

ROYAL COURT
(Samedi Division) 61.

4th April, 1997

Before: Sir Philip Bailhache, Bailiff, and
Jurats Rumfitt and Jones

Between	Mayo Associates S.A. Troy Associates Limited T.T.S. International S.A.	Plaintiffs
And	Cantrade Private Bank Switzerland (C.I.) Limited; Touche Ross & Co.	First Defendant Second Defendant
And	Robert John Young (joined at the instance of the First Defendant)	
	Anagram (Bermuda) Limited (joined at the instance of the First Defendant)	
	Myles Tweeddale Stott (joined at the instance of the First Defendant)	
	Michael Gordon Marsh (joined at the instance of the First Defendant)	
	Monica Gabrielli (joined at the instance of the First Defendant)	
	Touche Ross & Co. (joined at the instance of the First Defendant)	
	Cantrade Private Bank Switzerland (C.I.) Limited (joined at the instance of the Second Defendant)	Third Parties

Representation by the First Defendants, seeking an Order that the Viscount be appointed by the Court, in relation to Cantrade's offer of immediate compensation to be paid to the TTS Investors, for the purposes of:

- 1.1 receiving from the Plaintiffs in Action 94/254 ("the Plaintiffs") in confidence a written list stating the identity of each TTS Investor who may be eligible for compensation under Cantrade's offer ("the Eligible Investors") and the contact address(es) and telephone number(s) last known to the Plaintiffs and/or their Advocates for each such Eligible Investor;
- 1.2 receiving from Cantrade in confidence a written list stating the identity of each Eligible Investor from whom Cantrade has received a response leading to discussions between Cantrade and such Eligible investor as at the date of this order and stating the contract address(es) and telephone number(s) for each such Eligible Investor;
- 1.3 ascertaining from the above lists the identity of those Eligible Investors from whom Cantrade has not received a response leading to discussions between Cantrade and such Eligible Investor ("the Relevant Investors");

- 1.4 ensuring that the full terms of Cantrade's offer are properly communicated and explained to each of the Relevant Investors as soon as, and in so far as, this is reasonably practicable;
- 1.5 at the request of Relevant Investors who do not wish to communicate with Cantrade direct, providing a confidential channel of communication between such Relevant Investors and Cantrade;
- 1.6 at the request of Relevant Investors, providing assistance to them with their consideration of the terms of Cantrade's offer, such assistance to be provided by the Viscount or in his discretion by lawyers appointed by the Viscount at the expense of Cantrade;
- 1.7 at the request of Relevant Investors, providing assistance to them with their consideration and/or execution of all necessary documents to achieve a binding acceptance of Cantrade's offer, such assistance to be provided by the Viscount or in his discretion by the said lawyers at the expense of Cantrade;
- 1.8 at the request of Eligible Investors listed under paragraph 1.2 above and/or at the request of Cantrade, carrying out the purposes stated in paragraph 1.4 to 1.7 above in relation to Eligible Investors listed under paragraph 1.2 above;
- 1.9 doing all such acts or things which the Viscount may in his discretion consider incidental to or reasonably necessary for the carrying out of the purposes set out in paragraphs 1.1 to 1.8 above.
- 2 In the alternative to paragraph 1 above, order that an independent third party be appointed by the Court under its inherent jurisdiction in the place of the Viscount on the terms set out in paragraph 1 above.
- 3 Further or in the alternative to paragraphs 1 and 2 above, order that the Viscount be appointed Administrator over the Relevant Investors' property in Jersey consisting of their interests in the fruits of Action 94/254 proceeding in the Royal Court of Jersey (Samedi Division), alternatively to protect their interests in Jersey in respect of the said Action, such appointment to be solely for the purposes set out in paragraphs 1.1 to 1.9 above and to continue until further order provided that:
 - 3.1 the said property and interests in Jersey of Relevant Investors who after the date of this order give written notification to the Viscount excluding themselves from such Administration shall be excluded from such Administration; and
 - 3.2 the said property and interests in Jersey of Eligible Investors listed under paragraph 1.2 above who after the date of this order give written notification to the Viscount including themselves in such Administration shall be included in such Administration.
- 4 Order the Plaintiffs within seven days of the date of this order to supply to the Viscount in confidence the list described in paragraph 1.1 above.
- 5 Order Cantrade within seven days of the date of this order to supply to the Viscount in confidence the list referred to in paragraph 1.2 above.
- 6 Order the Plaintiffs and Cantrade to provide such assistance to the Viscount at his request as he in his discretion may consider reasonably necessary for the carrying out of the purposes in paragraphs 1.1 to 1.9 above at their own expense.
- 7 Order Cantrade to pay the proper costs and expenses of the Viscount at this written request in his carrying out of such appointment as may be made under paragraphs 1 to 3 above.
- 8 Make such further and other orders or directions as the court considers just.
- 9 Give liberty to apply on two clear days' written notice to the other parties.
- 10 Order that the costs of the Representation be provided for.

11 Further or other relief.

Application by the Plaintiffs to place the Representation
on the Pending List.

Advocate D.R. Wilson for the Representor.
Advocate P.C. Sinel for the Plaintiffs.
Advocate F.J. Benest for the Viscount.

JUDGMENT

5 THE BAILIFF: Cantrade Private Bank Switzerland (C.I.) Limited, to which we shall refer as "Cantrade", has brought a representation in relation to an action number 94/254 between Mayo Associates S.A., and others as plaintiffs and Cantrade and Touche Ross & Co. as defendants. The representation seeks, by paragraph 1, the appointment by the Court of the Viscount for the purposes of communicating and otherwise dealing with an open offer made by Cantrade in relation to action 94/254 to certain persons who had invested money with the plaintiffs, but who are not parties to that action. Further, or alternatively, Cantrade seeks
10 the appointment either of an independent third party for the above purposes or of the Viscount as administrator of the property in Jersey of the aforesaid persons, being persons who are absent from the Island.

15 The representation was brought before this Court on 14th March, 1997, and adjourned until today so that the parties convened could be served and notified to appear.

20 Mr. Benest appeared on behalf of the Viscount, submitted himself to the wisdom of the Court and was released. Mr. Sinel appeared for the plaintiffs.

25 Mr. Wilson on behalf of Cantrade has asked that the representation be heard on 30th March and 1st April and has told the Court that those dates have been reserved, and indeed agreed, with the office of Advocate Sinel and with the Viscount. Mr. Sinel made two submissions in relation to the requests of Mr. Wilson.

30 Firstly, he submitted that the representation was an action within the meaning of the Royal Court Rules, 1992. He accordingly drew the Court's attention to Rule 6/7(1) and he asked that the representation be placed on the pending list.

35 Secondly, he submitted, in the event that his first submission should fail, that the dates sought by Mr. Wilson were inappropriate as giving the plaintiffs insufficient time to prepare for the hearing. We deal with each of those submissions in turn.

40 Firstly, the Court is satisfied that the representation is not a separate action. It is a representation brought within the body of an existing action, that is to say action number 94/252. The representation seeks an order from the Court in the context of that existing action. In considering whether or not to make such an order the Court will clearly wish to hear from interested parties who will

include the plaintiffs in the main action but will also include a non-party, that is to say the Viscount.

5 In our judgment the plaintiffs have therefore no right to seek to place this representation on the pending list.

10 Turning to Mr. Sinel's second submission the representation does however raise interesting questions for the Court, in particular the question whether the Court does have an inherent jurisdiction to make the orders sought. In our judgment, having regard to the objections raised by Mr. Sinel, we should not order the hearing to take place on the dates reserved by Mr. Wilson. We propose, however, to set a time table leading to the early hearing of the representation. The plaintiffs and the Viscount will be at liberty to file any evidence 15 which they wish to file within four weeks from today. On the assumption that such evidence is filed, Cantrade will have two weeks thereafter within which to file evidence in reply. Cantrade will then be at liberty to apply to my secretary, upon notice to the plaintiffs and to the Viscount, for a date for the hearing. If agreement cannot be 20 reached upon a proximate date before my secretary the fixing of the date can be adjourned to a judge in chambers in the customary way.

25 One further matter arises. Mr. Sinel has drawn our attention to a summons which he has issued on behalf of the plaintiffs seeking to strike out the representation of Cantrade. A date for a hearing of that summons has been fixed by the Greffier Substitute for Tuesday, 29th April. In the context of this case the Judicial Greffier has no jurisdiction to hear a summons to strike out a representation which is before the Court and which has not been delegated by the Court to him. 30 We accordingly strike out that summons.

I do not wish to pre-empt counsel but my inclination is that costs should be costs in the cause of the representation.

35 *[The Court heard submissions relating to the calling of evidence].*

40 The order that I am going to make is that the evidence to be filed in accordance with the order that the Court has just made should be filed by affidavit and that the deponent of any affidavit should be tendered for cross examination at the request of the opposing party. Now, if, when the time comes to fix the date, either party wishes to make a strong representation that the Court ought to hear evidence-in-chief viva voce in addition to considering affidavit evidence it will be open to either party to make such submissions as it thinks fit to the 45 judge in chambers. I think that the matter can be dealt with on an administrative basis and that the judge in chambers can decide at that time in the exercise of his discretion whether it is in the interests of justice that viva voce evidence should be heard in addition. That is my order this afternoon. The intention is that evidence-in-chief will be 50 tendered by affidavit; there may be a cross-examination at the request of either side. If you want to go further than that, Mr. Sinel, then you will have to persuade a judge in chambers, having regard to the written evidence which has been filed, that that is in the interests of justice.

55 *[The Court heard an application for leave to appeal].*

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Mr. Sinel, so as far as this Court is concerned, we refuse you leave to appeal and you will have to pursue that in another Court if you see fit to do so.

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No Authorities