

Representation of Saffery Champness Trust Corporation

Jurisdiction:	Jersey
Judge:	The Bailiff
Judgment Date:	21 April 2005
Neutral Citation:	[2005] JRC 52
Reported In:	[2005] JRC 52
Court:	Royal Court
Date:	21 April 2005

vLex Document Id: VLEX-792963917

Link: <https://justis.vlex.com/vid/representation-of-saffery-champness-792963917>

Text

[2005] JRC 52

ROYAL COURT

(Samedi Division)

Before:

Sir Philip Bailhache, Bailiff, **and** Jurats Georgelin **and** Le Cornu.

**In the matter of the Representation of Saffery Champness Trust Corporation,
Trustees of The Settlement — The Representors**

And in the Matter of a Settlement

Representation by the Trustees to allow errors in the First and Fourth Deeds of Variation to
be rectified by the Royal Court.

Advocate L.J. Springate **for the Representor.**

Authorities

[*Jersey Evening Post v Al Thani and Ors* \[2002\] JLR 542.](#)

In re M M Patel Settlement and in re Abacus (C.I.) Ltd [2003] JRC 096

AIB Worthy Trust Ltd v Fallon and Ors. [2004] JRC 025.

The Bailiff

- 1 This is an application by Saffery Champness Trust Corporation, Trustees of a settlement established on 23rd December, 1986, for rectification of a Deed of Appointment and two Deeds of Variation executed pursuant to that Deed of Appointment.
- 2 We deal first of all with a matter which may be of some importance to the profession and for that reason we shall explain our decision. Counsel asked us to sit in private to hear this application and we declined to do.
- 3 This is not an administrative application under the jurisdiction conferred by Article 47 of the Trusts (Jersey) Law 1984. It is an application as we have said for the rectification of various Deeds, as a result of mistakes made by professional advisers, and we think that the principle of public justice requires us to sit in open court to determine the application.
- 4 Having said that, we acknowledge that the Court stated in [*Jersey Evening Post Limited v Al Thani* \[2002\] JLR 542](#), which underlined the general principle of open justice, that the practice in this jurisdiction was to accord some importance to the confidentiality of private trusts. The Court stated:

“but we think it can be said that the courts in this jurisdiction have accorded a greater importance to the need to respect the confidentiality of private trusts than has been the case elsewhere”.
- 5 In cases of this kind the privacy of the trust, and the nature of the confidential family arrangements to which the transactions such as those in question here relate, would not generally have seen the light of day. But for the mistakes made by the professional advisers it would not have been necessary to make an application to the Court, and the arrangements for the treatment of different beneficiaries under the Trust would have remained entirely private.
- 6 In such circumstances we do not think that the needs of public justice, in general, require us to identify the settlor and beneficiaries by name, and we do not propose to do so in this case. The name of the Trust will accordingly be adapted to refer to ‘a Settlement’.

- 7 The application relates to a Jersey discretionary settlement to which we shall refer as 'the Settlement' executed in December 1986. The representor is the Trustee of the Settlement. The Settlement is governed by Jersey Law.
- 8 The Settlement is paralleled by an English Settlement to which we refer as the 'English Settlement' which was created by the same settlor in 1991.
- 9 In August 1995 the Trustee decided for fiscal reasons to convert the Jersey Settlement into a combination of accumulation and maintenance trusts in respect of two classes known as the 'elder children' and 'the younger children' and life interest trusts. At the same time the Trustees of the English Settlement executed a deed of appointment which similarly created accumulation and maintenance trusts and life interest trusts in relation to that Settlement.
- 10 On 7th August, 1995, the Trustee, acting on legal advice, executed a similar deed in respect of the Jersey Settlement, intending that it would have the same effect as the appointment in relation to the English Settlement.
- 11 The intention was that the effect of the accumulation and maintenance trusts under the Jersey appointment would ensure that the elder children and the younger children would receive an absolute entitlement to income arising on their respective contingent interests in the elder children's fund, or the younger children's fund respectively, no later than at the age of 25, without the need for any further action being taken by the Trustee.
- 12 Both the Trustee, and its English legal adviser, believed that the Jersey appointment achieved this aim. The English legal advisers of the Trustee had sought and obtained advice from a firm of local advocates, but it seems that there was a mis-match between the advice received from the advocates, and the expectations of the English legal advisers as to what that advice meant.
- 13 Following the execution of the Jersey appointment, the Trustee subsequently executed *inter alia* two Deeds of Variation, prepared by the English legal advisers, on the 24th May, 2000, ("the First Deed of Variation"), and 24th April, 2003, ("the Fourth Deed of Variation") to vary the Jersey appointment, intending and believing that such variations would create two separate interests for two members of the two different classes.
- 14 The Trustee intended and believed that such interests were created by varying the terms of the Jersey appointment so that each of the children received an absolute entitlement to income arising on their respective one-fifth shares of the elder childrens' fund with effect from the date of execution of the First Deed of Variation and the Fourth Deed of Variation without requiring any further action to be taken by the Trustee. Subsequently, it emerged that the Jersey appointment and the First and Fourth Deeds of Variation might not have

achieved their intended aims and legal advice was taken from a different firm of Jersey advocates.

- 15 The advice received indicated that none of the Deeds in question achieved the effect intended by the Trustee. The Trustee accordingly applies to the Court to rectify the Jersey appointment as set out in the First Schedule to the Representation and to rectify the First and Fourth Deeds of Variation as set out in the Second Schedule to the Representation.
- 16 Notice of this application has been served on all the adult beneficiaries under the Trust and they have indicated that they have no objection to the order sought by the Trustee. The interests of the minor and unascertained beneficiaries were represented by Advocate Preston appointed by this Court as a *guardian ad litem*.
- 17 Advocate Preston has informed the Court that the application made by the Trustee is in the interests of those whom he represents. Although it is not necessarily material to our decision we record that we have also been told by Counsel that the Inland Revenue in England has been advised of this application and has confirmed that it has no observations upon the matter and does not wish to be heard.
- 18 The applicable law has been settled in a number of cases. Most conveniently, the test which the Court has to apply is set out in *Re M. M. Patel Settlement and in re Abacus (CI) Ltd* [\[2003\] JRC 096](#), where the Court stated:

“(i) The court must be satisfied by sufficient evidence that a genuine mistake has been made so that the settlement/deed does not carry out the true intention of the parties.

(ii) There must be full and frank disclosure.

(iii) There should be no other practical remedy. The remedy of rectification remains a discretionary remedy.”

- 19 The Court has received full affidavits from the legal adviser concerned in the documentation leading up to this application and from the Trustee. We are entirely satisfied that a genuine mistake was made.
- 20 We are also satisfied that there has been full and frank disclosure and that no other practical remedy is available to put right what has gone wrong.
- 21 We accordingly grant the prayer of the Representation and we order the rectification of the Jersey appointment as set out in the First Schedule to the Representation and the rectification of the First and Fourth Deeds of Variation as set out in the Second Schedule to the Representation.

- 22 Finally, we order that the costs of the Trustees be met on an indemnity basis out of the Trust Fund. We have been informed by Counsel that the Trustee will give due consideration to the question of whether those costs are recoverable from any of the legal advisers involved in the drawing up of the original documentation.