

The Representation of the Maram Trust

Jurisdiction:	Jersey
Judge:	Deputy Bailiff
Judgment Date:	20 April 2020
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Text

[2020] JRC 62

ROYAL COURT

(Samedi)

Before:

R. J. MacRae, **Esq.**, Deputy Bailiff, **and** Jurats Christensen **and** Hughes

In the Matter of the Representation of the Maram Trust
And in the Matter of Article 51(2) of the Trusts (Jersey) Law 1984

Advocate J. D. Garrood for the Representor.

Authorities

Trusts (Jersey) Law 1984.

Re S Settlement [\[2001\] JRC 154](#).

Trust — reasons for the orders made

Deputy Bailiff

THE

Introduction

- 1 On 8th April 2020 we heard the Representation of the settlor in this case. We made certain orders as sought in his Representation and declined to make others, and we now give the reasons for our decision.
- 2 The Maram Trust (“the Trust”) was settled by the settlor on 25th May 1994.
- 3 The Trust is a discretionary trust and from the date of settlement until his death at the age of 93 in 2018, the trustee was a Swiss lawyer from Lausanne. In fact he ceased to practice aged about 88 in 2013 but nonetheless remained trustee of the Trust.
- 4 For reasons which the settlor cannot now recall, the Trust was settled and remains governed by the laws of Belize.
- 5 Nonetheless, this Court has jurisdiction over the Trust pursuant to Article 5 of the Trusts (Jersey) Law 1984 (“the Law”) as although this is not a Jersey trust as defined under the Law, the trust property of this Trust is situated in Jersey and it consists and always has consisted of a portfolio of investments held and managed by Canaccord Genuity Wealth (International) Limited (“Canaccord”). As at February 2020 the portfolio was worth just under £900,000. The Trust has no other assets.

The relevant provisions of the Trust

- 6 The Trust recites that the settlor is domiciled in Jersey but desired the settlement to be established under the laws of Belize. The beneficiaries under the Trust are defined as those persons specified in the Fourth Schedule to the Trust. That Schedule names (and the settlor cannot explain why this charity was chosen) the “World Wild Life Fund”. This is assumed to be a reference to the “World Wildlife Fund”.
- 7 At Clause 24 the trustees enjoy a power of exclusion entitling them to “*at any time or times declare that any person or member of a class named or specified ... who is, would or might but for this Clause be or become a beneficiary ... shall be wholly or partially excluded from*

future benefit thereunder or shall cease to be a beneficiary...".

- 8 The trustees have a power to add to the class of beneficiaries under Clause 25. Clause 26 provides the trustees with a power to change the proper law of the settlement.
- 9 As to the power of appointment of new or additional trustees, the key provisions of Clause 31(a) provides:

"Power of appointment of new or additional trustees

31(a) IF any trustees hereof whether original additional or substituted shall die or being a company shall be dissolved or shall give notice of desire to withdraw and be discharged from the trusts hereof under the provisions of sub-clause (b) of this clause or shall refuse or become unfit to act then the persons specified in the Fifth Schedule hereto in order of priority may by deed appoint one or more other persons wherever resident but subject to any exclusions or provisions specified in the said Fourth Schedule to be a trustee hereof in place of the trustee so deceased dissolved or desiring to withdraw and be discharged refusing or becoming unfit to act."

- 10 Unfortunately the Fifth Schedule to the Trust is blank and, on the evidence available to us, always has been blank.
- 11 The First Schedule to the Trust provides that the trustees "*shall hold the trust fund on trust to pay the income thereof to the settlor for life...*".
- 12 Additional powers of the trustees are contained in the Second Schedule to the Trust and include at paragraph 1(4)(b) a power to revocably or irrevocably to appoint all or any part of the capital of the Trust to the trustees of any other settlement under which any more of the beneficiaries may benefit.

The reasons for this application

- 13 The settlor is now 80. He wishes to ensure that the Trust has a new trustee (the power of appointment of a new trustee under the Trust cannot be exercised as is clear from the above). He wishes to appoint his ex-wife, who is in her early 70s, as the sole trustee of the Trust and wishes that himself and his daughter (who is in her late 30s) be added as beneficiaries.
- 14 In his Representation the settlor seeks the following orders:

"(i) [Name of settlor's ex-wife] be appointed as the sole Trustee of the Trust.

(ii) All the assets of the Maram Trust of whatever nature and wherever located shall vest in [the new trustee] on the trusts set out in the Trust Instrument of the Maram Settlement dated 25 May 1994.

(iii) The in-principle decisions of [the new trustee] to:

(a) change the proper law of the Trust to the Law of Jersey;

(b) add to the class of beneficiaries; and

(c) to re-settle the assets of the Trust on those trusts set out in the Draft Trust Instrument,

be approved.”

The Court's decision

- 15 The Court made the orders sought at (i) and (ii) but declined the orders sought at (iii) (a), (b) and (c).
- 16 As to the appointment of the settlor's ex-wife as the new trustee of the Trust, the Court was entitled under Article 51(2)(a)(ii) of the Law to, if it thinks fit, appoint a trustee of a trust.
- 17 We were told by counsel for the Representor, which we accept, that it is difficult to find a professional trustee in Jersey willing to act as trustee of a relatively small trust (by value) such as this and that the cost of trustee services for a trust of this size would outweigh the benefit of appointing a professional trustee.
- 18 We were furnished with an email from the settlor's ex-wife indicating that she was prepared to act as trustee, and also a letter saying that she was willing to be appointed as trustee and confirming that she had reached an in-principle decision to carry out the steps listed in the Representation at (iii) (a), (b) and (c). Indeed she went further than what is said at (b) and said that she had reached an in-principle decision to “ *alter the beneficial of class to exclude the World Wildlife Fund, and to include [her daughter by her marriage to the settlor] as to capital and income and [the settlor] as to income alone*”.
- 19 The Court had no difficulty in appointing the settlor's ex-wife as trustee of the Trust and in making the order sought at (ii) of the Representation, namely ordering that the assets of the Trust be vested in her.
- 20 However, as to the invitation that the Court should bless the in-principle decisions of the new trustee to change the proper law of the Trust to Jersey law, add to the class of beneficiaries and re-settle the assets of the Trust on new trusts which were shown to the Court, the Court had two difficulties.

- 21 First, this is not the application of the new trustee. She is yet to be appointed. The Court was not provided with any authority to the effect that it would be an appropriate exercise of the Court's discretion to bless a decision to be taken by someone who was not yet trustee.
- 22 Advocate Garrood suggested that the Court's discretion under Article 51 was wide enough to make such an order and he may well be right about that, as the jurisdiction of the Court under Article 51(2) is exceptionally wide. Nonetheless, normally this is the sort of relief the Court would only be prepared to grant on the application of the current trustee.
- 23 The second and more fundamental difficulty is it is clear from the authorities that the Court's jurisdiction to "bless" or "approve" the decisions of trustees is generally only exercised where they can be described as "momentous". As the Royal Court said in the leading decision in *Re S Settlement* [\[2001\] JRC 154](#) at paragraph 11, the Court will frequently be invited to exercise its jurisdiction when: "***The trustee has decided what it wishes to do; there is no question as to its legal power to do so, but, because it can be categorised as a momentous decision, it wishes to seek the blessing of the Court to the course of action which it proposes to take.***"
- 24 We should say, in order to assist the new trustee, that the decisions that she proposes to take appear to the members of the Court to be reasonable.
- 25 But none of them appear to be momentous. Dealing with them each in turn:
- (i) Changing the proper law of the Trust to the law of Jersey. The Representor, the settlor, lives in Jersey. The new trustee lives in Jersey. Their daughter, who will be the principal beneficiary in the future, lives in Jersey. All the assets are in Jersey. The change of proper law to the law of Jersey would appear to be a routine decision in the circumstances. That is not to say that there may not be occasions when a change of proper law could properly be described as momentous – for example, in the context of pending litigation where there is an exclusive jurisdiction clause under the trust; where the law against perpetuities is different in the jurisdiction of the proposed new proper law, and for other reasons.
 - (ii) Adding to the class of beneficiaries. As indicated, the settlor is already an income beneficiary and a decision to add his daughter to the class of beneficiaries is not momentous. There may be circumstances when adding, or indeed excluding, a beneficiary from benefit may be momentous particularly if the beneficiaries disagree with the proposed course of action of the trustee. Nonetheless this is not such a case.
 - (iii) Re-settling the assets of the Trust on the trusts provided for in the draft trust instrument. We were told that the principal reason for this step would be to modernise the Trust. Again, in the context of this case, we do not regard this as a momentous matter. In the event, we would suggest that further attention needs to be paid to the

mode of resettlement. The trust that we were shown was a declaration of trust by the settlor. This would not be appropriate on the facts of this case. The settlor of a new trust would be the new trustee. Furthermore, the terms of the new trust were not consistent with the wish of the new trustee that the settlor be an income beneficiary only. Again, there may be circumstances when a resettlement on new trusts might be momentous but not in this case.

- 26 Counsel for the Representor explained to us that the principal objective of the Representor was to secure the appointment of a new trustee and the Representor felt that in the circumstances it was appropriate to seek a blessing of all decisions that were on the new trustee's agenda. We do not criticise that approach but it is obviously important that trustees are encouraged to take a realistic view of what can be described as "momentous" and what trustees should regard as routine.
- 27 We granted the Representor his costs from the trust fund on the indemnity basis to be taxed on that basis if the new trustee wishes them to be assessed.