Jtc Trustees Ltd v C

Jurisdiction:	Jersey
Judge:	Pitman, Jurats Blampied, Sir Michael Birt, Birt
Judgment Date:	25 January 2021
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Text

[2021] JRC 19

ROYAL COURT

(Samedi)

Before:

Sir Michael Birt, Commissioner, and Jurats Blampied and Pitman

In the Matter of the A Trust and the B Trust

Between
(1) JTC Trustees Limited
(2) Pen Fiduciary Services Limited
Representors
and
(1) C
(2) D
(3) E

(4) F
(5) G
(6) I
(7) J
(8) K
(9) L
(10) M
(11) N
(12) O
(13) Advocate S. Franckel as Representative of the Minor and unborn Beneficiaries of the A and B Trusts
(14) The adult children of the First and Second Respondents.
Respondents

Advocate E. Moran **for the Representors**.

Advocate S. A. Franckel **in person**.

Authorities

In the matter of the A and B Trusts [2019] JRC 221B.

In the matter of the A Trust [2012] JRC 066.

Trusts (Jersey) Law 1984.

In Re HHH Employee Trust 2012 (2) JLR 64.

Royal Court Rules 4/4.

V v Minister for Health & Social Services 2014 (2) JLR 42.

Trusts — reasons for the Court's blessing of a momentous decision

THE COMMISSIONER:

1 This judgment arises out of an application by the Representors as trustees of the A Trust and the B Trust (together "the Trusts") for the Court's blessing of their decision to enter into a settlement agreement ("the Settlement Agreement") in respect of certain claims against the Trusts. At the same time, Advocate Franckel has applied for the Court's blessing of his decision also to enter into the Settlement Agreement as representative of the minor and unborn beneficiaries of the Trusts.

2 We have given our blessing both to the Representors and to Advocate Franckel and have set out our reasons in a separate judgment which will not be published. However, we are

giving this judgment for publication on the short point of the Court's jurisdiction to bless Advocate Franckel's decision, as it appears that this issue has not been considered previously.

Background

3 The background to the proceedings in question is to be found in the previous judgment of this Court dated 13 th November 2019, *In the matter of the A and B Trusts* [2019] JRC 221B. In summary the background is as follows.

4 Both Trusts were established by Mr and Mrs H as settlors when they were living in Guernsey. They have four children, namely the First to Fourth Respondents ("the siblings").

5 The B Trust was established on 11 th December 1996 and is governed by the law of Guernsey. It is a discretionary trust in fairly standard form. The class of beneficiaries comprises the children and remoter issue of the settlors together with their spouses. The Representors are the current trustees of the B Trust. The protector is R & H Trust Co (Jersey) Limited.

6 The A Trust was established on 12 th December 1996 and is governed by Jersey law. The settlors were the life tenants. Following the death of the survivor, there are discretionary trusts. These were initially in favour of charities generally but, on 12 th September 2007, following the death of the last surviving settlor in November 2005, the siblings were added as beneficiaries. The Second Representor is the sole trustee of the A Trust. The protector is again R & H Trust Co (Jersey) Limited.

7 On 26 th March 2012, *In the matter of the A Trust* [2012] JRC 066, following a contested hearing, this Court approved the decision of the then trustee to add the remoter issue of the settlors as beneficiaries of the A Trust. It follows that the beneficiaries of the Trusts are now the same, save that the spouses of the siblings and remoter issue of the settlors are not beneficiaries of the A Trust whereas they are beneficiaries of the B Trust.

8 Mr H died in Guernsey on 13 th July 2003. In his Will he left all his moveable estate to Mrs H. Mrs H died in Guernsey on 12 th November 2005. Under her Will, Mrs H left the disposable portion of her moveable estate (50%) to the A Trust. In 2008, the then trustee of the A Trust disclaimed its interest in Mrs H's estate in order to benefit the siblings in a tax efficient manner.

9 Subsequently, in 2012, the Royal Court of Guernsey revoked the previous Grants of Probate for both estates and new Grants of Probate were made to the siblings.

10 During the course of the application to widen the class of beneficiaries of the A Trust referred to above, the siblings raised the possibility that some of the assets of the A Trust were not validly settled due to Mr H's lack of mental capacity.

11 In the absence of confirmation from the siblings that they were waiving any such claims, the then trustees issued a representation seeking a declaration that all of the assets in the Trusts had been properly settled. In a judgment dated 23 rd June 2015 (unpublished), the Court ordered that any beneficiary who proposed to contend that any transfer to either of the Trusts was invalid must file Particulars of Claim setting out the exact nature and grounds of the challenge within a specified period.

12 The Third and Fourth Respondents, with the support of the Fifth to Twelfth Respondents (being the adult children of the Third and Fourth Respondents and their spouses), filed Particulars of Claim on 7 th October 2015 on behalf of the estates of the settlors. Five specified transfers of assets to one or other of the Trusts were challenged. We do not think it necessary for the purposes of this judgment to go into detail concerning those challenges.

13 On 30 th November 2015 this Court decided that Advocate Franckel, acting for the minor and unborn beneficiaries, should defend the transfers to the Trusts, with the trustees remaining neutral. Since then pleadings have been completed and discovery has taken place.

14 In early 2019, the outline of a settlement was reached whereby a sum of £7.5m inclusive of costs would be paid by the Trusts to the estates of the settlors. However, there were a number of matters where further negotiations were required in order to finalise the settlement. It was in those circumstances that the then trustees applied to this Court for a Benjamin order and this was the subject of the 2019 judgment. In summary, for the reasons set out in that judgment, the Court directed that the trustees of the A Trust should retain £5 million in cash or liquid investments, but could administer the balance of the A Trust as if free of claims. Similarly the trustees of the B Trust were directed to retain a minimum of £2.5 million in cash or liquid investments but, subject to that, were free to administer the remaining assets of the B Trust as if free of claims.

15 We should add that the First and Second Respondents, together with the Fourteenth Respondents (their adult children and the spouses of such adult children) have maintained a neutral stance in relation to the claims brought against the Trusts.

Discussion

16 As set out at paragraph 13 above, Advocate Franckel's role in the present proceedings has been unusual. Because all the beneficiaries were either attacking the dispositions to the Trusts or were expressly staying neutral, the Court directed Advocate Franckel to take the

lead in defending the interests of the Trusts against the claims on behalf of the estates. This would not of course be a role normally undertaken by an appointed representative of minor and unborn beneficiaries of a trust. Advocate Franckel has therefore played an active role in conducting the defence and played a leading role in negotiating the terms of the Settlement Agreement.

17 It is in those circumstances that, unusually for a representative, he seeks the blessing of the Court for his decision to enter into the Settlement Agreement.

18 In our judgment, the Court has inherent jurisdiction to bless a momentous decision of an appointed representative of minor, unborn or unascertained beneficiaries of a trust, if it thinks fit. We would summarise our reasons for so concluding as follows:-

(i) The Court's inherent jurisdiction to supervise and, where appropriate, intervene in the administrations of trusts is a wide one as is its jurisdiction under Article 51 of the Trusts (Jersey) Law 1984. It extends not only to trustees, but also to other persons such as protectors or settlors (to the extent that the latter have fiduciary powers) – see *In Re HHH Employee Trust* 2012 (2) JLR 64.

(ii) Advocate Franckel was appointed by the Court pursuant to Royal Court Rules (RCR) 4/4 to represent the interests of the minor and unborn beneficiaries of the Trusts. He owes fiduciary duties to such beneficiaries as a result of such appointment and must act solely in their best interests. It is entirely reasonable that a person appointed by the Court to undertake fiduciary duties in such circumstances should be able to seek the Court's blessing where appropriate in the same way as trustees can.

(iii) There is an analogy with the position outside the field of trusts. It is well established that, where a minor brings a civil claim – for example, a personal injury claim – the guardian ad litem of such minor is able to seek the Court's approval to any settlement of the claim which the guardian proposes to enter into – see for example *V v Minister for Health & Social Services* 2014 (2) JLR 42. This can be regarded as part of the Court's inherent jurisdiction to protect the welfare of minors. As the Court said in *V*, it has the additional benefit of ensuring that settlements are reached in the best interests of the minor and also provides a finality in protection to the guardian, in that it prevents a minor from bringing a claim against the guardian upon reaching majority (possibly many years later) on the basis that the settlement was somehow inadequate. These considerations may be thought to be equally applicable to a representative appointed under RCR 4/4 to represent the interests of minor or unborn beneficiaries in relation to a trust.

(iv) There is a further analogy in the case of a delegate appointed under the Capacity and Self-Determination (Jersey) Law 2016 (“the 2016 Law”) to manage the property and affairs of a person lacking mental capacity. Although there is no specific mention of such a jurisdiction in the 2016 Law, it was held in *Re A* [2018] JRC 225 that the Court has jurisdiction to bless a momentous decision by a delegate (such as to settle litigation brought on behalf of the person lacking mental capacity). As in (iii) above,

this is an example of the Court safeguarding the interests of those lacking capacity (whether as minors or as those lacking mental capacity), but at the same time seeking to assist those charged with responsibility for taking major decisions on behalf of such persons.

19 Accordingly, we hold that the Court has inherent jurisdiction to bless a momentous decision of a person appointed as representative of minor and unborn beneficiaries of a trust. The approach of the Court should be the same as when considering momentous decisions by trustees. Thus the Court must satisfy itself that (i) the representative has made the decision in good faith; (ii) the decision is one a reasonable representative, properly instructed, could have made; and (iii) the decision has not been vitiated by any actual or potential conflict of interest.

20 However, we wish to emphasise that it will only rarely be necessary for such a representative to seek the Court's blessing or, if he does, for the Court to give it. In most circumstances, the role of a representative is to consider a proposed decision by a trustee and to make submissions in relation to it. If the Court approves the trustee's decision, that decision becomes by definition a reasonable decision and does not amount to a breach of trust. It is difficult in those circumstances to see how a minor beneficiary could, once an adult, have any claim against his or her representative or how such a decision on the part of a representative could be said to be momentous. Accordingly, we would not expect a representative to seek the Court's blessing to his decision in many circumstances and, if he did, we would expect the Court often to refuse any such application as being unnecessary and merely duplicating the blessing of the trustee's decision.

21 However, the circumstances of the present case are unusual. As explained above, Advocate Franckel was directed by the Court to take the lead in defending the Trusts, with the trustees remaining neutral. It was therefore very much his decision to compromise the claims on the terms of the Settlement Agreement and it is the reasonableness of that decision which is at issue. It is properly to be categorised as a momentous decision. Accordingly, we accepted his application as being reasonably brought and, having considered the merits of the Settlement Agreement, agreed that it was entirely reasonable on his part to enter into it on behalf of the minor and unborn beneficiaries. In the circumstances we granted our blessing to his decision.