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*Judgment: approved by the Court for handing down*
*(subject to editorial corrections)**

| *Delivered:* | **02/10/2014** |
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**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

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**CHANCERY DIVISION**

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**IN THE MATTER OF THE TRUST CREATED IN THE WILL OF CAPTAIN ROGER HALL, DECEASED**

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**BETWEEN:**

**MARCUS SAVAGE HALL**

**Plaintiff;**

**-and-**

**1. MABEL DIANE MARGARET COULTER**
**2. SIR WILLIAM JOSEPH HALL**

**Defendants.**

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**<u>HORNER J</u>**

**Introduction**

[1] Marcus Savage Hall ("the plaintiff") has issued proceedings against Diane Coulter ("the Solicitor") and Sir William Joseph Hall ("WJH") who were Trustees of a Trust created by the Will dated 1 October 1929 and two codicils respectively of Captain Roger Hall ("CRH") (hereinafter referred to as "the Trust") and also Trustees of the Trust appointed by the Will of Roger Hall ("RH"), the son of CRH, dated 11 August 2007.

[2] The plaintiff sought the following relief, which included an order that the Solicitor and WJH as Trustees account to the plaintiff for all monies deducted by them from the Trust estate and paid to the Solicitor in respect of legal fees together with taxation of the Solicitor's bills of costs paid from the Trust estate and an order that the Solicitor repay the sum by which the sums paid to her from the Trust estate in respect of legal fees exceed such reasonable remuneration as is found on taxation.

[3] The parties were able to agree a solution that has allowed resolution of most of the issues in dispute save for what appear to be two discrete issues. The court has been asked to rule on the following issues, namely:-

(a) Whether the plaintiff is entitled to challenge the remuneration paid to the Solicitor for her services to the Trust between the date of 1 November 2006 to the death of RH on 8 September 2007 ("Issue 1"); and

(b) Costs ("Issue 2").

[4] I made it clear that I would not rule on Issue 2 until after I had given my judgment on Issue 1. Both parties would then have an opportunity to consider the judgment before making further submissions. There was some suggestion that the plaintiff and the other beneficiaries would have to pay any balance which might be found to be due to the Solicitor if, after assessment of her costs, she is found to have undercharged. This was not the subject of any detailed submission by counsel for the Solicitor. It seems to be devoid of any legal authority. In the absence of a finding that the plaintiff is in some way in breach of trust, and that he benefited from that breach, it is difficult on the present information to see how such a claim might succeed.

[5] At this stage, I want to express my gratitude for the clear and comprehensive submissions made by counsel for the plaintiff and the Solicitor.

[6] The court only heard submissions in respect of Issue 1. The date chosen, that is 1 November 2006, is as far back as Article 42 of the Limitation (NI) Order 1980 will allow the plaintiff to go in seeking to hold the Solicitor to account for any overpayment he claims she received from the Trust.

**Background**

[7] CRH lived at Narrow Water, County Down. He died on or about 3 February 1939. His son, RH, the father of the plaintiff, late of Narrow Water Castle, Narrow Water, County Down died on 8 September 2007. Under the Will of CRH the residue of his estate was left on the following trust:

> "My Trustees shall stand possessed of my said real estate and the residue of the my said personal estate … upon Trust to permit my son to have the use and possession of my said Mansion House and receive the rents and profits thereof and to pay the income of my said real and personal estate to my son and permit him to have the use of the said Chattels during his life …."

The Will then went on to say:-

> "… and after death of my said son my Trustees shall stand possessed of the said property in trust for all or such one or more exclusively of the others or other of the children or remoter issue of my son at such age or time or in respect of ages or times if more than one in such shares and with such trusts for the respective benefit and such provisions for the respective advancement of maintenance and education at the discretion of the Trustees … or any other person or persons as my said son shall by any Deed or Deeds revocable or irrevocable or by Will or Codicil appoint and in default of and subject to such appointment in Trust for all or any of the Children or Child of my said son … and if more than one in equal shares."

[8] CRH's Will also contained the following provision which permitted payment of any Solicitor who was a Trustee. Clause 18 said:

> "Any Trustee for the time being hereof being a Solicitor or other person engaged in any profession or business should be entitled to charge and be paid all usual or other professional charges for business done by him or his firm in relation to the Trusts hereof."

[9] Under the Will of RH, the power of appointment in the Trust created by CRH's Will was exercised and the Trust Estate was resettled on new trusts. Under those new trusts, RH left certain lands to the plaintiff absolutely, other lands to the plaintiff for life and the remainder to his son St John, and left other property to the plaintiff's brother, Toby and his sister, Lassara.

[10] The Solicitor, who has been a Trustee of the Hall Estate Trust since before 1 November 2006, has received substantial legal costs. In the accounts for the year ending in April 2007 legal costs were £156,375. For the following year they were recorded as being £137,445. These legal costs were not paid out of funds that

directly benefited RH but instead appear to have come from capital earmarked, inter alia, for the plaintiff.

[11] The plaintiff, with the apparent support of Toby Hall, his brother, complains that although certain bills of costs have been provided, there is an insufficiency of detail to allow the plaintiff to understand them and to assess whether or not they are reasonable. The Solicitor, apart from protesting that she has been providing good value to the estate and could lawfully have charged much more, makes the following points, inter alia;

(i) The plaintiff has no locus standi to seek further disclosure and taxation of the Solicitor's bills.

(ii) In the lifetime of RH, RH agreed the costs charged by the Solicitor. If the plaintiff had sought to challenge those costs at the time that they were furnished, he would have been refused relief by the court. They are agreed by the Trustees for the time being.

(iii) Finally, the court should refuse to exercise any discretion it had whether in respect of an order for further disclosure or taxation of the Solicitor's bills because disclosure of further documents would be contrary to CRH's and RH's wishes and will cause great difficulties because of their confidential nature.

**Legal discussion**

[12] Underhill and Hayton in the Law of Trusts and Trustees (18th Edition) at 56.1 state:

> "(i) A trustee:
>
> (a) must keep clear and accurate accounts of the Trust's property; and
>
> (b) may be ordered by a court, at the request of a beneficiary, to give him full and accurate information as to the amount and state of the Trust's property, and to permit him or his solicitor or accountant to inspect the accounts and vouchers, and other documents …"

[13] In Armitage v Nurse [1998] Ch 241-261 Millett LJ said when dealing with a private trust that:

> "There is an irreducible core of obligations owed by the trustees to the beneficiaries and enforceable by them which is fundamental to the concept of a trust. If the beneficiaries have no rights enforceable against the trustees there are no trusts."

[14] Underhill and Hayton comment at 56.2:

> "The rights of a beneficiary to monitor and protect his interest by obtaining accounts from the trustee so that they can then be falsified or surcharged is at the very core of the trust concept."

They go on to state at 54.12:

> "After all, beneficiaries are entitled to challenge the charges made by a professional trustee."

[15] In Re Fish (1893) 2 Ch. 413 the Court of Appeal in England made it clear that beneficiaries are entitled **as of right** to have the charges made by professionals acting as trustees investigated. Bowen LJ said in that case at page 422:

> "Whether the accounts are satisfactory or not is another matter, and they will be investigated at the risk of the person who challenges them."

Kay LJ said at page 425:

> "That would be an exception to a rule, which is a rule, as far as I know without exception, that cestuis que trust have an absolute right to investigate the accounts of their trustees."

[16] Indeed in Re Webb (1894) 1 Ch. 73 the Court of Appeal in England held that it was the duty of the solicitor trustees to inform the residuary legatees that they were entitled to have a bill of costs, and if they thought fit, to have it taxed or moderated.

[17] Davey LJ said at page 83:

> "The law imposes upon trustees taking a benefit from their cestuis que trust the obligation of putting their cestuis que trust in point of information in the same

> position as they are themselves and none the less when the trustees have employed themselves as solicitors to do work on behalf of the trust and some of the charges in question are charges which they have retained for their own benefit in remuneration for such employment. I do not think there is any magic in the trustees being solicitors."

He goes on to say at page 86:

> "I do not myself doubt for one moment there is an obligation under the trustees, at least, to inform their cestuis que trust that those amounts were amounts which they had deducted in payment of their own bills of costs, the particulars of which and the detailed bills of costs of which they were bound to furnish if they were required."

[18] In the decisions previously referred to the parties applying were actual beneficiaries under a trust. Indeed up until the decision of the Privy Council in Schmidt v Rosewood Trust Ltd [2003] 3 All ER 76 the accepted view had been that the ability to invoke the court's supervision depended on the nature of the interest the applicant enjoyed. Thus the line was drawn between on the one hand, fixed and discretionary beneficiaries and, on the other, the objects of powers of appointment. It was claimed that while the former enjoyed accounting rights, the latter did not unless they had been specifically conferred. All this changed with the Privy Council's decision in Schmidt. At paragraph [51] the Privy Council said:

> "Their Lordships considered the more principled and correct approach is to regard the right to seek disclosure of trust documents as one aspect of the court's inherent jurisdiction to supervise, and if necessary to intervene in the administration of trusts. The right to seek the court's intervention does not depend on entitlement to a fixed and transmissible beneficial interest. The object of a discretion (including a mere power) may also be entitled to protection from a court of equity, although the circumstances in which you may seek protection, and the nature of protection you may expect to obtain, will depend on the court's discretion …"

It is now clear following Schmidt, that the right to interfere does not depend on the applicant enjoying a "fixed and beneficial interest".

[19] In Schmidt v Rosewood Trust Limited the principles as to when disclosure should be ordered may be briefly summarised as follows:

(i) The right to obtain disclosure of trust documents is but an aspect of the court's inherent jurisdiction to supervise, and if necessary to intervene in, the administration of trusts, which is not dependent in the nature of the applicant's interest and whether it can be said to be proprietary or not.

(ii) The court has the discretion over whether or not to order disclosure. This discretion can depend on a number of different factors including:

(a) The competing interests of different beneficiaries, the trustees themselves and third parties;

(b) The confidential nature of the documents sought. The competing interests are particularly potent where there are issues of personal or commercial confidentiality involved;

(c) The likelihood of the applicant benefiting materially from the trust. The more remote the interest is, the less likely a court is to order disclosure;

(d) Whether these issues of confidentiality can be protected by limiting the material to certain professionals or redacting it.

[20] It is, of course, a cardinal principle of trust law that the High Court has an inherent jurisdiction to supervise the administration of trusts. In Schmidt v Rosewood Trust Limited [2003] 3 All ER 76 the Privy Council said at paragraph [36]:

> "It is fundamental to the law of trusts that the court has jurisdiction to supervise and if appropriate intervene in the administration of a trust, including a discretionary trust."

**Discussion**

[21] The Will of CRH conferred a determinable life interest on RH while the capital was held by the Trustees. RH had a discretionary power to appoint in favour of his children or child. In default of appointment his property was to be held on trust for his children in equal shares. Accordingly, the plaintiff has two interests under the Will of CRH. Firstly, he is a beneficiary in remainder subject to the exercise of the power of appointment. Secondly, he is a member of a small class who are the object of the power of appointment conferred on RH under CRH's Will.

Importantly, he is not just a mere object of a power of appointment. He is a default beneficiary and on any view he has a real and direct interest in the Trust property and, in particular, in ensuring that the capital is preserved. On the other hand under the Will of CRH, RH received, inter alia, the right to the income of CRH's real and personal estate. RH being in receipt of the income and with no entitlement to the capital, was not affected financially by charges made against the capital account by the Solicitor. He did not have the same interest in ensuring that any legal costs charged were reasonable. Thus there can be no doubt that the plaintiff under the Will of CRH had a real interest in ensuring that any legal costs charged to the Trust estate were not excessive because they were drawn from the capital account and this directly affected what he might receive and what he did in fact receive.

[22] There can be no dispute that the information provided by the Solicitor would not permit any conclusion to be reached definitively as to what work was carried out by her, and whether what was billed by her represented reasonable remuneration for the services which she had rendered. It is not possible to know how her substantial costs were incurred in the period before RH's death. The court has no hesitation in concluding that the plaintiff is entitled to challenge the fees charged by the Solicitor for the period between 1st November 2006 and 8th September 2007. The complaint here is that the costs of the Solicitor cannot be scrutinised. No one can form a view as to whether the costs are reasonable or not. The plaintiff is not required to accept the Solicitor's word on that issue. The fact that the co-trustee, WJH, may have agreed the bills charged by the Solicitor does not prevent the beneficiaries from challenging the costs the Solicitor charged. In Re Fish Lindley LJ said at 421:

> "I cannot think that, in the absence of a special power given to them by the instruments creating a trust, two trustees can settle accounts between themselves, and then tell the cestuis que trust **the accounts are settled, and you have nothing to do with them** … I have never heard of such a proposition before, it would be an extremely dangerous one."

Those substantial costs should be scrutinised, so that the plaintiff, who benefits under the Will of RH, can be satisfied that those costs, charged as they are against the capital account, are reasonable. In doing so the court exercises its discretion to supervise the Trust and orders full disclosure of all the bills of costs and all underlying documents to support the costs which have been charged. In default of agreement, the court orders taxation of those costs.

[23] The plaintiff has made it clear that he is content that any documents which the Solicitor considers may be confidential should be sent to his solicitor who will be under an implied undertaking not to disclose them to anyone, other than a costs assessor, who will assess the costs and remain under the same undertaking. The

court considers that a sufficient protection against any risk of confidential or personal documents being seen by the plaintiff or his siblings or indeed any other third party.

[24] The court does not accept that during the life time of CRH, it would not have granted disclosure of the documents relating to the costs charged by the Solicitor should the plaintiff have applied, given the nature of the interest of the plaintiff as a default beneficiary and the object of a power of appointment. This is especially so given the amount of the costs and the fact that they were being paid out of capital which the plaintiff (and the court) had good reason to believe he would in due course receive a share.

**Conclusion**

[25] In the circumstances, and for the reasons given, the court is satisfied that the plaintiff can challenge the fees charged to the Trust estate by the Solicitor for the period between 1st November 2006 and 8th September 2007. If necessary, the court will exercise its inherent jurisdiction to order that:

(a) The Solicitor renders full disclosure of all documents relating to the legal costs she charged the Trust during the period from 1 November 2006 to 8th September 2007 to the plaintiff's solicitors on the undertaking that they will not disclose the contents of the same to the plaintiff or his siblings but with liberty to instruct a competent costs assessor; and

(b) An order for taxation of those costs.

[26] I will hear counsel on Issue 2 when all parties have had a chance to consider and digest this judgment.