (A MINOR)
8. ANDREW LAW

Defendants

ORDER

UPON THE APPLICATION of the Plaintiff by Originating Summons dated 3 November 2011

AND UPON HEARING counsel for the Plaintiff, counsel for the First Defendant, counsel for the Second and Fifth Defendants, and counsel for the Eighth Defendant

AND UPON READING the materials recorded on the Court file as having been read

AND the Court having invited all parties to consider the use of an independent mediator with a view to resolving the Main Proceedings or narrowing the issues in the Main Proceedings

IT IS ORDERED AND DIRECTED THAT:

1. Mr Julio Manuel Ayerbe be joined to these Proceedings as the Ninth Defendant and shall not be required to file an Acknowledgement of Service herein.
2. The Plaintiff and the Eighth and Ninth Defendants, as Protectors of the Elsa Trust, shall continue to discharge their duties in the due administration of the Elsa Trust and the Daniel Trust and the Paula Trust (insofar as such duties relate to the Elsa Trust) on the basis on which they have been administered since 25 September 2004 pending the outcome of the proceedings filed in the Grand Court of the Cayman Islands by Mary Elsa Sonia Echavarría Lince (“Elsa”) in FSD Cause No. 93 of 2011 against the Plaintiff and others (the “Main Proceedings”), and for the avoidance of doubt it will be for the Judge in the Main Proceedings to determine any claims that Elsa may make.
3. The Plaintiff shall be at liberty to distribute such dividends that it receives (or has received since the Main Proceedings were commenced) from Warbrook Ltd, Kemco Ltd and/or Leyfield Ltd in accordance with the terms of the Elsa Trust as amended and restated on 25 September 2004.

4. The Plaintiff's attorneys shall prepare a draft case memorandum within 28 days of the date of this Order and circulate the draft case memorandum to the other parties for their review and approval.
5. The Plaintiff shall obtain such evidence as advised by the Plaintiff's counsel, to enable counsel to advise on the merits of any potential defence to the Main Proceedings and the Counterclaim in the Main Proceedings.
6. The Plaintiff shall be at liberty to instruct leading counsel to provide an opinion in relation to the Counterclaim in the Main Proceedings and shall have liberty to apply for directions as to whether it may continue to instruct leading counsel thereafter.
7. If so advised the Plaintiff shall have liberty to defend the Main Proceedings and the Counterclaim in the Main Proceedings up to and including the date for exchange of discoverable documents provided by any order for discovery that may be made in the Main Proceedings commenced by Originating Summons and shall be at liberty to bring or respond to any incidental interlocutory proceedings and to take all such other steps including the filing of pleadings and evidence therein.
8. Should the Main Proceedings become treated as a Writ action, the Plaintiff shall if so advised have liberty to defend the Main Proceedings and the Counterclaim in the Main Proceedings until after the exchange of discoverable documents, and shall be at liberty to bring or respond to any incidental interlocutory proceedings and to take all such other steps including the filing of pleadings and evidence therein, provided that thereafter the Plaintiff shall be at liberty to apply to this Court for further relief.
9. The Eighth Defendant, Mr Andrew Law, and the Ninth Defendant Mr Julio Manuel Ayerbe, as Protectors of the Elsa Trust shall be at liberty to apply to be joined to the Main Proceedings.
10. The Plaintiff shall reveal the categories of documents included within the Exhibits to the First Affidavit of Peter Roberts sworn on 18 January 2012 to the other parties. The issue

as to whether these Exhibits should be kept confidential by the Plaintiff shall be adjourned, and in the meantime the parties shall seek to agree whether the Plaintiff shall keep these Exhibits confidential in whole or in part.

11. The Plaintiff's costs of this application, together with its costs incurred in the Main Proceedings and the Counterclaim in the Main Proceedings shall be raised and paid on an indemnity basis out of the assets of the Elsa Trust, including, for the avoidance of doubt, its own professional charges at their current published rate for the time its own employees spend in dealing with the conduct of the litigation with liberty to apply for an order that such costs be taxed on the indemnity basis if not agreed.
12. The Eighth and Ninth Defendants' costs of this application, together with costs incurred in connection with the Main Proceedings and the Counterclaim in the Main Proceedings by the Eighth and Ninth Defendants shall be raised and paid on an indemnity basis out of the assets of the Elsa Trust up to and including the service of any defence in the Main Proceedings with liberty to apply for an order that such costs be taxed on the indemnity basis if not agreed.
13. Subject to paragraph 10 above neither the Plaintiff, the Eighth Defendant nor the Ninth Defendant shall be obliged to provide the First Defendant with legally privileged documents in their possession generated in connection with the Main Proceedings.
14. The Plaintiff and the Eighth and Ninth Defendants shall be at liberty to apply for further directions.

DATED the 27 day of April 2012

FILED the 27 day of April 2012

Creswell J

BY ORDER OF THE COURT



This Order was filed by Appleby (Cayman) Ltd, Attorneys-at-Law for the applicant whose address for service is 75 Fore Street, P.O. Box 190 GT, George Town, Grand Cayman (Ref: CDP/GS/RC/309727.0004)

K3386377.1

Approved as to form and content:

Appleby (Cayman) Ltd.

Appleby (Cayman) Ltd.
Attorneys for the Plaintiff

Maples and Calder

Maples and Calder
Attorneys for the First Defendant

Charles Adams Ritchie & Duckworth

Charles Adams Ritchie & Duckworth
Attorneys for the Second to Seventh Defendants

Ogier

Ogier
Attorneys for the Eighth and Ninth Defendants

