

Rep of PP Investors

Jurisdiction:	Jersey
Judge:	The Deputy Bailiff
Judgment Date:	25 February 2008
Neutral Citation:	[2008] JRC 31
Reported In:	[2008] JRC 31
Court:	Royal Court
Date:	25 February 2008

vLex Document Id: VLEX-793412161

Link: <https://justis.vlex.com/vid/rep-of-pp-investors-793412161>

Text

[2008] JRC 31

ROYAL COURT

(Samedi Division)

Before:

M. C. St. J. Birt, **Esq.**, Deputy Bailiff, **and** Jurats Tibbo **and** King.

In the Matter of the Representation of P P Investors Limited as Manager of One Plantation
Place Unit Trust

And in the Matter of the Trusts (Jersey) Law 1984, as Amended and in the Inherent
Jurisdiction of the Royal Court.

Advocate R. J. Macrae for the Representor.

No Authorities

The Deputy Bailiff

1 This is an application for rectification of the Second and Third Supplemental Trust Instruments of a unit trust known the One Plantation Place Unit Trust. The facts as they appear from the affidavit before us would seem to be as follows. The Trust was established by an Instrument In Writing dated 21st November, 2005. The manager is PP Investors Limited, the Representor today, and the trustees are Mourant Properties Services Limited and Mourant and Co Trustees Limited. The proper law of the Trust is that of Jersey and accordingly, this Court has jurisdiction to consider the matter.

2 Clause 42.1 of the Trust contains a power to amend the Trust in the following terms:-

“subject to clause 42.2, the Trustees and the Manager shall be entitled by instrument supplemental hereto to modify, alter or add to the provisions of this trust instrument or to enter into a new instrument in substitution for this trust instrument and embodying any such modifications, alterations or additions (each a “modification”) in such manner and to such extent as the Trustees and the Manager may agree”.

Clause 42.2 provides that a modification may only be made if approved by an extraordinary resolution.

3 The trustees and the manager have exercised this power on three occasions, each time with the unanimous consent of the unit holders. On the 21st March, 2006 they executed a First Supplemental Trust Instrument. On 16th August, 2006 they executed a Second Supplemental Trust Instrument and on 19th March, 2007 they executed a Third Supplemental Trust Instrument. On each occasion the format used was the same. The Supplemental Trust Instrument itself was very short and the effective provision was clause 2 which said, as appropriate in each case, the following: “ *Without prejudice to the effect of the Trust Instrument prior to the Effective Date, on and from the Effective Date, the Trust Instrument shall be amended and restated in the form set out in Schedule 1 to this Supplemental Trust Instrument*”. Annexed as Schedule 1 was the entire Trust Instrument including the proposed amendments. There was therefore a complete restatement of the Trust on each occasion and the schedule was the only place where one can find what the amendments were, presumably by comparing the restated deed line by line with the previous version.

4 The problem has arisen in the following manner at 7.30pm on 21st March, 2006 Carey Olsen received from the English solicitors in this matter, a version of the proposed First Supplemental Trust Instrument, which we refer to as ‘the 7.30pm version’. It was headed Execution Copy and therefore appeared to be in final form. However, in fact, certain further amendments were agreed later that evening and the First Supplemental Trust Instrument that was executed later that evening by the manager and the trustees contained certain

further changes. However it appears that Carey Olsen never received an electronic version of the First Supplemental Trust Instrument as executed.

- 5 On 4th August, 2006 Carey Olsen received instructions for certain further amendments to be included in a Second Supplemental Trust Instrument. The person in the corporate group at Carey Olsen who carried out this task used, as a starting point, the 7.30pm version held by Carey Olsen in electronic form. The amendments in the Second Supplemental Trust Instrument did not involve those parts of the original trust instrument which had been subject of further amendment after 7.30pm on 21st March, 2006. Accordingly no-one noticed that the restated trust deed prepared by Carey Olsen for the purposes of the Second Supplemental Trust Instrument did not contain the changes which had been made after 7.30pm on 21st March. Accordingly the schedule to the Second Supplemental Trust Instrument as executed 16th August, 2006 omitted the language which had been inserted after 7.30pm and it did not accurately reflect the First Supplemental Trust Instrument as executed.
- 6 On 19th March, 2007 a Third Supplemental Trust Instrument was executed. This too, was prepared by Carey Olsen and on this occasion they used the Second Supplemental Trust Instrument as their starting point. It follows that the same errors were carried through to the Third Supplemental Trust Instrument. It also follows that the Trust Instrument, as currently restated in the Second and Third Supplemental Trust Instruments is erroneous in that it does not include the additional amendments to the original Trust Instrument which were agreed and inserted after 7.30pm on the day of execution of the First Supplemental Trust Instrument.
- 7 The application, therefore, now is for rectification of the second and third deeds so as to put in the wording which should have been included.
- 8 The law is clear. The Court must consider firstly whether a genuine mistake has been made, so that the trust instrument does reflect the true intention of the parties; secondly there must be full and frank disclosure; and thirdly, there must be no other practical remedy.
- 9 We are quite satisfied that the errors in the Second and Third Supplemental Trust Instruments arose through a genuine mistake as we have described, namely they were caused by the fact that Carey Olsen used the 7.30pm version of the First Supplemental Trust Instrument as the basis for the Second and Third Supplemental Trust Instrument rather than the version of the First Supplemental Trust Instrument which had actually been executed. We are satisfied there has been full and frank disclosure and we are satisfied there is no other practical remedy. We note that all the unit holders have consented to the rectification.
- 10 In the circumstance we grant the prayer so as to rectify the Second and Third Supplemental Trust Instruments as set out in paragraph 12 of the Representation.

