

BNP Paribas Jersey Trust Corporation Ltd v A and B and C and D and E and F and G

Jurisdiction:	Jersey
Judge:	J. A. Clyde-Smith, Jurats Nicolle, Ronge
Judgment Date:	12 January 2017
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Text

[2017] JRC 008

ROYAL COURT

(Samedi)

Before:

J. A. Clyde-Smith, Esq., Commissioner and Jurats Nicolle and Ronge

IN THE MATTER OF THE REPRESENTATION OF BNP PARIBAS JERSEY TRUST
CORPORATION LIMITED AS TRUSTEE OF THE PW TRUST

AND IN THE MATTER OF ARTICLE 51 OF THE TRUSTS (JERSEY) LAW 1984

Between
BNP Paribas Jersey Trust Corporation Limited
Representor

and
A
First Respondent

and
B
Second Respondent

and
C
Third respondent

and
D
Fourth Respondent

and
E
Fifth Respondent

and
F
Sixth Respondent

and
G
Seventh Respondent

Advocate J. P. Speck for the Representor.

Authorities

Representation of BNP Paribas [\[2010\] JRC 199](#) .

Representation of BNP Paribas [\[2011\] JRC 213](#) .

Representation of BNP Paribas [\[2012\] JRC 017](#) .

Trusts (Jersey) Law 1984.

Re S Settlement [2001] JLR Note 37 .

Public Trustees v Cooper [\[2001\] WTLR 901](#) .

Representation of Otto Poon Trust [\[2015\] JCA 109](#) .

Re Y Trust [\[2011\] JLR 464](#) .

Lewin on Trusts (19th ed. 2014).

Trust — approval sought from the Court by the representor relating to the representor's decision to distribute the entirety of the trust fund to the settlor.

THE COMMISSIONER:

- 1 On 22nd November, 2016, the Court blessed the decision of the representor to distribute all of the assets of the PW Trust dated 18th December, 2003, ("the Trust") to the first respondent, who is the settlor ("the settlor") and mother of the remaining respondents.
- 2 The Trust is a discretionary trust in familiar form, governed by Jersey law. The beneficiaries comprise the settlor and the remaining respondents. The trust assets comprise substantial credit balances in bank accounts in Singapore held through a wholly owned Jersey incorporated company J Limited.

Background

- 3 The background is set out in the 8th affidavit of H, a director of the representor, which details the previous applications made to this Court and proceedings which have taken place between the beneficiaries in Singapore, to which the representor was a party ("the Singapore proceedings"), but working from that affidavit, and in summary:—
 - (i) The Trust was established in 2003 by the Settlor but in reliance on, and with assistance from her eldest son, the seventh respondent, ("G") The assets settled into the Trust consisted of the accumulated family wealth and the inheritance from the Settlor's husband, who died in 2000 domiciled in Singapore ("the deceased"). G was appointed the Protector under the terms of the Trust. In the Singapore proceedings, G denied having been so involved, but as we shall see, the Singapore Court firmly rejected that assertion (the judgment in the Singapore proceedings at paragraph 22).
 - (ii) By August 2004, G was making complaints regarding the administration of the Trust. These complaints centred on his apparent inability to get funds out of the Trust easily, the limits on his role as Protector, the performance of the portfolio held under the Trust and fees.
 - (iii) By October 2005, it became clear that there was a dispute between G and the rest of the beneficiaries, being his mother and his siblings. G's claim was effectively that the assets settled into the Trust derived from the estate of the deceased and that

under the terms of the will of the deceased, certain testamentary dispositions had not been satisfied. G claimed the Settlor (i.e. his mother) had transferred the assets into the Trust in breach of her duties as executor of her late husband's estate. As dealt with in detail in the Singapore proceedings, these claims flew in the face of the intimate involvement G had in the establishment of the Trust (the judgment in the Singapore proceedings at paragraph 119).

(iv) There followed a long period of discussion and mediation between the family as to the claims over the assets in the Trust, during which time distributions from the Trust were suspended.

(v) By 2010 the mediation had stalled. The claims of G remained however, which created conflicts with his role as Protector and also caused a block on distributions. The representor therefore issued a representation on 10th March, 2010, ("the first representation"), seeking declarations:—

(a) as to the claims made by G as to the origin of the trust assets;

(b) in relation to the role of G as Protector of the Trust in light of the conflict of interest arising between his role as protector and his personal proprietary claim against all or any of the assets settled into the Trust.

(vi) On 28th September, 2010, the Court (the current Bailiff, then Deputy Bailiff presiding) considered the first representation (see the judgment of 4th November, 2010, *Representation of BNP Paribas* [\[2010\] JRC 199](#)). The only beneficiary represented in those proceedings was the Settlor's second son, the sixth respondent ("F"), but his position was adopted by the other beneficiaries, save for G. G did not appear and was not represented, but sent letters making it clear he maintained his claims to the assets in the Trust. The orders made by the Court had the effect of:—

(a) suspending G's powers as Protector (this order having originally been made on 14th June, 2010); and

(b) giving G six months to bring proceedings in Jersey to action his claim over the assets in the Trust, failing which the Trust could be administered free of any such claim.

(vii) Those orders were communicated to all the beneficiaries of the Trust. G did not bring any proceedings as contemplated by the 2010 Orders within the time frame stipulated or, in fact, at all. From May 2011, therefore, the representor was entitled to administer the Trust free and clear of all and any claims which G might have or purport to have (save in his capacity as beneficiary). As such, the representor proceeded to administer the Trust in its full discretion and made distributions accordingly.

(viii) G, through lawyers in Singapore and Jersey did, however, continue to write to the representor, explaining that he maintained his claims over the trust assets and objecting to the representor administering the Trust without impediment and making

distributions. G threatened proceedings in Singapore against the representor and its related company and sought funding from the Trust for that purpose.

(ix) In light of the continued claims by G, on 9th September, 2011, the representor brought a further representation before the Royal court ("the second representation") seeking directions and declarations as to:-

- (a) G's requests for funding of his legal costs;
- (b) the claims of G; and
- (c) the future administration of the Trust (including distribution policy).

To the extent that the representor may have had, or be said to have had, a conflict of interest in light of the potential claims against it or a related company by G, the representor sought to surrender its discretion to the Court.

(x) The representor subsequently received notice from the Singapore lawyers acting for G that a writ of summons was in the process of being issued out of the High court of Singapore by G against the remaining beneficiaries and against the representor, J Limited and a related company of the representor, BNP Paribas Wealth Management Singapore ("BNPP Wealth"). Those proceedings focused on G's claim that the assets in the Trust should fall to be dealt with under the estate of the deceased (under which he was entitled) rather than under the Trust ("the substantive proceedings"). There were also claims made directly against the representor and BNPL that each were aware the funds that were settled into the Trust did not belong to the settlor so that the representor was a constructive trustee or trustee *de son tort* and that distributions made were in breach of those trusts ("the personal claims").

(xi) G also obtained an interim injunction against BNPL requiring it to preserve at least the sum of US\$10,800,000 (later reduced in light of distributions made to G to cover his legal costs) ("the injunction").

(xii) In light of the developments set out above, the representor issued a further representation dated 29th September, 2011, ("the third representation") wherein the representor sought orders, inter alia, that:-

- (a) The Court accepts, if deemed appropriate, the representor's surrender of discretion to it and make such consequential orders or directions as shall be appropriate; and
- (b) The Court give directions as to what action (if any) the representor should take in light of its being cited in the Singapore proceedings (and BNPL also being so cited).

(xiii) The Court considered the third representation on 26th October, 2011, (Commissioner Clyde-Smith presiding) (see the judgment dated 3rd November, 2011, *Representation of BNP Paribas* [\[2011\] JRC 213](#)), at which hearing none of the beneficiaries appeared, but the Court considered correspondence from K & Partners

on behalf of G The Court, having accepted the surrender to it of the representor's discretion, made orders in respect of the Singapore proceedings, effectively directing the representor to seek removal of the personal claims, but to take a neutral stance in respect of the substantive claims.

(xiv) The second representation was considered on 16th January, 2012, (i.e. after the third representation) (the Bailiff, then Deputy Bailiff, presiding), at which point the Court also considered a summons issued by G. In those proceedings, the Court, having accepted the surrender to it of the representor's discretion, provided for funding for G in connection with the Singapore proceedings, on condition that G removed certain claims in the Singapore proceedings concerning distributions made by the representor (see the judgment dated 16th January, 2012, *Representation of BNP Paribas* [\[2012\] JRC 017](#)).

(xv) The Singapore proceedings continued and, on 14th March, 2014, the representor issued a further representation ("the fourth representation") when discovery and inspection of documents had largely been concluded. The representor sought a direction that the representor and BNPL should maintain their stance in the Singapore proceedings on the grounds set out in the answers filed in the Singapore proceedings on their behalf or on such other grounds as it sees fit to the conclusion of the trial or to settlement.

(xvi) On 29th April, 2014, the Court (Commissioner Clyde-Smith presiding) considered the fourth representation and having accepted the surrender to it of the representor's discretion, gave directions to the effect, as with the second representation, that the Trustee should maintain an active role in defending the personal claims and a neutral stance in respect of the substantive claims.

The Singapore proceedings

- 4 The trial of the Singapore proceedings took place over sixteen days in August and September 2015 before the High Court of the Republic of Singapore ("the Singapore Court").
- 5 As a preliminary issue, the defendants in the Singapore proceedings raised a limitation defence (save for the Settlor who reserved her right to rely on the defence of limitation at the main trial). The limitation defence was that all the claims against the relevant defendants, ranging from knowing assistance in the setting up of the Trust, to wrongful transfer of assets to BNPL, and to withdrawals of certain sums of money from several bank accounts, did not accrue within six years prior to the commencement of the Singapore proceedings on 21st September, 2011. On 19th August, 2015, the trial judge in Singapore ruled in favour of the defendants on the limitation issue. The personal claims were thereby disposed of.
- 6 There were further claims against certain of the beneficiaries for wrongful withdrawals of sums of money that were not time-barred, and counsel for those beneficiaries submitted

that there was no case to answer in respect of those claims, G failing to adduce evidence to show that the withdrawals in question were made by the beneficiaries accused of the misconduct and that the withdrawals *per se* were unlawful. The Singapore Court determined that issue in favour of the respective beneficiaries and dismissed G's claims on that aspect on 4th September, 2015.

- 7 The only aspect that remained for the Singapore Court to consider in light of the above was G's claim against the settlor as executrix of the 1996 will of the deceased and as constructive trustee of the assets transferred to BNPL i.e. the substantive claims. The primary complaint in that regard was that G had not received his inheritance from the estate of the deceased as a result of the settlor failing to apply for grant of probate, despite his repeated demands made over the years that she do so, and withholding his inheritance from him. G further asserted that the settlor had taken control over the assets held in several jointly-held bank accounts as her own to set up the Trust.
- 8 The Singapore Court published its judgment on 1st June, 2016, (citation [\[2016\] SGHC 109](#)) ("the Singapore judgment"). As set out in the Singapore judgment, the Singapore Court dismissed G's claim in its entirety. The Singapore Court considered the evidence presented and heard live evidence from the settlor and G as well as representatives of BNPP Wealth who had been involved in the establishment of the Trust. The Singapore Court concluded (paragraphs 119 of the Singapore judgment) that G had been closely involved in the establishment of the Trust and indeed had been the primary instigator of the Trust, persuading his mother to settle the assets into the Trust. The Court found that G's evidence was contradictory in many places and his disassociation in relation to the establishment of the Trust was simply untrue (paragraphs 42 and 47 of the Singapore judgment).
- 9 A notice of appeal was filed on behalf of G on 2nd July, 2016; however, the obligation to file further paperwork in relation to the appeal was not met, so the appeal was deemed to have been withdrawn.
- 10 The representor understood that G may seek to recommence the appeal. The representor had been advised that there is limited prospect of G being allowed to continue with his appeal in light of the previous failure to meet the necessary court deadlines. However, the basis of G's application remained unclear, and further, the Singapore Court has not yet considered any such application. There was also the issue of the injunction, which remained live and which the representor would need to instruct its lawyers in Singapore to apply to withdraw in order that a full distribution may be made in due course.

Trustee's decision

- 11 Subject to the issue of the appeal in Singapore and the injunction, the representor considered that the Trust should now be distributed in its entirety to the Settlor in order that

she can consider appropriate distributions to make amongst her children. The settlor is elderly and has undergone (alongside her other children) over ten years of a bitter dispute with her son. Her son's claims have been demonstrated to lack any merit, and in fact it has been demonstrated that he was the instigator of the very trust he had sought to attack.

- 12 The distribution proposed would also have tax advantages for those beneficiaries resident in Indonesia in light of an Indonesian Tax Amnesty; we refer to this in more detail below.
- 13 The proposals for onward distribution would result in benefit for the beneficiaries, although it was expected that G would be the only one of the beneficiaries who does not receive any benefit directly from the Trust. G is a man of expertise and business acumen, having assisted in building up the assets which were ultimately settled into the Trust by way of investments. He was understood by the representor to reside in an apartment that is funded outside of the Trust and had not sought to rely on the Trust for financial reliance, save in respect of legal costs. In addition to the requests for funding of legal costs by the Trust, it was assumed that he had also funded costs from private sources. The representor did not understand G to be in particular need of funding from the Trust. Further, the representor had a likely costs claim against G in light of the Singapore proceedings and the settlor had requested the representor to consider waiving any such claim, which would itself present a significant benefit to G. The quantum of that costs claim had not yet been finally calculated, but in excess of USD\$750,000 has been paid to the Singapore lawyers by the representor and so it is significant. A final decision on that aspect awaits the outcome of the ongoing appeal question.

The Law

- 14 This application was brought under Article 51 of the Trusts (Jersey) Law 1984 ("the Law") and the representor sought the Court's approval of its proposed decision.
- 15 In the case of *Re S Settlement* [2001] JLR Note 37 (which is the authority for the application in Jersey of the principles enunciated in the decision of the English High Court in *Public Trustees v Cooper* [2001] WTLR 901), the Court set out a non-exhaustive list of categories where it would be proper for a trustee to invoke the jurisdiction of this Court. This case falls within the second category listed in *Re S*, described as:—

"The second category is where the issue is whether the proposed course of action is a proper exercise of the trustees' powers where there is no real doubt as to the nature of the trustees' powers and the trustees have decided how they want to exercise them but, because the decision is particularly momentous, the trustees wish to obtain the blessing of the court for the action on which they have resolved and which is within their powers. Obvious examples of that which are very familiar in the Chancery Division are a decision by the trustees to sell a family estate or to sell a controlling holding in a family company. In such circumstances there is no doubt

at all as to the extent of the trustees' powers nor is there any doubt as to what the trustees want to do, but they think it prudent and the court will give them their costs of doing so, to obtain the court's blessing on a momentous decision. In a case like that there is no question of surrender of discretion and indeed it is most unlikely that the court will be persuaded in the absence of special circumstances to accept the surrender of discretion on a question of that sort, where the trustees are *prima facie* in a much better position than the court to know what is in the best interests of the beneficiaries."

- 16 As further set out in *Re S*, the questions the Court need to ask itself when considering the second category are as follows:–

"1. Are we persuaded that the Trustee has in fact formed the opinion in good faith that the circumstances of the case render it desirable and proper for it to carry out each of the steps we have described earlier in this judgment?"

2. Are we satisfied that the opinion which the Trustee has formed is one at which a reasonable Trustee properly instructed could have arrived?"

3. Are we satisfied that the opinion at which the Trustee has arrived has not been vitiated by any actual or potential conflict of interest which has or might have affected its decision?"

- 17 When a court is deciding whether or not to bless a **"momentous"** decision the court is not exercising its own discretion. The consideration is whether the decision falls within the range of decisions that a trustee, properly exercising its powers, is entitled to make (even if the Court would balance the factors differently and might have reached a different decision).

- 18 The principles were considered and reconfirmed by the Jersey Court of Appeal in *Representation of Otto Poon Trust* [\[2015\] JCA 109](#) (paragraphs 14–23). As set out in that case:–

"18 When the court is to give approval for a momentous decision the court needs to be satisfied as to the rationality of the decision; the lengths to which the court must go in examining the process by which the trustee arrived at the decision must depend upon the particular decision. In some cases the decision may be a difficult and doubtful one, requiring fine judgment in the face of competing considerations; in others the decision may be obvious. In the former cases the quality of the decision-making process will be more important than the latter. For that reason, we do not consider that the additional requirement for which Madam Kan contends should be introduced to the law of this jurisdiction, even if it were to be adopted in England .

19 That is not to suggest that the court should take a lax approach, or that it should approve any trustee's applications without due consideration. There is a threshold that must be crossed: the court is required properly to scrutinise the proposed exercise of the trustees' power on the evidence. As was pointed out in *Re Y Trust* [2011] JLR 464 (citing with approval *Lewin on Trusts (18th ed.)*), at paragraph 29–299 (a similar approach is taken in Guernsey: *see Re The Trusts (Guernsey) Law 2007 and (AAA) Children's Trust, Royal Court, 8th January 2014 [2015] WTLR 683*) **the result of the court giving its approval is that the beneficiaries will be unable thereafter to complain that the exercise is a breach of trust, or to set it aside as flawed.** Furthermore, when trustees are seeking approval for a decision they have already reached, the beneficiaries are unlikely to have the same advantages of cross-examination or disclosure of the trustees' deliberations as they would have in proceedings to challenge the exercise of the power once made. For that reason, the trustees should put before the court all relevant considerations (supported by evidence) and they should explain their reasons for reaching the decision, even though they are not otherwise obliged to make such disclosure to the beneficiaries. But the process by which the trustees satisfy the court that the legal test has been met should not be confused with the substance of the test itself. Furthermore, each case will need to be decided on its own facts, and the degree of detail that is required from a trustee cannot be uniform in all circumstances. In some cases, a trustee's decision may come out of the blue, and if so it may require both the beneficiaries and the court to be given the background and the context in considerable detail: in other cases, such as this, a trustee's decision may emerge from a situation that is well known to the interested parties, and that is likely to have an impact on the degree of detail required from the trustee by the court.”

- 19 The case of *Re Y Trust* [2011] JLR 464 referred to above, concerned distributions from a trust and the Court held in that case;—

“Although other trustee, or indeed the court, might have exercised the trustee's powers differently — by making a distribution to B's children exclusively from his notional 50% share — the trustee's decision to allocate more than that could not be said to have been beyond the limits of rationality. A distribution to the settlor's grandchildren would not have been contrary to her wishes. The trustee had treated A in a regrettable and high-handed manner in that, having previously involved him and his advisers in discussions concerning the notional 50/50 division, it had made its final decision in respect of the division of the trust fund without informing them. The court had, however, to bear in mind two legal principles which applied to the administration of discretionary trusts. First, a trustee could not fetter the future exercise of its discretion. The 50/50 division of the trust assets contemplated in its earlier meetings had therefore been merely notional and had no legal effect.

The trustee had been required to make its decision in December 2009 in the circumstances as they had existed at the time, properly informed and having regard to but not fettered by its previous thinking, which was what it did. Secondly, the rules of natural justice in the traditional sense **did not apply to trusts**. As a beneficiary of a discretionary trust, A had not been entitled to a hearing from the trustee or to have been consulted before it made the December 2009 decision. Furthermore, whether or not a beneficiary could in certain circumstances have a legitimate expectation as to benefit from a trust so that a trustee would act unreasonably if it failed to give him an opportunity to persuade it against a particular course of conduct, A had no such legitimate expectation. Nothing had been said to him that was contractual in nature and he had not relied to his detriment on his expectation of a notional 50% interest in the trust fund. The key issue was not the expectation of A as a beneficiary but the information that had been available to the trustee at the time it made the decision. By not consulting A, the trustee had taken the serious risk that, had he been consulted, he might have provided information that would or might have led to it acting otherwise than it did. A was, however, unable to point to any such information.”

20 Lewin on Trusts (19th ed. 2014) describes the function of the Court at paragraph 27–079 as follows:–

“The court's function where there is no surrender of discretion is a limited one. It is concerned to see that the proposed exercise of the trustees' powers is lawful and within the power and that it does not infringe the trustees' duty to act as ordinary, reasonable and prudent trustees might act, ignoring irrelevant, improper or irrational factors; but it requires only to be satisfied that the trustees can properly form the view that the proposed transaction is for the benefit of beneficiaries or the trust estate, that the proposed exercise of their powers is untainted by any collateral purpose such as might amount to a fraud on the power, and that they have in fact formed that view. In other words, once it appears that the proposed exercise is within the terms of the power, the court is concerned with limits of rationality and honesty; it does not withhold approval merely because it would not itself have exercised the power in the way proposed.”

Submissions of the representor

21 Of the three requirements of the *Re S* test, Advocate Speck said there was no question in this case that the decision of the representor is in bad faith or vitiated by any actual or potential conflict. The personal claims against the representor have now been disposed of. As a result of the Singapore judgment, the representor is free to administer the Trust free and clear of any claim that G had claimed he has over the assets in the Trust.

22 As such, it is the second limb of the test which is of relevance here, namely whether the

decision was one which reasonable trustees, properly instructed, could have arrived at, and this test needed to be considered with reference to the limitations referred to above.

- 23 The proposed distribution to the settlor would ultimately result in distributions out to the beneficiaries (save for G) and, in light of the Indonesian Tax Amnesty, this will be done in a manner which is tax efficient and will result in an overall tax saving.

Submissions of G

- 24 G had been given notice of the application of the representor and its intention to distribute the trust fund to the settlor. He filed an affidavit with the Court dated 11th November, 2016, in which he questioned the scope of the Indonesian Tax Amnesty, described the application as premature, repeated many of the allegations in the Singapore proceedings and sought further funding for his application to reinstate his appeal, which had otherwise lapsed. He opposed the application.
- 25 Apart from stating that he had limited funds, he gave no details of his financial position, and made no comment on his effective exclusion from the trust fund should it be distributed to the settlor, other than to complain that he had not received his share of his father's estate. He deposed that if the assets were distributed to the settlor, the beneficiaries would have a problem in apportioning the tax payable as between them. They would be placed in an impossible position and might even face being investigated for tax evasion. He talked in terms of penalties of 200%. He said, in brief, that income of the Trust assets would be taxed at 90% and for persons like himself, with little money left, he would almost certainly go to jail, which was unfair and unjust when he had not received his share of his father's estate. There was no relevant advice to support these contentions.
- 26 He said he had already filed his Tax Amnesty declaration on 22nd September, 2016, due to his entitlement to certain inherited properties in Indonesia, even though he was not considered tax resident there. To the best of the representor's knowledge, he is resident in Singapore, as is the settlor. It would seem that three of the remaining beneficiaries are tax resident in Indonesia.
- 27 BNP, in contrast, had obtained general advice on the Indonesian Tax Amnesty from an Indonesian firm of lawyers, Assegaf Hamzah & Partners, which was exhibited to the affidavit of H, and which confirms that the Indonesian resident beneficiaries can benefit from the Amnesty for which declarations are required before 31st December, 2016. If they do so, the following (apparently substantial) advantages would flow:—

“ a. Waivers of tax due, tax administrative sanctions, and tax crime sanctions for all tax obligations for fiscal periods up to 31 December 2015 for which no tax assessments have been issued.

b. Waivers of administrative sanctions in the form of interest and fines for fiscal periods up to 31 December 2015.

c. Exemption from a tax audit, preliminary evidence tax audit, and tax crime investigation for all tax obligations for fiscal periods up to 31 December 2015.

d. Discontinuation of any ongoing tax audit, preliminary evidence tax audit, and tax crime investigation for all tax obligations for fiscal periods up to 31 December 2015.”

Decision

- 28 The representor was not in a position to assess the impact of Indonesian taxation on any of the beneficiaries resident there, but with a distribution to the settlor, they should be in a position to meet any tax due. All the beneficiaries, other than G, had made it clear that they did not want the Trust any more, that they supported the distribution of all of the trust fund to the settlor and that they wished to regularise their own individual tax positions. They are all adult, and had participated in the Singapore proceedings; they were well able, therefore, to take their own advice and to assess what was in their own individual financial interests.
- 29 The beneficiaries have all been consulted on the proposals (differentiating it from *Re Y* as referred to above, wherein lack of consultation was clearly a concern for the Court), and are in agreement and support of it, save for G.
- 30 The only possibly contentious aspect of the decision was the likely exclusion of G. However, in that regard:—
- (i) G had in fact benefited historically, by way of payment of his legal fees to the total sum of S\$516,750.96;
 - (ii) It was further proposed that G may benefit by way of the representor waiving any right to claim legal costs against him and those costs may be significant; and
 - (iii) Whilst the information available to the representor was limited in light of lack of contact with G, his previous business experience and expertise suggested that he has sufficient wherewithal to fund himself outside of the Trust, and indeed he appears to have done so for a number of years.
- 31 Ultimately, the Singapore proceedings were concluded, thereby bringing to an end the claims of G that have held the Trust hostage for in excess of ten years. The settlor is elderly and wishes to see her children (save for G in light of his actions) benefit from the Trust now that that is a possibility. There is an incentive to do so on a tax efficient basis prior to the end of December 2016.

- 32 The decision of the Singapore Court constitutes a damning indictment of G. He has subjected his family to a dispute and litigation for over ten years over claims that have been found to have no credibility at all, causing significant cost both financially and emotionally on the part of his mother and siblings. It is understandable, therefore, that they did not wish him to share in the trust fund, although he will be released from what may be a potentially large cost burden arising out of the Singapore proceedings.
- 33 Ordinarily, one might expect the representor, as Trustee, to exercise its discretion over how the trust fund should be divided between the members of the family, but the family were united (other than G) in wanting to bring the Trust to an end and in wanting all of the trust fund to be distributed to the settlor and for her to fulfil her traditional role over the family patrimony; a role which the representor did not feel it appropriate to usurp.
- 34 G had disrupted the administration of this Trust for long enough, and in the Court's view, his affidavit was an attempt to disrupt it further for the ulterior purpose of pursuing meritless claims.
- 35 It was clear that the representor had taken all reasonable advice and considered carefully the views of all of the beneficiaries before reaching its decision, and that it was reasonable for it to give effect to the wishes of all but one of the beneficiaries. It had acted in good faith and its decision had not been vitiated by any conflict. The test set out in *Re S* had therefore been met.
- 36 Accordingly, we approved the representor's decision to distribute the entirety of the trust fund to the settlor, subject to appropriate indemnities and security. There will be restrictions on the ability of the representor to implement that decision in full, in the light of the injunction and the potential application to renew G's appeal, if made. The lifting of the injunction would, of course, be a process which will involve G.