

IMK Trust

Jurisdiction:	Jersey
Judge:	The Deputy Bailiff
Judgment Date:	15 August 2008
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Text

[2008] JRC 137

ROYAL COURT

(Samedi Division)

Before:

M.C. St. J. Birt, **Esq.**, Deputy Bailiff, **and** Jurats Le Brocq **and** Liddiard.

In the Matter of the Imk Family Trust

Between
Aaliya Mubarak
Representor
and
Iqbal Mubarak
First Respondent
Salem Mubarak and Noor Mubarak
Second Respondent

Advocate M. P. Renouf (as guardian ad litem of the minor beneficiaries Osman Mubarak and Hamza Mubarak and representative of the unborn or unascertained beneficiaries)

Third Respondent

The Craven Trust Company Limited

Fourth Respondent

Advocate C. G. P. Lakeman for the Representor.

The First Respondent did not appear and was not represented.

The Second Respondents did not appear and were not represented.

Advocate M. P. Renouf in person.

Advocate J. M. P. Gleeson for the Fourth Respondent.

Authorities

Re Moritz [\[1960\] Ch 251](#).

Re L&M Trusts [2003] JLR N6.

REASONS FOR DECISION TO EXCLUDE EMPLOYEE OF ADVOCATE BEGG.

The Deputy Bailiff

- 1 I understand that the first respondent ("the husband") is seeking to appeal against my decision to exclude Ms Lisa Revell (an employee of Advocate Begg's firm) from the proceedings on 15th April 2008. In the circumstances, I think it right to explain briefly the reasons for my decision. I refer to 'my' decision because, being a procedural matter, I take full responsibility for it. It was not a decision for the Jurats.
- 2 Advocate Begg represents the husband. However we were informed shortly before the commencement of the hearing in April that he had been instructed by the husband not to attend. He did not do so. However, Miss Revell attended to observe the proceedings. She took notes and no doubt informed Advocate Begg of what was happening at the hearing.
- 3 On 15th April, Mr Kevin Mawer of KPMG was called to give evidence by Advocate Lakeman on behalf of the wife. The main topic of his evidence was to explain exactly what steps KPMG would take to unlock liquidity from the group structure if the Court were to vary the Trust and appoint KPMG to achieve this objective.
- 4 After Mr Mawer had been in the witness box for a while, Advocate Lakeman suddenly

realised that Ms Revell was present in court and drew it to my attention. I ordered that she should leave and that she should not communicate to Advocate Begg anything she had heard during that day, including discussions between counsel. I also ordered that her notebook should be retained by the Greffier.

- 5 My reasons for so doing were that, insofar as the evidence of Mr Mawer was concerned, the husband was a party with an adverse interest. The whole object of the steps outlined by Mr Mawer (i.e. to obtain provisional liquidation in Hong Kong and possibly elsewhere) would be to raise funds from the Group in circumstances where the husband had refused to pay anything to the wife under the English order for several years. I took the view that to alert the husband to the detailed steps which were proposed would run the risk of rendering those steps nugatory or at least less effective.
- 6 It is common in this jurisdiction (and I believe in the English Chancery Division) for a party with an adverse interest to be excluded from some or all of the hearing of an administrative action concerning trusts. A classic example is where the trustee seeks authority from the Court to take legal action against a beneficiary. That beneficiary is convened to the hearing but usually receives redacted versions of the affidavits and other material put before the Court and is excluded from the hearing when the trustee needs to explain to the court matters which need to be kept confidential from that beneficiary (e.g. the strength of the case against him). This is an obvious example but there are many other instances where the Court takes the view that the interests of justice require a particular beneficiary to be excluded from some or all of the proceedings in the interests of the trust and the beneficiaries as a whole. The English authority frequently relied upon is *Re Moritz* [1960] Ch 251. In this jurisdiction an example is *Re L&M Trusts* [2003] JLR N6.
- 7 I took the view that this was a case where the other beneficiaries (assuming the Trust were to be varied in accordance with the Holman order) would be prejudiced if the husband were to be alerted to the exact nature of how KPMG would seek to realise liquidity from the underlying group structure. I therefore had no hesitation in concluding that the interests for justice required Ms Revell to leave whilst such matters were dealt with, whether in evidence or during submissions.
- 8 What was slightly unusual about this case was that she had already heard some of Mr Mawer's evidence. I took the view that the interests of justice required that she should not disclose this to Advocate Begg who would be duty bound to disclose it to the husband. It was then further drawn to my attention that she had been present during discussions between counsel on this topic and, in the unusual circumstances of the case, I ordered that she should not disclose to Advocate Begg what she had heard. In support of my order, I also ordered that her notes should be retained by the Greffier. My reason for making these additional orders was simply to ensure that the order excluding her from the hearing was in fact effective and that the interests of justice were not prejudiced by the fact that she had inadvertently been allowed to remain when she should have been asked to leave at an earlier stage.

- 9 Although it is not directly relevant, I should add that the reasoning which underlay my decision to exclude Ms Revell was the same reasoning as led the Court to impose a gagging order when the Act appointing KPMG as receivers and authorising various steps was made. The Court (the Jurats were involved in this aspect) took the view that it might render the Court's decision nugatory or less effective if the husband were alerted by the Act to the proposed application for provisional liquidation and the other steps which KPMG were proposing. Again the order was for a short period and in due course expired. Following an application by Advocate Begg I also thereafter released Ms Revell from the order restraining her from telling Advocate Begg what had occurred at the hearing and her notes were also released to her. As far as I am aware Advocate Begg has also since received a full transcript of all that took place during the hearing now that the need for confidentiality has passed.