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Mrs FM v ASL Trustee

Jurisdiction:	Jersey
Judge:	The Deputy Bailiff
Judgment Date:	06 February 2006
Neutral Citation:	[2006] JRC 20A
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Text

[2006] JRC 20A

ROYAL COURT

(Samedi Division)

Before:

M. C. St. J. Birt, **Esq.**, Deputy Bailiff, **and** Jurats Le Breton **and** Le Cornu.

In the matter of the A Trust;

And in the matter of an Order of Mrs Justice Baron of the Family Division of the High Court of England and Wales.

Mrs F M
Representor
and
ASL Trustee Company Limited
Respondent

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

Advocate D. M. Cadin for the Representor.

Authorities

English Matrimonial Causes Act 1973.

Lane v Lane [1985/86] JLR 48.

Compass Trustees Limited v McBarnett [\[2002\] JLR 321](#).

CI Law Trustees v Minwalla [2005] JRC 099.

Trust (Jersey) Law 1984.

The Deputy Bailiff

- 1 This is an application by FM, whom we shall call the 'wife', to give an effect to an order of Mrs Justice Baron made in the Family Division of the High Court of England and Wales on 21st November, 2005, in divorce proceedings between her and Mr R M, the husband, in connection with the Jersey trust known as the 'A Trust'.
- 2 This Court has held a number of hearings in relation to the Trust and its assets are currently held to the order of the Court. The Trust was established on 18th June 1999, between the A Establishment of Lichtenstein, as settlor, and ASL Trustee Company Limited as trustee which company remains the trustee. It is governed by the law of Jersey. The Trust was a conventional discretionary trust of which the beneficiaries were the husband, the wife and their children.
- 3 However, following execution of a deed of appointment dated 8th February, 2001, the trust fund is held upon trust to pay the income to the wife during her life with power to advance her capital; subject thereto to pay the income to the husband for his life with a like power to advance capital; and subject thereto upon discretionary trusts for the children of the husband and the wife.
- 4 The Trust holds the freehold of a property in Holland Park, the lower two floors of which were the matrimonial home and in which the wife and children still live. The Trust also hold long leasehold interests in three other flats in the building and there is a mortgage on the property.
- 5 The husband and the wife have been involved in acrimonious divorce proceedings. The

husband comes from a wealthy Indian family which has substantial world wide business interests. The background to the case was set out in the judgment which we delivered on 12 November, 2004, and a fuller picture appears from the judgment of Mrs Justice Baron, in which she also found that the husband and his family had decided to do all they could to ensure that the wife did not receive anything upon her divorce from the husband.

- 6 This included instituting litigation in Dubai, India and Jersey all to the effect that the husband's father, or companies within the group, had proprietary claims against the assets of the Trust. Baron J. found that these claims were groundless and all part of the family's scheme to deny the wife any funds.
- 7 In the divorce proceedings the judge made a number of orders including that the husband should pay the wife a lump sum of £10 million. This remains unpaid by the husband who no longer resides in England. She made two orders in relation to the Trust which are relevant for today's purposes.
- 8 First, pursuant to the English Matrimonial Causes Act 1973 she varied the Trust so as to extinguish any interest that the husband might have in the Trust. Secondly, she ordered the husband to transfer to the wife the benefit of a loan to the trustee of the Trust, estimated at some £406,732 in April 2005. This was money the husband had contributed to the Trust but which had been recorded in the books as a loan rather than as a gift to the Trust.
- 9 The wife now applies to the Court for an order that the relevant paragraphs of the English order be recognised and enforced within this jurisdiction. The husband was refused leave to appeal against Baron J's order and the time for appealing has now expired with no appeal being lodged.
- 10 We should add that whilst, during the various hearings before us, this Court did all it could to ensure that the wife received funds from the Trust in order to maintain herself and her children in the face of the husband's family's machinations and the failure of the husband to support her, the Court directed the Trustee not to submit to the jurisdiction of the High Court because of the possible adverse consequences to the Trust in terms of enforcement of any order made by the High Court. It follows, therefore, that the Trustee was not a party to the divorce proceedings in which these various orders were made.
- 11 It is important to begin by reminding oneself of the current position. There is a suggestion in correspondence from the English solicitors for the wife that the Trustee is under a duty to act upon the English Court order. We have to say this displays a fundamental misunderstanding of the position. This is a trust administered in Jersey, with a Jersey trustee and governed by Jersey law. Under the law of Jersey, unless or until this Court orders otherwise, the Trustee must hold the trust fund upon the trusts set out in the trust deed, not upon the terms of an order made by a foreign court. We propose for convenience to use the expression 'foreign court' to cover any court outside Jersey.

- 12 This Court has jurisdiction to vary the terms of a trust in order to give effect to a foreign judgment in the interests of comity. We have been referred to the relevant cases, namely, *Lane v Lane* [1985/86] JLR 48; *Compass Trustees Limited v McBarnett* [2002] JLR 321 and *CI Law Trustees v Minwalla* [2005] JRC 099. However, where the trustee has not submitted to the jurisdiction of the foreign court different considerations apply compared to where a trustee has voluntarily submitted to the jurisdiction of a foreign court and may therefore be said to have agreed to be bound by its decision.
- 13 In the former case it is entirely a matter of discretion for this Court as to whether the interests of justice and comity lead the Court to give effect to the foreign court's order or not. We would add that, although this may be a matter of language, we would prefer not to talk in terms of enforcing the foreign judgment. A foreign judgment can have no effect as such in Jersey or under Jersey law. We think it is more a question of this Court making such orders as it thinks appropriate to enable the decisions made by the foreign court to be given effect to in Jersey if this Court so determines.
- 14 With that introduction in mind we turn to consider whether we should make orders to give effect to the judgment of Baron J in this case. We are in no doubt whatsoever that we should.
- 15 First, we accept entirely the judge's findings that the husband has wilfully failed to maintain his wife and children and that his family have done all they can to cause the wife to run up very substantial legal fees in order to defend satellite litigation which they have instituted with the sole intention of trying to deny her any relief.
- 16 Secondly, the judge heard the matter in great detail and decided that these two orders were fair and reasonable. We can fully understand her decision. These are the only substantial assets in the United Kingdom. In the absence from the United Kingdom of the husband and in the absence of any other assets in the United Kingdom they may well be the only assets which the courts in England and Jersey can ensure go to the wife as ordered by the English Court.
- 17 Thirdly, although the husband did not attend the hearing in England he had every opportunity of doing so. We agree, therefore, that it is in the interests of justice that all of the assets in the Trust should be made available for the exclusive benefit of the wife and children.
- 18 Fourthly, although the husband has not appeared before us, that has been his choice. He participated in a conference telephone call at which this date was fixed, he was aware of the date and of the wife's representation. We have also been taken through the procedures whereby he has been served with the skeleton argument and other documents produced to us. Whilst there may, initially, have been a hiccup in getting these through to him, we are in

no doubt that he has been aware of what is intended. He has sent a fax seeking a delay, but we regard this simply as another delaying tactic on his part.

- 19 In the circumstances we approve the draft order and in essence we order as follows. First that the Trustee execute a deed of exclusion declaring the husband to be an excluded person. Secondly we vary the Trust by deleting Clause 2.3 of the deed of appointment dated 8th February, 2001, which has the effect of deleting the life interest of the husband and the ability to advance capital to him. Thirdly, we order the husband to assign to the wife all his rights in the loan made by him and we further order that if this is not done by noon on 10th February the Judicial Greffier shall execute the same on his behalf pursuant to Article 52 of the Trusts (Jersey) Law 1984.
- 20 We note that there is one outstanding matter. The Trustee wishes to be satisfied that the Trust will suffer no adverse tax consequences in the UK as a result of giving effect to the order of Baron J. That is still awaited and the Trustee reserves the right to revert to us should there be a difficulty in that respect. It is not thought that there will be.
- 21 Assuming that all goes ahead and that all the documents are executed then it will no longer be necessary for the trust assets to be held to the order of the Court. This matter can revert to the trust fund being held upon the terms of the Trust as varied and hopefully matters can be proceeded with for the benefit of the wife and children. Those are the orders we make.