Private Client eBriefing

In praise of Schumacher – approach to trustee removal applications

Article by Philippe Kuhn, 1st May 2026

The recent English case of *Smith v Campbell* [2025] EWHC 3011 (Ch) considered once again the approach to trustee removal applications in England which was solidified by the decision of Chief Master Marsh in *Schumacher v Clarke* [2019] EWHC 1031 (Ch).

This article considers the appropriate approach to trustee removal applications. The issues are of application in all major common law offshore trust jurisdictions. Anecdotally, heavy trials of trustee removal applications are increasing in popularity. For the reasons developed below, this is undesirable and courts in England and beyond these shores would do well to pay heed to the more economical and restrained approach urged in *Schumacher* and cases following it.

Trustee removal jurisdiction:

The starting point in the discussion is the nature of the trustee removal jurisdiction. While it has a statutory footing in England, by way of Section 41 of the Trustee Act 1925, it also exists as part of the inherent jurisdiction of the court in relation to trusts administration. The position is substantially the same in a number of leading common law offshore jurisdictions.

The leading case of *Letterstedt v Broers* (1884) 9 App Cas 371 in the Privy Council explained the nature of the jurisdiction at page 386:

> "*It seems to their Lordships that* ***the jurisdiction which a Court of Equity has no difficulty in exercising … is merely ancillary to its principal duty, to see that the trusts are properly executed****. This duty is constantly being performed by the substitution of new trustees in the place of original trustees for a variety of reasons in non-contentious cases. And therefore,* ***though it should appear that the charges of misconduct were either not made out, or were greatly exaggerated, so that the trustee was justified in resisting them, and the Court might consider that in awarding costs, yet if satisfied that the continuance of the trustee would prevent the trusts being properly executed, the trustee might be removed****. It must always be borne in mind that trustees exist for the benefit of those to whom the creator of the trust has given the trust estate.*" (Emphasis added.)

The trustee removal jurisdiction is helpfully explained further in *In re Wrightson* [1908] 1 Ch 789 and the Bermudan case of *St John's Trust Company (PVT) Limited v Medlands (PTC) Limited* [2021] CA (Bda) 20 Civ.

In *In re Wrightson*, Warrington J explained at pp.797-8 **[Auth/12/158-9]**:

> "*Now, I desire to say this first with regard to the practice as to the removal of trustees. It seems to me that it is probably unnecessary to ask expressly for the removal of the trustees.* ***If the facts alleged in the pleadings, or if the facts ascertained in working out the judgment pronounced at the trial or the inquiries properly added to it according to the practice of the Court, shew that the removal of the trustees is necessary for the welfare of the trust, I have no doubt that, as the Court is carrying the trusts into execution under its direction, it would have jurisdiction to do that which is one of the incidents to the execution of the trusts, namely, do that which is necessary for the preservation of the trust property or the welfare of the cestuis que trust****. Further, I think also that if the trustees subsequently to judgment were to be guilty of some misconduct, or if some circumstances should arise subsequently to judgment which made it necessary to remove the trustees, the Court then would have jurisdiction to do so.*" (Emphasis added.)

The Court of Appeal of Bermuda in *St John's Trust Company* provided a useful synopsis of the leading English authorities at [55]-[57]:

> "*55. And so the real question – indeed, the governing principle whenever the supervisory jurisdiction is invoked– is what is required for the welfare of the beneficiaries: Letterstedt v Broers at 389. See also, as so concluded in this jurisdiction in Re X Trust [2018] SC (Bda) 56 Civ (12 July 2018) per Kawaley CJ at [24] and [25] and in England and Wales in The Pensions Regulator v Dalriada Trustees Ltd and others [2013] EWCH 4346 (Ch), [2013] WL 6229578 per Nugee J, at [28].*
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> *56. It is also to be emphasized that the dispute enjoined in the Administration Proceedings is not ordinary adversarial litigation: see again, for instance The Pensions Regulator v Dalriada at [28]-[30]. And, from Schumacher v Clarke [2019] EWHC 1031 (Ch) per Chief Master Marsh at [18] in terms which this Court is content to approve and adopt: "The jurisdiction is quite unlike ordinary inter partes litigation in which one party, of necessity, seeks to prove the facts (of) its cause of action against another party."*
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> *57. And further, as to the sui generis nature of trust proceedings, from Schumacher v Clarke at [21(i)]: "The claim is between the executors and trustees and the beneficiaries, but it is only in part about them. It is primarily about the estate, seen separately from the persons who are the custodians and the beneficiaries. As I have said, the claim is not an ordinary in personam claim".*

The principle, originating from the Privy Council's decision in *Letterstedt*, is that the claimant in a removal application need not prove any misconduct on the part of the trustee (or executor).

***Schumacher* approach:**

The key issue for Chief Master Marsh in *Schumacher* itself was whether to permit an eight-day trial of a claim for the removal of the executors and trustees of Dame Zaha Hadid's estate pursuant to Section 50 of the Administration of Justice Act 1975 and the court's inherent jurisdiction. The case

involved a £67.5 million estate. There were detailed pleadings, with serious allegations levelled against the executors and trustees.

In refusing to permit a full trial with cross-examination of witnesses, Chief Master Marsh provided a clear and incisive explanation of the nature of the trustee removal jurisdiction and the procedural implications thereof.

At [18], he explained that "*It is critical for present purposes that the core concern of the court is what is in the best interests of the beneficiaries looking at their interests as a whole.* ***The power of the court is not dependent on making adverse findings of fact, and it is not necessary for the claimant to prove wrongdoing. It will often suffice for the court to conclude that a party has made out a good arguable case about the issues that are raised****. If there is a good arguable case about the conduct of one or more of the executors or trustees, that may well be sufficient to engage the court's discretionary power under s.50, or the inherent jurisdiction, and make some change of administrator or trustee inevitable.* ***The jurisdiction is quite unlike ordinary inter partes litigation in which one party, of necessity, seeks to prove the facts its cause of action against another party***." (Emphasis added.)

On that footing, and despite the substantial value of the estate and the competing allegations of serious wrongdoing, he concluded that the claim "*can be resolved in three days adequately*" (at [39]), and without cross-examination.

The approach in *Schumacher* has been influential and consistently endorsed in subsequent English authorities: see e.g. *Ugolor v Ugolor* [2021] EWHC 686 (Ch) at [43] and *Gohil v Kumara* [2023] EWHC 1809 (Ch) at [14].

The following principles may be identified from *Schumacher* and other cases in this area:

1. At least in England, it is "*exceptional*" for a removal claim to "*necessitate a full trial*": *Schumacher* at [34]; *Long v Rodman* [2019] EWHC 753 (Ch) at [20].

2. "*[T]he core concern of the court is what is in the best interests of the beneficiaries looking at their interests as a whole*": *Schumacher* at [18]; *In re Wrightson* at pp.797-8; *St John's Trust Company* at [55]; and *Lewis on Trusts* (20th ed.) at [14-076].

3. *"The jurisdiction is quite unlike ordinary inter partes litigation in which one party, of necessity, seeks to prove the facts its cause of action against another party*": *Schumacher* at [18]; *Letterstedt* at p.386; *St John's Trust Company* at [56].

4. Subject to what follows in relation to *Smith v Campbell*, ordinarily, it is sufficient for the court to reach a view that "*a party has made out a good arguable case about the issues that are raised*": *Schumacher* at [18]; *Ugolor v Ugolor* at [43]; *Gohil v Kumara* at [14].

An important point which emerges from the *Schumacher* line of authority is that it is not strictly necessary to make findings of misconduct in order to remove a trustee. This is related to the view of Chief Master Marsh in relation to the "*good arguable case*" threshold and full trials with cross-examination being the exception to the rule.

***Smith v Campbell*:**

Smith v Campbell involved a claim to remove and replace the trustees of an English trust established by will. The net probate value of the estate was around £8.2m. The residuary estate was left to trustees to hold on the terms of a discretionary trust. It was a hard-fought claim resulting in a detailed judgment by Deputy Master Holden. In that judgment, the judge considered the contours of the *Schumacher* approach.

At [50]-[52], he accepted that the trustee removal jurisdiction is "*highly fact-sensitive*" and discretionary in the sense that there was "*scope for reasonable disagreement as to the appropriate course of action*". The judge expressly referred to *Letterstedt v Broers* and the fact that the Privy Council ordered the removal of the trustee without making any finding that the trustee had committed a breach of trust.

Deputy Master Holden's discussion of *Schumacher* at [67]-[80], in the context of argument about the approach to disputed issues of fact, which raised a question about the application of the Supreme Court's decision in *TUI UK Ltd v Griffiths* [2023] UKSC 48, is of greater interest. He placed greater emphasis on the procedural history in *Schumacher* – i.e. that the decision was made at a directions hearing – and concluded at [79] that "*the true ratio of the Chief Master's judgment in Schumacher was that a full trial with cross-examination should not be directed on the facts of that particular case, because it would be contrary to the overriding objective to do so. What the Chief Master did not purport to do was suspend the ordinary rules of evidence in the context of trustee removal claims.*"

As far as it goes, that statement is unimpeachable. Of course the decision in *TUI* is of general application in relation to civil evidence. However, as Deputy Master Holden acknowledged in relation to *Schumacher* at [77]: "*The Chief Master's statements are correct in principle because the jurisdiction to remove and replace trustees may be exercised without any breach of duty or misconduct on the part of the trustees being established. It follows that, on the facts of a particular case, the court might well think it right to remove or replace trustees on the basis that there is a good arguable case of some misconduct on their part, and (crucially) that in those circumstances the welfare of the beneficiaries and the proper administration of the trust in their favour warrant the court's intervention.*" He added: "*Plainly that does not mean that a trustee will always be removed from office wherever a good arguable case of breach of duty or misconduct has been made out. That is a non sequitur.*"

While the analysis at [77]-[79] in *Smith v Campbell* is strictly accurate, it wrongly downplays the influence of Chief Master Marsh's approach both in England and in offshore jurisdictions (including Bermuda, where *Schumacher* has been cited with approval on appeal in *St John's Trust Company*). It should remain the approach of the English courts and, it is submitted, common law offshore jurisdictions dealing with equivalent applications that (i) heavily contested witness trials with cross-examination are discouraged and (ii) a good arguable case standard can be used, as much as possible, in disposing of trustee removal applications.

The *Schumacher* approach is rightly grounded in the nature of the trustee removal jurisdiction and is consistent with well over a century of authority, most notably *Letterstedt v Broers*. There is a real risk in turning the trustee removal application into something it is not. The court's function is not to decide on civil causes of action and remedies in these types of applications. Rather, trustee

removal applications are merely a species of trust administration proceedings. While *Schumacher* can be reduced – as Deputy Master Holden did in *Smith v Campbell* – to its specific facts and procedural history, that does a disservice to the cogent and compelling logic which underpins Chief Master Marsh's approach. It is not in the interests of proper trust administration to have protracted and lengthy multi-week trials on these applications. They are costly, time-consuming and unlikely to facilitate the due administration of the trust moving forward. To the extent that *Smith v Campbell* suggests otherwise, it is (with respect) wrongly decided and the remarks of Deputy Master Holden are, in any event, only *obiter* on this issue. *Schumacher* remains at least the starting point as to procedure in these cases and, it is submitted, would best be regarded as the end point in all but truly exceptional cases.

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