

# The Representation of Equity Trust (Jersey) Ltd

<b>Jurisdiction:</b>	Jersey
<b>Judge:</b>	Jurats Olsen, Sir Michael Birt, Hughes
<b>Judgment Date:</b>	11 November 2019
<b>Neutral Citation:</b>	[2019] JRC 223A
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<b>Court:</b>	Royal Court

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## Text

[2019] JRC 223A

ROYAL COURT

(Samedi)

Before:

Sir Michael Birt, **Commissioner, and** Jurats Olsen **and** Hughes.

In the Matter of the Representation of Equity Trust (Jersey) Limited  
And in the Matter of the Longthorne Trust  
And in the Matter of Article 51 of the Trusts (Jersey) Law 1984 (As Amended)

**Advocate J. D. Garrood for the Representor.**

**One of the beneficiaries in person.**

**Authorities**

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*Representation of Hawksford Jersey Limited re H Trust* [\[2018\] JRC 171](#).

Trust — application for the Court's blessing of a momentous decision

**THE COMMISSIONER:**

- 1 This is an application by Equity Trust (Jersey) Limited (“the trustee”) for blessing of a momentous decision which it has taken as trustee of the Longthorne Trust (“the Trust”).
- 2 The factual background briefly is as follows; the Trust was established by Declaration of Trust dated 11<sup>th</sup> March, 1996, executed by the trustee under its then name of Matheson Trust Company (Jersey) Limited. The Trust is a conventional discretionary trust governed by the law of Jersey. There were initially four named beneficiaries, namely the settlor, the settlor's wife and their two sons, one of whom is present today in court. Although there was power to add beneficiaries, that power has not been exercised. Sadly, the settlor's wife has died and there are accordingly now three beneficiaries of the trust, namely the settlor and his two adult sons.
- 3 The sole asset of the Trust is the issued share capital of a BVI company called Longthorne Limited which in turn owns a residential property in Hertfordshire in the United Kingdom. The Trust has no income. There has been a long history of the Trust not having sufficient monies to meet the outgoings, both in respect of the property and the Trust itself. The settlor, who is domiciled and resident outside the United Kingdom, has periodically provided additional funds, but unfortunately the sums produced have been on an irregular basis. There have also, we are told, been periods when the trustee has not received any communication from any of the beneficiaries despite, it is said, attempts by the trustee to obtain their views. As against that we have been informed by the son who is before us this morning that he did not know anything much about this Trust and it may well be that the settlor has kept things partly to himself, and not kept his two sons fully informed.
- 4 It is clear from the evidence that the property has deteriorated in condition. Furthermore, since the institution of these proceedings it has been discovered that the property has suffered a leak and that water was running down the internal walls. It is clear that the property is in significantly worse condition than when it was inspected and valued in 2016.
- 5 The trustee has now decided that there is no alternative to the company selling the property, with the company subsequently being liquidated if necessary and the net sum being paid to the Trust. This will enable the trustee to clear the debts of the Trust. At present the trustee has paid out of its own pocket a sum of £32,880.47 and that will have increased since 17<sup>th</sup> September, 2019, by reference to these proceedings, let alone any other matter. The trustee is also owed outstanding fees which as at 17<sup>th</sup> September, 2019, amount to £28,009.07.

- 6 The trustee having reached that decision now seeks the blessing of this Court.
- 7 The approach of the Court on such applications is well established. We must be satisfied that:
- (i) The trustee has made the decision in good faith.
  - (ii) The decision is one which a reasonable trustee, properly instructed, could have made.
  - (iii) The decision has not been vitiated by any actual or potential conflict of interest.
- 8 In this case there is a conflict of interest because, as we have said, the trustee is owed a substantial sum of money and the only way in which it is to be repaid, in the absence of further money from the settlor, is by sale of the property. However, the trustee has acknowledged that conflict in its affidavit and has explained why, notwithstanding the conflict, sale of the property is in the best interest of the beneficiaries.
- 9 We accept that the conflict in this case is not an uncommon one and it is not so pervasive as to disable the trustee from taking the decision or as to require it to surrender its discretion to the Court. Furthermore as we have said, unlike in the case of *Representation of Hawksford Jersey Limited re H Trust* [2018] JRC 171, the trustee has acknowledged the conflict of interest when reaching its decision and has taken that conflict into account.
- 10 We agree with the trustee that there is no realistic alternative to sale in this case and we note that the son who appeared before us this morning accepts that. The Trust has no income with which to meet necessary expenditure, whether in relation to the property, the company, or the Trust itself, in the absence of further contributions from the settlor, and these have been irregular and insufficient in the past. In the absence of expenditure the property is likely to deteriorate even further and to devalue further in value. This would not be in the interests of the beneficiaries.
- 11 We note, as I say, that one of the sons is here today and has agreed there is no alternative to sale. We have also been referred to an email from the settlor which indicates that he and the sons do not oppose the need for the property to be sold, although we gather from the son this morning that he has certainly not always been kept informed by his father. That is something on which we cannot comment. However, it seems to us that there is no alternative and accordingly we give our blessing to the application on the following basis.
- 12 We approve (b) of the draft order namely that the trustee will engage agents to market and if appropriate sell the property at the best price obtainable within a reasonable time and (c) will apply the proceeds of sale to discharge the Trust's outstanding liabilities. We do not at

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this stage give any further approvals which are set out in the draft in terms of subparagraph (a) and the second part of subparagraph (c).

- 13 We order the costs to be paid from the trust assets on the usual basis, and that the son's travel expenses also be paid out of the trust fund.