[2020 Gib LR 22]

LEMBERGA v. SERILLO (PTC) LIMITED, FIDUX TRUST COMPANY LIMITED, CANRIF LIMITED and FIMAN LIMITED

SUPREME COURT (Dudley, C.J.): January 23rd, 2020

Trusts—trust companies—liability of directors—directors of corporate trustee owe no fiduciary duty to beneficiaries of trust—no indirect or "dog-leg" claim in favour of beneficiaries

The claimant brought a claim under CPR r.64.2 seeking *inter alia* the termination of a trust and the distribution to her of the assets.

The claimant was a beneficiary of the Cerise Trust, the proper law of which was Guernsey law but the administration of the trust property was carried on in Gibraltar. The second defendant ("Fidux") and the fourth defendant ("Fiman") were Gibraltar companies which were part of the Fidux group of companies which provided trust and corporate services. The first defendant ("Serillo") and the third defendant ("Canrif") were BVI companies. Serillo was the trustee of the trust. Finom, which was part of the Fidux group but not a party to these proceedings, was the sole shareholder of Canrif, and Canrif was the sole director of Serillo. Fiman and the claimant were the directors of Canrif.

Serillo, as trustee of the trust, was also the sole shareholder of two underlying BVI companies, "Hoshen" and "Uros." Hoshen was the sole shareholder of another BVI company, "Ambra." According to the claimant's evidence, the three companies had invested large sums in two funds which had sustained massive losses in 2016 although no claim was advanced in respect of the alleged loss. The claimant alleged that Fidux had administered the trust structure since its commencement, partly through its *de facto* control of Canrif, and that she had not been given any

notification regarding the business of the companies within the structure nor had she been involved in any decision taking.

The claimant had asked Fidux to consider *inter alia* distributing the trust assets to her and terminating the trust. She stated that Fidux refused to take any steps until (a) conditions concerning the mechanism of the transfer and distribution with related due diligence requirements were met; and (b) certain indemnities were provided by the claimant to Fidux and its personnel. The claimant considered (a) to have been met but refused to give the indemnity sought, which she considered to be excessively wide and onerous.

The claimant therefore sought certain directions and orders, including the provision of an account; the termination of the trust; the appointment of new directors and transfer of shares in Hoshen and Uros; the liquidation of Serillo and Canrif; the termination of the trust and the distribution to her or as she might direct of the trust assets.

Fidux and Fiman applied to strike out the claim against them under CPR r.3.4(2)(a) as it disclosed no reasonable grounds for being brought against them.

Fidux and Fiman submitted that should the claimant wish to take control of the trust, she could remove Canrif as the sole director of Serillo or have Fiman removed as director of Canrif, leaving her in complete control of that company. Nothing would be required of Fidux or Fiman and they could not prevent those steps being taken. Therefore the claimant could achieve the steps she sought without any assistance from the court. The directors of a corporate trustee owed no fiduciary duty to the beneficiaries of a trust. Although the claimant did not rely on a "dog-leg claim," in any event such an approach would also fail to show reasonable grounds for bringing the claim. There was no fiduciary relationship between Fidux and the claimant and Fidux did not administer, manage or control the trust.

The claimant submitted that Fidux had acted as *de facto* trustee of the trust on the basis of invoices raised against Serillo for the "provisions of trustees."

Held, ruling as follows:

(1) The test on a strike-out application under CPR r.3.4(2)(a) was that the defendants had to satisfy the court that the Part 8 claim form did not show reasonable grounds for bringing the claim, *i.e.* that the claim was bound to fail (para. 11).

(2) There were no reasonable grounds for bringing the present claim against Fiman and it would be struck out. Fiman was the director of Canrif, which was in turn the sole director of Serillo, which was the corporate trustee of the trust. The directors of a corporate trustee owed no fiduciary duty to the beneficiaries of a trust. Neither the claim as formulated nor the submissions advanced by the claimant relied upon a "dog-leg claim." The essence of a dog-leg claim was that where there was a breach of trust by a corporate trustee and that corporate trustee could not

or would not pursue its own directors to remedy that breach, a dog-leg claim treated the corporate trustee's cause of action against its directors as a trust asset, thereby allowing a beneficiary to pursue it. In the present case, not only was a dog-leg claim not advanced but in so far as Fiman was concerned, it was one step removed. Serillo was the one trust company and Canrif was its director. In the traditional analysis of a dog-leg action, the claim would lie against Canrif. In the present case it would have to be further extended to the director(s) of the director. In those circumstances, what was at best a tenuous proposition of law would, if it were to be relied upon, be an argument that would be bound to fail. The court's inherent jurisdiction to supervise and intervene in the administration of trusts afforded it a very broad discretion, but the court's supervisory jurisdiction could not extend to forcing a director of the corporate director of one trust company to undertake the duties which fell as a matter of law upon the trustee. Certain obligations might or might not arise contractually, but their enforcement would require a distinct Part 7 claim as opposed to relief pursuant to CPR Part 64. In the present case, it could also not be ignored that the relief sought related to the administration of the trust in circumstances in which the corporate structure allowed the claimant to seize control of the trust (paras. 13–15; para. 19; paras. 22–23).

(3) There were no reasonable grounds for bringing the claim against Fidux and it would also be struck out. The difficulty with the claimant's case against Fidux was that its administration of the trust was clearly referable to the client service agreement. Particularly in the context of a trust/corporate structure which was evidently designed to afford the claimant ultimate control over the trust and its assets, something much more than loose language in invoices and a letter to a bank to explain the provenance of funds would be required to properly advance the argument that Fidux had impliedly accepted to be trustee of the trust (para. 27).

Cases cited:

(1) *Bath* v. *Standard Land Co.*, [1911] 1 Ch. 618, applied.
(2) *Bhusate* v. *Patel*, [2018] EWHC 2362 (Ch), followed.
(3) *Crociani* v. *Crociani*, [2014] UKPC 40; 2014 (2) JLR 508; [2014] 17 ITELR 624, considered.
(4) *Gregson* v. *HAE Trustees Ltd.*, [2008] EWHC 1006 (Ch); [2009] Bus. L.R. 1640, referred to.
(5) *HR* v. *JAPT*, [1997] OPLR 123, considered.
(6) *R. (Fayad)* v. *Home Secy.*, [2018] EWCA Civ 54, referred to.
(7) *Royal Brunei Airlines Sdn. Bhd.* v. *Tan Kok Ming*, [1995] 2 A.C. 378; [1995] 3 All E.R. 97, *dicta* of Lord Nicholls considered.
(8) *X Trusts*, *In re*, [2018] SC (Bda) 56 Civ, July 12th, 2018, considered.
(9) *Young* v. *Murphy* (1994), 13 ACSR 722, referred to.

Legislation construed:

Civil Procedure Rules (S.I. 1998/3132), r.64.2: The relevant terms of this rule are set out at para. 2.

Trusts (Private International Law) Act 2015, s.3(d):

"3. The Gibraltar courts have jurisdiction where—

. . .

(d) administration of any trust property of a foreign trust is carried on in Gibraltar . . ."

D. Dumas, *Q.C.* for the claimant;
D. Brownbill, *Q.C.* with *E. Phillips* for the second and fourth defendants.

1 **DUDLEY, C.J.:** This is an application by the second defendant ("Fidux") and the fourth defendant ("Fiman") pursuant to CPR r.3.4(2)(a) to strike out the claim on the basis that the claim discloses no reasonable grounds for bringing it against them.

Background

2 The claim is brought by the claimant ("Lemberga") as a beneficiary of the Cerise Trust pursuant to CPR r.64.2(a)(ii) and (b) which provides:

"64.2 This section of this Part applies to claims—

(a) for the court to determine any question arising in—

. . .

(ii) the execution of a trust;

(b) for an order for . . . the execution of a trust, to be carried out under the direction of the court ('an administration order') . . ."

3 The Cerise Trust is a trust the proper law of which is Guernsey law, although for the purposes of the Trusts (Private International Law) Act it is a foreign trust, for present purposes it is not in issue that by virtue of s.3(d) of that Act, this court has jurisdiction on the basis that administration of trust property is carried on in Gibraltar.

4 Fidux is a Gibraltar company, licensed by the Gibraltar Financial Services Commission ("the GFSC") and holding a VII Professional Trustee Licence. Fiman is also a Gibraltar company licensed by the GFSC holding a VIII company manager licence. Both Fidux and Fiman are part of the Fidux group of companies which provide trust and corporate services.

5 The corporate structure underpinning the Cerise Trust is best understood with the benefit of an organogram exhibited to Lemberga's affidavit in support of the claim, sworn on April 12th 2019, and which I reproduce as an appendix to this ruling (at p.35).

6 The first defendant ("Serillo") and the third defendant ("Canrif") are companies incorporated in the British Virgin Islands ("BVI"). Serillo is the trustee of the Cerise Trust which is the subject of these proceedings. Finom Ltd. ("Finom") which is part of the Fidux group, but is not a party to these proceedings, is the sole shareholder of Serillo and holds the shares on a bare trust for Lemberga. Serillo, as trustee of the Cerise Trust, is the sole shareholder of Canrif, whilst Canrif is the sole director of Serillo. Fiman and Lemberga are the directors of Canrif.

7 Serillo, as trustee of the Cerise Trust, is also the sole shareholder of another two underlying BVI companies, Hoshen Ltd. ("Hoshen") and Uros Investments Ltd. ("Uros"). Hoshen is the sole shareholder and director of Ambra Ltd. ("Ambra") which is also a BVI company. According to Lemberga's evidence these three companies had invested large sums in two funds jointly defined by her as the "Xanthos funds." Also said by her that Fidux informed her that these investments sustained massive losses in 2016, but that despite requests for information, it is unclear where the moneys had been invested or by whom. However, in the claim form no claim is advanced as regards the alleged loss.

8 According to Lemberga, Fidux has administered the Cerise Trust structure since its commencement in 2009, partly through its *de facto* control of Canrif. That she has not been given any notification regarding the business of the companies within the structure, nor has she been involved in any decision taking. However, the issues that now arise between her and Fidux are succinctly set out at paras. 6 to 8 of her affidavit:

> "6. Differences have arisen between the Second Defendant and I and I have asked the Second Defendant to consider, inter alia, the distribution of the Trust assets to me followed by the termination of the Trust. Whilst the Second Defendant acknowledges and has considered my request to distribute all assets as directed, it refuses to take any steps unless and until:
>
> (a) conditions concerning the mechanism of transfer and distribution with related due diligence requirements were met; and
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> (b) certain indemnities were provided by me to the Second Defendant and its personnel.
>
> 7. I consider that the first condition has been met.
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> 8. The relationship with the Second Defendant has broken down completely and there is no substantive dispute regarding the steps to be taken to distribute assets and terminate the Trust (which are, generally, the orders and directions sought). However, the steps have not been taken because the Second Defendant refuses to take them unless and until I provide an express release and indemnity, separate

> to any indemnity to Serillo as Trustee, to which they are not entitled to and, in any event, is excessively wide and onerous on me. This is separate to that to be provided to Serillo as the retiring trustee."

Apart from Lemberga's witness statement, reliance is also placed upon the documentation exhibited to the witness statement of Oliver Heaton, a trainee barrister with Hassans. Of particular relevance a client service agreement dated June 9th, 2009, cl. 1 of which provides:

> "[Lemberga] instructs Fidux, and Fidux agrees, to establish and/or manage the Trust, Company or other legal entities and undertake the other services . . . specified in Appendix B annexed hereto."

Whilst in his skeleton argument Mr. Dumas summarizes the claimant's case as follows:

> "In short, the Claimant has had to bring these proceedings as the means of directing and ordering the parties in effective and de facto control of the trust, its structure and its assets and administration, and to whom the Claimant is beholden—and who have agreed to act as she is asking the court to order and direct, only if she agrees to the onerous and unacceptable indemnity."

9 Premised upon that case, Lemberga seeks certain directions and orders including the provision of an account; the termination of the Cerise Trust; the appointment of new directors and transfer of shares in Hoshen and Uros; the liquidation of Serillo and Canrif; the termination of the trust and the distribution to her or as she may direct of the trust assets.

10 Should Lemberga wish to take control of the Cerise Trust and its corporate structure, the short and practical answer is to be found in Mr. Brownbill's skeleton submissions:

> ". . . it will be apparent from the facts attested to by the Claimant that the Claimant has ultimate control of the structure. If she is in any way dissatisfied with Fiman as a director of Canrif, she can by a few simple steps have Canrif removed as the sole director of Serillo or have Fiman removed as a director of Canrif, leaving her in complete control of that company. Nothing would be required from Fidux or Fiman in this respect and neither Fidux nor Fiman could prevent any of these steps being taken. In this way, the Claimant can herself achieve the very steps she seeks without any assistance of the court."

Put very simply, it is accepted by Fidux and Fiman that Lemberga can properly require Finom to transfer the shares it holds in Serillo on trust for her. Thereby Lemberga can assume full control over the Cerise Trust and its corporate structure.

Strike out—principles

11 In his skeleton argument, Mr. Brownbill usefully relied upon *Bhusate* v. *Patel* (2), a recent English High Court decision in which the strike-out principles were considered in the context of a Part 8 claim. Admirable because of its simplicity, Chief Master Marsh said ([2018] EWHC 2362 (Ch), at para. 9):

> "The test for an application to strike out a statement of case under CPR 3.4(2)(a) need hardly be stated. The . . . defendants must satisfy the court that the Part 8 claim form does not show reasonable grounds for bringing the claim; put in simpler terms, they must show that the claim is bound to fail."

Albeit said in the context of an application for summary judgment, also apposite in the context of a strike-out application, a passage at para. 12:

> "Part 8 requires the claimant to provide the evidence that is relied upon with the claim. Although there may be cases in which a claimant will be permitted to file supplementary evidence, the court has the claimant's complete case. It is a reasonable starting point for the court that the claimant's case has been put at its highest and, unless the claimant is able to point to material evidence that has not been brought forward, there is no reason to consider what further evidence might be available."

Although Fidux and Fiman do not accept certain allegations advanced by Lemberga, it is not in issue that the application falls to be considered from the perspective of the case advanced by her.

The claim against Fiman

12 By way of repetition. Fiman is a director of Canrif, which in turn is the sole director of Serillo, which is the corporate trustee of the Cerise Trust.

13 In *Bath* v. *Standard Land Co.* (1), the English Court of Appeal considered whether or not the directors of a company that had a fiduciary relation to the company also stood in a fiduciary relation to the company. Cozens-Hardy, M.R. said ([1911] 1 Ch. at 625–626):

> "Directors stand in a fiduciary relation to the company, but not to a stranger with whom the company is dealing. It is of course true that a company acts through its directors. But that does not involve the proposition that if a breach of trust is committed by a company, acting through its board, a beneficiary can maintain any action against the directors in respect of such breach of trust. Of course I except the case where trust property can be followed into the hands

> of a director, or of any stranger with notice. No such point arises here."

Later (*ibid.*, at 627):

> "I base my decision upon the broad principle that directors stand in a fiduciary position only to the company, not to creditors of the company, not even to individual shareholders of the company, still less to strangers dealing with the company. This principle applies equally whether the relation between the company and the stranger is one purely of contract, such as principal and agent, or is one of trustee and cestui que trust. To speak of directors as the 'brains' of the company or the 'hands' of the company is only to use words which have no definite meaning in this connection."

Bath v. *Standard Land Co.* is therefore clear authority for the proposition that the directors of a corporate trustee owe no fiduciary duty to the beneficiaries of a trust.

14 Notwithstanding that neither the claim as formulated nor the submissions advanced on Lemberga's behalf rely upon what has come to be described as a "dog-leg claim," Mr. Brownbill submits that, in any event, any such approach would also fail to show reasonable grounds for bringing the claim.

15 The essence of a dog-leg claim comes to this. Where there is a breach of trust by a corporate trustee and that corporate trustee cannot or will not pursue its own directors to remedy that breach, a dog-leg claim treats the corporate trustee's cause of action against its directors as a trust asset, thereby allowing a beneficiary to pursue it.

16 The high watermark of the viability of such a claim is to be found in *HR* v. *JAPT* (5). Mr. Brownbill referred me to the passage where Lindsay, J. said ([1997] OPLR 123, at para. 38):

> "In my judgment neither subsequent English authority nor Commonwealth authority enables me to distinguish *Bath supra* (which Mr Sher reserved the right, in higher courts, to say was wrongly decided). There is a broad principle, as Cozens-Hardy M.R. described it in *Bath* at *p. 627*, that the directors of a trust company stand in a fiduciary position only to the company itself not to strangers dealing with the company and not even where the stranger is able to describe himself as a beneficiary of a trust of which the company is trustee. Whilst exceptional facts can be envisaged, as Finn J. suggested and as *Barnes-v-Addy* (as I shall come to) illustrates, in which a finding of a fiduciary relationship between a beneficiary and the directors of the trustee company may be justified, I do not see the facts here relied on in argument, consisting only of directors purporting to act as such and acting (alleged carelessness

> apart) as one might expect directors of a trustee company to act, to be sufficient to enable any such a finding. In other words, at any rate at first instance and so long as *Bath supra* stands, I regard this way of putting the Plaintiffs' case as unarguable."

That passage is authority for the proposition that there exists no direct fiduciary relationship between the directors of a trustee company and the beneficiaries of the trust. However, as I understand that judgment, the "dog-leg claim" proper was considered thereafter by Lindsay, J. described (*ibid.*, at para. 59) as an indirect fiduciary duty in which the *chose in action* against the director acquired by the former corporate trustee is to be treated as trust property. After reviewing the authorities, including the judgment of the Supreme Court of Victoria in *Young* v. *Murphy* (9), in which the proposition that a right of action against the directors of a corporate trustee could vest upon new trustees was rejected, Lindsay, J. nonetheless did not consider the "dog-leg claim" unarguable and refused to strike out the claim.

17 The High Court of England and Wales again considered the viability of the "dog-leg claim" in *Gregson* v. *HAE Trustees Ltd.* (4). The court in *Gregson* reviewed the authorities including *HR* v. *JAPT*, *Young* v. *Murphy*, and also the Privy Council decision in *Royal Brunei Airlines Sdn. Bhd.* v. *Tan Kok Ming* (7) and, in particular, where Lord Nicholls of Birkenhead, giving the judgment of the Board said ([1995] 2 A.C. at 391):

> "It is against this background that the question of negligence is to be addressed. This question, it should be remembered, is directed at whether an honest third party who receives no trust property should be liable if he procures or assists in a breach of trust of which he would have become aware had he exercised due diligence. Should he be liable to the beneficiaries for the loss they suffer from the breach of trust?
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> The majority of persons falling into this category will be the hosts of people who act for trustees in various ways: as advisers, consultants, bankers and agents of many kinds. This category also includes officers and employees of companies in respect of the application of company funds. All these people will be accountable to the trustees for their conduct. For the most part they will owe the trustees a duty to exercise reasonable skill and care. When that is so, the rights flowing from that duty form part of the trust property. As such they can be enforced by the beneficiaries in a suitable case if the trustees are unable or unwilling to do so. That being so, it is difficult to identify a compelling reason why, in addition to the duty of skill and care vis-a-vis the trustees which the third parties have accepted, or which the law has imposed upon them, third parties should also owe a duty of care directly to the beneficiaries. They have undertaken

> work for the trustees. They must carry out that work properly. If they fail to do so they will be liable to make good the loss suffered by the trustees in consequence. This will include, where appropriate, the loss suffered by the trustees, being exposed to claims for breach of trust."

Robert Miles, Q.C., sitting as a Deputy Judge of the High Court, did not accept the submission that Lord Nicholls' *dictum* provided support for a "dog-leg claim" on the basis that (i) the remarks are not confined to trust companies but refer to companies generally; (ii) it refers to the application of company funds as opposed to trust funds; (iii) the passage is in fact dealing with the question of whether the law should impose direct liability on trust advisers to beneficiaries; and (iv) as he put it ([2008] EWHC 1006 (Ch), at para. 35):

> "Most significantly for present purposes, *Tan* itself concerned a company which acted as the trustee of the receipts and sales of passenger and cargo transportation. The decision in the case was, of course, that the director could only be liable as an accessory to the trustee's breach if he was shown to be dishonest. If Lord Nicholls had thought that the duties of the defendant, as a director of the trustee, were held on trust for the claimant there would have been no need to establish dishonesty. Negligence would have done."

I can do no better than to respectfully agree with that analysis.

18 *Lewin on Trusts*, 19th ed. (2015) deals with indirect or "dog-leg" actions at para. 40–066, with the following view being expressed:

> "The objection to this argument is that the claims by the company against the directors form part of the corporate assets of the company and are not held in trust, and so the benefit of the claims passes to the company's general creditors. We consider that this objection is particularly forceful in the case of a commercial trust company which acts as trustee for a large number of trusts. But where the company is a one-trust no-asset company created and administered solely for the purpose of administering the trust in question, special considerations may apply, and it is not unarguable that the claims against the directors beneficially belong to the trust, thereby opening the door to an indirect or 'dog leg' action by the beneficiaries against the directors."

19 In the present case not only is the dog-leg claim not advanced but in so far as Fiman is concerned, it is one step removed. Serillo is the one-trust company and Canrif is its director. In the traditional analysis of a dog-leg action, the claim would lie against Canrif. Here it would have to be further extended to the director[s] of the director. In those circumstances, in my judgment, what is at best a tenuous proposition of law

would, if it were to be relied upon, be an argument that would be bound to fail.

20 For his part the only authority that is relied upon by Mr. Dumas is the judgment of Kawaley, C.J. in the Supreme Court of Bermuda in *In re X Trusts* (8). Coincidentally, it is a case in which Mr. Brownbill appeared and where (as reflected at [2018] SC (Bda) 56 Civ, para. 34), he made submissions which were categorized by opposing counsel as "analogous to a 'dog-leg claim'" and where he submitted, relying *inter alia* upon *Crociani* v. *Crociani* (3), that the court (*ibid.*):

> "can take any step to secure the proper administration of a trust. And this . . . supervisory jurisdiction when it comes to a trust is regularly exercised in completely new and novel situations."

21 In *In re X Trust*, Kawaley, C.J. *inter alia* considered whether corporate trustees should remain in office or be removed, and whether the court had jurisdiction to compel the directors of the corporate trustee to resign. He said (*ibid.*, at paras. 35–37):

> "35. The breadth and flexibility of the Court's supervisory jurisdiction over trusts is confirmed rather than undermined by the concession made in the instant case. The directors of corporate Trustees, whom the Court has no power to formally remove, have expressly conceded that the Court may validly decide whether or not it is desirable for them to resign, if a case for removing the Trustees is made out.
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> 36. It would be surprising if the Court could not validly make similar findings in circumstances where the directors did not expressly agree to any directions the Court might give as to the desirability of a resignation. It is also difficult to conceive that the Court could not, in circumstances where (a) a corporate trustee's directors served multiple clients, and (b) a prima facie case for removal of the corporate trustee was made out, direct (or signify) that a director's continued deployment in the administration of a particular trust would, be inconsistent with the due administration of the relevant trust. There is no need to resolve these questions in the present case but in general terms the oral submissions of Mr Brownbill QC on the flexibility of this Court's supervisory jurisdiction over trusts were fundamentally sound.
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> 37. In summary, I find that the Court has no jurisdiction to direct the removal of one or more of the directors. The Court does possess the inherent jurisdiction in supervising a Bermudian trust to signify that rather than removing the corporate trustees it would be desirable if one or more of the directors resign. The existence of this jurisdiction was implicitly conceded by the Trustees in the present case."

22 That the court's inherent jurisdiction to supervise and intervene in the administration of trusts affords it a very broad discretion cannot be doubted and indeed if this court were to signify that Fiman should resign, I would be surprised if, as a regulated entity, it would not act accordingly. But the court's supervisory jurisdiction cannot extend to forcing a director of the corporate director of a one-trust company to undertake the duties which as a matter of law fall upon the trustee. Certain obligations may or may not arise contractually, but their enforcement would require a distinct Part 7 claim as opposed to relief pursuant to CPR Part 64. Moreover, there is no ignoring that the relief being sought relates to the administration of the Cerise Trust in circumstances in which the corporate structure allows Lemberga to seize control of the trust.

23 For these reasons, in my judgment, there are no reasonable grounds for bringing the present claim against Fiman, and I order that it be struck out.

The claim against Fidux

24 As may be discerned from Lemberga's witness statement, her claim is principally directed against Fidux, which it is said is in *de facto* control of the Cerise Trust. Some time after the conclusion of the hearing, Mr. Dumas filed supplemental submissions when that proposition was developed, to the extent that it was then said that Fidux acted as *de facto* trustee of the Cerise Trust.

25 The evidence relied upon in support of that allegation is essentially various invoices raised by Fidux against Serillo, the subject of which is the Cerise Trust and which *inter alia* include fees for the "provision of trustees." In particular an invoice dated October 29th, 2014 has the following narrative:

> "Professional Services for the period ended 30 September 2014 in respect of meeting the client in connection with a proposed settlement; valuation of the shares owned by the trust; negotiation of terms including release for the trustees and the client to include instructions to counsel . . ."

Reliance is also placed upon a letter from Fidux to Swedbank AS dated February 12th, 2015, which states:

> "We write to confirm that funds received by our mutual client Ms Liga Lemberga are distributions to a discretionary beneficiary from a Gibraltar settlement for which we provide trustee services under license from the Gibraltar Financial Services Commission."

26 The submissions advanced on behalf of Fidux come to this. That the claim discloses no duty owed by Fidux to Lemberga to carry out any of the steps sought in the claim and no right to demand as against Fidux that

it carry them out. That the only material facts disclosed in the claim are that Fidux is the parent of Fiman and of Finom, and that as asserted by Lemberga in her witness statement at para. 3, Fidux "administers, manages and/or controls [Serillo], the Trust and all of its underlying assets." That the fact that Fidux is the parent company of Fiman and Finom creates no fiduciary relationship between Fidux and Lemberga and that Fidux cannot "administer, manage and/or control" the Cerise Trust, the sole director of which is Serillo, of which, in turn, Canrif is the sole director. Taking it one step further, that Fidux cannot control Canrif because its directors are Lemberga and Fiman and not Fidux. That ultimately because Lemberga has overall control of the entire structure, by dint of the fact that Finom holds the shares in Serillo on trust for Lemberga, that she is capable of doing the things that she would have the court direct Fidux to do.

27 The submission as to how it is said Fidux is a trustee of the Cerise Trust was not materially articulated beyond the reliance placed upon the evidence I have referred to. The difficulty with Lemberga's case against Fidux is that its administration of the Cerise Trust is clearly referable to the client service agreement, and particularly in the context of a trust/corporate structure which is evidently designed to afford Lemberga ultimate control over the Cerise Trust and its assets, something much more than loose language in invoices and a letter to a bank to explain provenance of funds would be required to properly advance the argument that Fidux had impliedly accepted to be trustee of the Cerise Trust. I accept Mr. Brownbill's submissions and therefore, also as regards Fidux, there are no reasonable grounds for bringing the claim, which is also to be struck out.

28 As I alluded to previously, after the conclusion of the hearing Mr. Dumas submitted further written submissions. The matters raised therein were largely a restatement of the submissions that he had advanced before me and to the extent that they were developed further, that could have been done at the hearing. Absent very good reason (which was not present in this case), it is not appropriate to submit unsolicited written submissions after a hearing (*R. (Fayad)* v. *Home Secy.* (6) ([2018] EWCA Civ 54, at paras. 41 and 43)).

29 Orders accordingly and I shall hear the parties as to costs.

Orders accordingly.

Appendix: organigram of the Cerise Trust