

Jacobus Broere Trust

Jurisdiction:	Jersey
Judge:	Deputy Bailiff
Judgment Date:	06 June 2003
Neutral Citation:	[2003] JCA 91
Reported In:	[2003] JCA 091
Court:	Court of Appeal
Date:	06 June 2003

vLex Document Id: VLEX-793084189

Link: <https://justis.vlex.com/vid/jacobus-broere-trust-v-793084189>

Text

[2003] JCA 91

COURT OF APPEAL

Before:

M. St.J Birt, **Esq., Single Judge**

In the Matter of an appeal by the First and Second Respondents/Appellants from the Judgment of the Royal Court of 14th January, 2003, whereby it was adjudged that: (1) the First and Second Respondents/APPELLANTS, as trustees of the Cornelis Broere Trust, should continue as parties to the proceedings; and (2) the Representor/RESPONDENT be awarded his costs of and incidental to the application in the Royal Court.

Leave to appeal was refused by the Royal Court on 14th January, 2003.

Between
Jacobus Broere
Representor/Respondent
and

Mourant & Co (Trustees) Limited
First Respondent/Appellant

and

Fusina Trust Co. Limited
Second Respondent/Appellant

and

Cornelis Broere
Third Respondent/Intervenor

and

Elizabeth Broere
Fourth Respondent

and

Jacoba (Jacqueline) Broere
Fifth Respondent

and

Cornelia A.K. Broere
Sixth Respondent

Advocate M.J. Thompson **for the Representor/RESPONDENT.**

Advocate A.D. Robinson **for the First and Second Respondents/APPELLANTS.**

Advocate R.J. Michel **for the Third Respondent/INTERVENOR.**

Authorities

Trusts (Jersey) Law 1984: Article 47 (3).

Royal Court Rules, 1992, as amended: Rule 6/29.

Glazebrook v Housing Committee (13th November, 2002) Jersey Unreported; [2002/217].

Re C.A. Settlement: Representation of AA (2nd May, 2002) Jersey Unreported; [2002/90].

Eves v Gordon Robert Financial Consultants (Jersey) Limited (12th February, 1999) Jersey Unreported; [1999/29B].

In Re Rabaiotti Settlement [\[2000\] JLR 173](#).

Johnson Malthey Bankers v Shamji [1985–86] JLR N.7.

Re Londonderry's Settlement [\(1964\) 3 All ER 855](#).

Application by the First and Second Respondents/APPELLANTS for leave to appeal against the said Judgment of the Royal Court of 14th January, 2003.

Application by the Third Respondent/INTERVENOR: (1) for leave to intervene in the application for leave to appeal of the First and Second Respondents/APPELLANTS; and (2) as Settlor of the Cornelis Broere Trust, for leave to be heard in support of the said appeal.

Deputy Bailiff

THE

- 1 The application in relation to Article 47(3) is not seriously arguable. It seems to me that Article 47 is not relevant in these circumstances. The relief being sought against the CB (Cornelis Broere) Trustees is not because they are trustees; it is because they are shareholders, it is said, of Prodamco alongside the BB (Bastiaan Broere) Trustees. They could, therefore, equally be an individual or a company. The fact that they are trustees is irrelevant. I, like the Royal Court, consider that this is not a case where any application for an order under Article 47 is being made in respect of the CB Trust. It is as if one simply wanted to sue a person who happened to be a trustee. A stranger does not need leave to do that under Article 47(3). I consider that that element of the grounds relied upon by the applicants as not being worthy of consideration by the Court of Appeal.
- 2 I have concluded that their second argument is sufficient to merit the Court of Appeal's attention. The representation is in effect a complaint by Jacobus about a number of matters concerning the BB Trust. The key one for today's purposes is that he is concerned at what has happened in relation to Prodamco. He alleges that BB Trustees have not properly managed it and not obtained full value and also raises other concerns about Prodamco. On the face of it, the right course is for him to pursue his application against his trustees seeking the Court's assistance either to make them do their job properly, or possibly, to remove them and replace them by other trustees, who can then assert forcibly their rights as a shareholder in Prodamco.
- 3 He also asserts there may well be a conflict of interest. I have not heard full argument but it certainly seems strongly arguable that there is a conflict between the BB Trustees and the CB Trustees; and given that they at present consist of the same people they ought to consider their positions as should their advocates. That is, as I say, a matter I have not heard full argument on.

- 4 It seems to me very open to question whether, in administrative proceedings in relation to the BB Trust, it is open to convene a third party shareholder of one of the assets of the Trust. Under what right, in those administrative proceedings, would the Court have jurisdiction to make orders against that third party shareholder? The normal course, one would have thought, is that the BB Trustees, as a shareholder of Prodamco would take action against the other shareholder relying upon various causes of action under Company Law if that were appropriate; and that Jacobus' remedy is to ensure, if necessary, that his trustees do just that.
- 5 It seems to me very debatable whether, within administrative proceedings, it is open to a beneficiary to seek an order directly against a third party shareholder, who in many cases will be a complete stranger to the Trust. Mr Thompson says that in this case they are not complete strangers because the trustees happen to be the same, but in my judgment that is not really to the point because the fact is that they are shareholders representing other interests.
- 6 All in all I take the view that this aspect is of sufficient general importance to merit the Court of Appeal's attention and I do think it is strongly arguable that the Royal Court did not focus adequately on this topic and focused instead on the principles applicable on a strike out application.
- 7 I, therefore, grant leave to appeal on that basis.
- 8 I do not consider that it is necessary or in the interests of justice that Cornelis Broere should be given leave to intervene. He chose not to appear before the Royal Court. Mr Michel's contentions in effect put forward at this hearing exactly the same matters as were relied upon by the CB Trustees, and I see no reason why CB Trustees should not put forward on appeal all points which Mr Cornelis Broere thinks necessary. I do not see why Jacobus should face the risk of two sets of costs should he be unsuccessful in his appeal when there is no separate interest of Cornelius Broere, which cannot be adequately represented by the CB Trustees. I, therefore, do not grant leave to intervene.
- 9 Obviously, the costs of this hearing will be costs in the cause of the appeal.