

The Representation of Mr F and And The Representation of The A Settlement

Jurisdiction:	Jersey
Judge:	Deputy Bailiff
Judgment Date:	17 March 2016
Neutral Citation:	[2016] JRC 65
Reported In:	[2016] JRC 65
Court:	Royal Court
Date:	17 March 2016

vLex Document Id: VLEX-792825893

Link: <https://justis.vlex.com/vid/the-representation-of-mr-792825893>

Text

[2016] JRC 65

ROYAL COURT

(Samedi)

Before:

T. J. Le Cocq, **Esq.**, Deputy Bailiff, **and** Jurats Nicolle **and** Sparrow

IN THE MATTER OF THE REPRESENTATION OF MR F
AND IN THE MATTER OF THE REPRESENTATION OF THE A SETTLEMENT

Advocate M. H. D. Taylor for the Representor.

Authorities

Trusts (Jersey) Law 1984.

Settlement — reasons relating to appointment of new trustees.

Deputy Bailiff

The

- 1 On 21st December, 2015, the Court made an order appointing certain persons as trustees of the A Settlement (“the Settlement”). These, in brief, are our reasons.
- 2 The application to the Court was made by Mr F (“the Representor”) who describes himself as the “*economic settlor*” of the settlement. The settlement was created in 1996 by an Isle of Man resident settlor named Mr M. Mr M cannot now be traced.
- 3 The settlement was initially governed by the laws of the Republic of Ireland which is also the Representor's place of residence and indeed is the place of residence of the named beneficiaries of the trust who we shall mention hereunder.
- 4 Mr M created the settlement by deed dated 25th January, 1996, with A Investments Limited which is a company itself incorporated in the Republic of Ireland. A was, accordingly, the original trustee of the settlement.
- 5 The trust assets comprise real property in the Republic of Ireland.
- 6 The original beneficiaries of the trust were the RCS of Geneva and any person or object or class of persons or objects added by the trustee in the exercise of the power at clause 4 of the settlement. By deed of appointment A as original trustee appointed OTT on 9th December, 1997, as a new trustee. OTT was a Jersey company. The proper law of the settlement was changed to Jersey law by a deed dated 10th March, 1998, pursuant to clause 2(ii) of the settlement and the proper law has remained that of Jersey since that time. By Deed of Appointment of Protector and Variation dated 13th May, 1998, OTT appointed Mr D as protector of the settlement and varied the terms of the settlement to provide, amongst other things, that the exercise of the power to appoint a new trustee could be exercisable only with the prior or simultaneous written consent of a protector.
- 7 In 2001 OTT, pursuant to clause 4(ii) of the settlement and with the consent of the protector, appointed the representor's children, F1, F2, F3 and F4 to the class of beneficiaries of the settlement.

- 8 In December 2003 OTT merged with ATC a Jersey based trust company. ATC was wound up summarily and dissolved on 21st December, 2012. Prior to that dissolution, BTC had taken over part of ATC's business. However the settlement was not transferred to BTC and although enquiries have been made of BTC about the existence of trust files, these have been unsuccessful.
- 9 By a resolution dated 8th February, 2001, A had confirmed that it held the assets of the settlement for the trustee of the settlement. By deed of appointment dated 14th July, 2010, and executed (pursuant to clause 3B of the Deed) Mr D appointed Mr J to be the protector of the settlement. Mr J is the present protector.
- 10 The original trust documentation is missing but the Court has received copies exhibited to the affidavit of the representor.
- 11 The position accordingly is that *prima facie* there is a settlement governed by Jersey law with valuable property but no identifiable trustee. The representor asks the Court to appoint Mr C and Mr B as the new trustees of the settlement. Both Mr C and Mr B are residents of the Republic of Ireland and we note from the information provided concerning them suggests that they are well qualified to act as trustees of a settlement of this nature holding as it does real property in the Republic of Ireland. Information has been given to the Court concerning the experience of the proposed trustees in the second affidavit of Carl Hayes who is the representor's legal adviser.
- 12 On 20th November, 2015, this representation was first presented before the Royal Court and the service was ordered on Her Majesty's Attorney General in the light of the charitable interests identified in the trust deed. The Attorney General wrote to the representor's legal advisers in a letter of 30th November, 2015, indicating that he did not think it necessary to be represented at the hearing of this representation and had no observations to make to the Court.
- 13 Similarly the Court has seen the consent of the current protector, Mr J of 11th September, 2015, consenting to the appointment of Mr C and Mr B as trustees of the A Settlement. The Court has seen letters from each of those latter individuals consenting to that appointment. Finally the Court has been shown letters from the four named beneficiaries, the children of the representor, mentioned above also consenting to the application.
- 14 It is clear that there is no one presently available who has the power to appoint a trustee of the settlement.
- 15 Articles 5(a), (b) and (d) of the Trusts (Jersey) Law 1984 ("the 1984 Law") provide as follows:-

“5. Jurisdiction of Court

The Court has jurisdiction where –

(a) the trust is a Jersey trust;

(b) a trustee of a foreign trust is resident in Jersey;

...

(d) administration of any trust property of a foreign trust is carried on in Jersey.”

- 16 It is apparent that Article 5(a) is relevant and possibly also Articles 5(b) and (d) because whereas the trustee no longer exists and the trust has not in effect been administered for some time the last residence of the trustee was in Jersey and the trust was administered here. It seems to us that as a matter of principle the Court should be prepared to accept jurisdiction. However we do not need to consider that aspect further as in our view Article 5(a) clearly applies.
- 17 The application before us was made under Article 51(3) of the 1984 Law. We are satisfied on the information before us that the representor is, as he describes himself, the “*economic settlor*” of the trust and we believe that he has demonstrated sufficient interest to make the representation and accordingly we grant leave for him to do so.
- 18 The trust deed cannot be found. We are satisfied, however, on the copy documentation exhibited to us that it was validly executed and that a trust in the terms set out above does exist. We are satisfied on the evidence before us that a sufficiently diligent search has been made and the necessary individuals consulted. We note that the draft Deed of Appointment and Retirement of Trustees executed in 2009 was prepared by ATC and it seems to us to be highly improbable that ATC would have been in a position to prepare such a deed had the original trust deed not been executed. As OTT had been appointed in 1987 at around the time that the proper law was changed to the law of Jersey it seems entirely logical to the Court that the proper law was changed to the law of the trustee as being in the interests of the beneficiaries.
- 19 Under clause 11(i) of the copy trust instrument the power of appointing new or additional trustees is vested with the trustee for the time being or the liquidator of the last surviving trustee. There is no liquidator in office for ATC. By clause 11(x) of the deed the settlor could himself appoint new trustees but, as we have mentioned above, Mr M cannot now be traced.
- 20 It seems to the Court that it is entirely appropriate that the Court exercises its jurisdiction to appoint new trustees. We are satisfied that the individuals named, specifically Mr C and Mr B, are appropriate persons to appoint as trustees and we accordingly made the

appointment.

- 21 We delayed the effective date of our order so that notice could be given to the Jersey Financial Services Commission of the application. The representor's legal adviser did inform us in submissions that the JFSC had had an interest in ATC but, was unable to confirm to us that the JFSC was aware of this application. Accordingly we thought it appropriate to direct that this representation, whilst granted, would be subject to a delay so that the JFSC could take whatever steps if any it believed appropriate.