

The Trusts (Jersey) Law 1984, as amended: Articles 47 and 49

Jurisdiction:	Jersey
Judge:	Deputy Bailiff
Judgment Date:	02 December 2002
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Text

[2002] JRC 226A

ROYAL COURT

(Samedi Division)

Before:

M.C. St. J. Birt, Deputy Bailiff, **and** Jurats Potter **and** Georgelin.

In the Matter of The Trusts (Jersey) Law 1984, as amended: Articles 47 and 49.
And in the Matter of The G Trust.
PM Party Convened.

Advocate B.H. Lacey **for the Representor.**

Advocate R.J. Michel **for PM.**

Authorities

Re S Settlement (2001) JLR N. 37.

Representation of AIB Trust Company (Jersey) Limited, Trustee of the G Trust, seeking approval of the Court, to compromise legal proceedings instituted against the Trustee by Robert Lindsay Forbes, appointed by the Court of Session of Scotland, under the Bankruptcy (Scotland) Act 1985, permanent Trustee of a firm of Scottish lawyers, Messrs McCormick and Nicholson, Symons and McDonald.

Deputy Bailiff

THE

- 1 This is an application by AIB Trust Company (Jersey) Limited in its capacity as Trustee of the G Trust, for the approval of the Court to its entering into a compromise of certain litigation, which has been brought against it.
- 2 The history, briefly, is that the G Trust was established on 28th July 1989. It is a discretionary settlement and one of the beneficiaries is Mr PM. According to the Trustee, in October, 1991 it distributed US\$400,000 to PM in order to enable him to make an investment into a product marketed by a Scottish firm of solicitors known as McCormicks. The sum of US\$400,000 was, though, paid direct by the Trustee to McCormicks on the 18th October, 1991. On the 31st December, 1991 US\$600,000 was transferred from a client account of McCormicks to an account of L Limited, a company wholly owned by the Settlement. The Trustee was informed that this was the initial investment of US\$400,000 plus US\$200,000 profit and it was treated by the Trustee as additional funds settled by PM. On the 8th May, 1992, the sum of £100,000 was received from the client account of Messrs Sharpe and Co, PM's solicitors.
- 3 It transpired that McCormicks was running an investment fraud. The firm's senior partner was convicted in 1995 of embezzlement and sentenced to seven years' imprisonment. Accordingly, on the application of the Law Society on 24th July 1992, Mr Robert Lyndsay Forbes was appointed as Judicial Factor of McCormicks and each of its partners and, subsequently, on 13th November, 1992, he was appointed trustee in bankruptcy of the firm and each of its partners.
- 4 On 3rd August, 2001 Mr Forbes instituted an order of justice against the Trustee, seeking repayment of the US\$600,000 and the £100,000, together with interest. Both of these sums were said to be the proprietary funds of McCormicks' client account, having coming from that firm's client account.

- 5 The Trustee has, in fact, frozen the US\$600,000 since 1993, when it became aware of the fraud and of the possibility of a claim of that sum. However, the Trustee denied, until recently, having received the £100,000. PM also denied having settled that sum. However, on 8th May 1992, it was finally established that a cheque in that sum drawn on the client account of S and Co, had been paid to Allied Irish Bank and had been credited to the 'B' fund of the Settlement. Accordingly, there is now no dispute, but that the Trustee did receive the \$600,000 and the £100,000.
- 6 Mr Forbes has indicated a willingness to settle these proceedings upon payment of the following sums: US\$200,000 plus interest since receipt; £100,000 plus interest on that sum since receipt and £7,500 towards his costs. The Trustee wishes to settle the litigation on that basis.
- 7 It considers that to do so would be in the interests of the beneficiaries for the following reasons. First, as a mere volunteer, it has no defence to the proprietary claim for US\$600,000 and £100,000. Secondly, in strict theory, Mr Forbes could insist on repayment of the full US\$600,000. PM, as the investor, would then be able claim US\$400,000 from the compensation fund of the Scottish Law Society. However, in that event, the Settlement would still be US\$400,000 worse off than it would be under the agreement. It is therefore clearly in the beneficiaries' interest to proceed in that way. Mr Forbes is apparently willing to take a pragmatic view, allowing the Trustee to offset the payment in of US\$400,000, against the repayment out of US\$600,000. Thirdly, the US\$600,000 has, in effect, been frozen since 1993. A compromise to the litigation would enable the Trustee to get on, invest and generally deal with the balance of US\$400,000, as it thinks fit. Fourthly, and finally the costs of litigation will be averted by a compromise at this stage.
- 8 For these reasons the Trustee considers the proposed compromise to be in the best interests of the beneficiaries. It is not surrendering its discretion to the Court; this is a matter which is within its powers and it has concluded that it wishes to proceed in this way. It does, however, seek the Court's approval, because of the initial opposition of PM to some of the compromise and to the fact that it is a momentous issue. It is therefore a case which falls within the second category described in *Re S Settlement* (2001) JLR N. 37.
- 9 PM has now agreed to the payment of US\$200,000 and interest and the payment of the £100,000 and interest. He was initially inclined to dispute the payment of £7,500 but he now agrees to that. Accordingly, we are content to approve paragraph C(1) of the prayer of the representation, which seeks our approval to the entering of the compromise.
- 10 The Trustee also asks for an order for its costs and legal fees. We think that in relation to the fees related to these proceedings we should, as PM has requested, order taxation of the legal fees and the Trustee's own costs, although they are clearly payable out of the trust fund, on an indemnity basis, but, nevertheless, subject to taxation to ensure that they are

reasonable. As to the Trustee's costs incurred prior to the litigation, it seems to us that the normal rules are applicable and no specific order of this Court is required.