

First Hall Civil Court

Hon. Madame Justice Miriam Hayman LL.D.

Judge

Sworn Application:264/19MH

In the names:

Abacus Corporate Services Limited (C 51915) u Alexander William Beetham (KI 0104814A) bhala mandatarju specjali ta' ABACUS Trust Company Limited, socjeta estera inkorporata taht il-Ligijiet tal-Isle of Man bin-numru ta' registrazzjoni 24542C

Vs

Anthony Morton Dunn, detentur tal-Passaport Ingliz bin-numru 519000325; u Eleonor Lucy Buckley, detentrici tal-Passaport Ingliz bin-numru 519128781

Today the 12th of July, 2021

The Court,

Seen the sworn application were it was therein premised:-

State with respect and Alexander William Beetham under oath confirms the following facts of which he knows personally:

- 1. That the applicants are companies which are known in the financial services sector and they provide services that principally consist in corporate services, services related to trusts and other fiduciary services. The group of companies that the applicants form part of, which group of companies nowadays is based and operates throughout six jurisdictions, offers various specialised services of professional administration in this fiduciary services sector;*
- 2. That around the first half of the year two thousand and thirteen (2013), the applicants were approached by the defendants, who wanted to engage the*

applicants to provide them with services in relation to the formation of a financial structure to administer their financial needs;

3. That after the defendants provided the applicants with the necessary information, and after the applicants studied the needs of the defendants, the applicants proposed a financial structure to the defendants, which structure involved a number of companies and trusts to enable them to form a structure to administer the said financial needs of the defendants;

4. That the defendants had agreed with said structure as proposed by the applicants, and which proposition was then finalised in its detail, and subsequently said structure was formed and started operating;

5. That said structure was then finalised around the month of May of the year two thousand and thirteen (2013);

6. That whilst the formation and operation of said structure will be elaborated and explained in further detail during the court case, essential the structure that was created consisted of two trusts, namely The Scale Trust which regarded the defendant Dunn and Platinum First Trust which regarding the other defendant Buckley (vide documents of said trusts, a copy of which is being annexed here-in and marked as Dok. A. and Dok. B respectively). Apart from said trusts, there were also companies which have been formed for specific and different reasons and this within the said financial structure which is complex in itself and which served as a basis for the various financial services provided by the applicants. This in the sense that in the context of said structure, that after all the defendants were those benefitting from said structure as they were the ultimate and beneficial owners of said structure, notwithstanding the involvement of the applicants and companies created by the applicants as part of the services that the applicants were engaged of providing within said structure;

7. In order for said structure to operant and administered in the best possible manner, several contracts were agreed upon and concluded which contracts regulated the provision of administrative financial services required (vide copy

of said contracts here-in annexed and marked as Dok. C until Dok. F respectively);

8. That in connection with said financial services structure and in connection with the services provided by the applicants upon the instructions and requests made by the defendants for the benefit of the defendants, the same defendants are due to pay the applicants the total sum of forty five thousand, nine hundred and ninety eight Euros and thirty three Euro Cents (€45,998.33) over and above the legal interest accruing in accordance to law, which sum is due as follows – the sum of nine thousand, seven hundred and sixty five Euro and sixty four Euro Cents (€10,609.01) due to the applicant Abacus Corporate Services Limited and the sum of thirty five thousand, three hundred and eighty nine Euro and thirty two Euro Cents (€35,389.32) equivalent to thirty thousand, two hundred and fifty one Sterling and nineteen cents (£30,251.19) due to the applicant Abacus Trust Company Limited, all representing professional services, and related cost expenses, rendered by the applicants in connection with the administration of the financial structure created and operated by the applicants on instruction and requests by the defendants, including the fiduciary services and financial services on all levels of said structure;

9. Even though the defendants have been asked to pay said amounts due by means of a letter dated fourth (4th) October of the years two thousand and eighteen (2018) (a copy of said letter here-in attached and marked as Dok G), said payments remained due;

10. Therefore the applicants had no other option but to proceed with said court case;

Notwithstanding, in view of all of the above, the applicants humbly requests this Honourable Court to be satisfied, notwithstanding any declaration necessary and opportune;

1. To declare that the defendants are responsible to pay the applicants the total sum of forty five thousand, nine hundred and ninety eight Euros and thirty

three Euro Cents (€45,998.33) over and above the legal interest accruing in accordance to law, which sum is due as follows – the sum of nine thousand, seven hundred and sixty five Euro and sixty four Euro Cents (€10,609.01) due to the applicant Abacus Corporate Services Limited and the sum of thirty five thousand, three hundred and eighty nine Euro and thirty two Euro Cents (€35,389.32) equivalent to thirty thousand, two hundred and fifty one Sterling and nineteen cents (£30,251.19) due to the applicant Abacus Trust Company Limited, all representing professional services, and related cost expenses, rendered by the applicants in connection with the administration of the financial structure created and operated by the applicants on instruction and requests by the defendants, including the fiduciary services and financial services on all levels of said structure and including other amounts which may result in the course of the proceedings;

2. To order the defendants to pay the applicants the total amount due of forty five thousand, nine hundred and ninety eight Euros and thirty three Euro Cents (€45,998.33) over and above the legal interest in accordance to Law and other amounts which may result in the course of the proceedings;

3. To give any other remedy and/or directive that this Honourable Court believes it is most appropriate and opportune;

With interest and reserve to all further rights and actions available at Law.

Seen that defendants all duly served entered no sworn reply and are therefore considered to be contumacious according to law.

Seen all the records of the case.

Duly Heard the oral submissions.

Considers.

As is well held a contumacious party is not conceding a walk over to the advantage of the opposing party. Regardless of the lack of contestation on

defendant's part of the claim brought forward by the claimant, it still encumbers the latter to prove to the degree required by law the claim advanced.

An interesting extract cited by the adjudicator states the following:

*Service of the summons obligated the defendant either to appear in person at the specified time and place or else to send a procurator to present a satisfactory reason for his failure to comply. Should he fail to respond, he might be summoned twice more. If he or his personal representative still failed to appear after the third summons, the judge could declare him contumacious. This rendered the defendant infamous, which severely handicapped his ability to defend his case, and might result in a fine, excommunication, and perhaps a summary judgment in favour of the plaintiff as well. A contumacious defendant who thought better of the matter and then made a belated appearance needed to apologise to the judge, promise to obey the orders of the court in future, and usually paid a stiff fine before he could proceed with his defence.” (cfr. **J. A. BRUNDAGE**, “The Medieval Origins of the Legal Profession”, Chicago Press, edizjoni 2008; pp. 417–418).¹*

Seen all the acts exhibited by the claimants more specifically the affidavit presented by Alexander William Beetham explaining how defendants engaged the services of claimant entities to administer their finances through the formation of apposite financial structures established by claimants. For this purpose two trusts were established the Platinum Trust also the Scale Trust, defendants were signatories to relative application forms and ultimate beneficiaries respectively.

He added that companies were also established for the benefit of the same clients who also participated in board meetings of the same.

He stated that both defendants were the ultimate beneficiaries of these trust financial structures and the same structures were serviced by the claimant companies.

For these services rendered he mentioned that what was owed by defendants related to “*professional fees and related costs expenses, rendered by the application in connection with the administration of the financial structure created and operated by the applicants*” all this rendered as instructed by defendants.

¹ Footnote f' deċiżjoni tat-Tribunal tat-Talbiet iż-Zgħar 5/02/2019 **Margal Limited vs Eucharist Bajada**

To sustain the claim varied documents were exhibited relating to the operations of the claimants in regard to and for the benefit of the defendants.

Futher Considers

Later in the proceedings an affidavit drawn up by Alexander William Beetham representing applicant claimants was entered in the records of the case wherein he confirmed under oath that to the date of the said affidavit the sums due by defendants as aforesaid were as follows:

“.. to the amounts ninety three thousand , five hunderd and sixty four euros and forty seven Euro cents (€93,564.47), which sum is due as follows – the sum of thirty one thousand, fourteen euros and twelve euro cents (€31,014.12) due to the Abacus Corporate Services Limited and the sum of sixty two thousand , five hunderd and fifty euros and thirty five euro cents (€62, 550.35) which sum is equivalent to fifty four thousand , four hundred and ten Pounds Sterling and eighty nine pence (€54, 410.89) due to Abacus Trust Company Limited, all representing professional services, and related cost expenses, rendered by application in connection with the administration of the financial structure created and operated by the applicants on instruction and request by the defendants, including the fiduciary services and financial services on all levels of said structure.”²

He futher evidenced that Dunn and Buckley regardless of being called upon to honour their dues remained in default.

Consequently having seen all the records of the case considers that all pleas entered by the claimants are to be upheld in their totality taking into account the sum accrued and owed as evidenced by the above mentioned witness declares the defendants responsible to pay the applicants the total sum of ninety three thousand , five hunderd and sixty four euros and forty seven Euro cents (€93,564.47), which sum is due as follows – the sum of thirty one thousand, fourteen euros and twelve euro cents (€31,014.12) due to the Abacus Corporate Services Limited and the sum of sixty two thousand , five hunderd and fifty

² Ara affidavit ta' l-isemmi Beetham a folio 333 et. seq.

euros and thirty five euro cents (€62, 550.35) which sum is equivalent to fifty four thousand , four hundred and ten Pounds Sterling and eighty nine pence (€54, 410.89) due to Abacus Trust Company Limited, all representing professional services, and related cost expenses, rendered by application in connection with the administration of the financial structure created and operated by the applicants on instruction and request by the defendants, including the fiduciary services and financial services on all levels of said structure.”

Orders the defendant to pay the applicants the above mentioned total of ninety three thousand , five hundred and sixty four euros and forty seven Euro cents (€93,564.47) with accruing legal interest till the day of effective total payment.

All expenses of these proceedings are to be borne by defendants.

Hon. Miriam Hayman

Judge

Victor Deguara

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