Mrs C v RBC, Trilogy and YT

Jurisdiction:	Jersey
Judge:	J. A. Clyde-Smith
Judgment Date:	24 January 2013
Neutral Citation:	[2013] JRC 16
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Court:	Royal Court
Date:	24 January 2013

Text

[2013] JRC 16

ROYAL COURT

(Samedi)

Before:

J. A. Clyde-Smith, **Esq., Commissioner, sitting alone.**

Between

IN THE MATTER OF THE REPRESENTATION OF MRS C

Mrs C
Representor
and
RBC Trustees (CI) Limited as trustee of the Empowerment Charitable Trust, the Saving Grace Charitable Trust, the OM-LC Charitable Foundation International, the OM-VC5 Charitable Foundation and the Well Trust

First Respondent
Trilogy Management Limited as trustee of the C Com Foundation, the JA Com Foundation and the Blue Sky Foundation
Second Respondent
The YT Charitable Foundation (International) Limited
Third Respondent

Advocate N. F. Journeaux **for the Representor.**

Advocate D. S. Steenson **for the First Respondent.**

Advocate S. M. Baker **for the Second Respondent.**

Advocate J. P. Speck **for the Third Respondent.**

Authorities

In the matter of H [2011] JRC 070 .

In the matter of H [2011] JLR Note 13 .

Trust — Beddoes application for directions in relation to administrative proceedings.

THE COMMISSIONER:

1 The YT Charitable Foundation (International) Limited ("YT") in its capacity as trustee of the charitable foundation of the same name ("the Charitable Foundation") has applied to the Court by way of a Beddoes application for directions as to the stance it should take in relation to administrative proceedings in which it is a respondent and which are hostile in nature ("the main proceedings"). On 17 th December 2012, the Court directed that the first and second respondents should be convened to the Beddoes application in their respective roles as trustee of the eight trusts referred to above (to which I will refer for convenience as "the sub-trusts"). The Court also ordered that the eight children of the late settlor and the representor, namely LC, CC, PC, AC, VC, JC, MC and MWHC would have liberty to file an affidavit or affirmation in relation to the Beddoes application and could be heard on the Beddoes application but not as parties and strictly at their own cost.

2 The representor now applies to be made a party to the Beddoes application or alternatively, to be permitted to file evidence and be heard at the Beddoes application. She does so on the same basis that she applied successfully to be joined as a party to the main proceedings as set out in the judgment of Sir Michael Birt, Bailiff, on 30 th March 2011 (JRC 070) ("the March 2011 judgement"). It was accepted by the parties that the test for convening parties to proceedings concerning charitable trusts is as set out in that judgment and as summarised in Note 13 JLR 2011:–

> ***"The court may convene a person as a party to proceedings concerning a charitable trust if he has an interest in the trust which is materially greater than, or different from, that possessed by ordinary members of the public*** (*Att.-Gen v Dedham School* (1857), 23 Beav. 350; 53 E.R. 138, ***referred to:****In re J W Laing Trust* [1984] Ch. 143, ***referred to;****Bradshaw v University College of Wales*, [1988] 1 W.L.R. 190, ***dicta of Hoffmann, J. not followed;****In re Hampton Fuel Allotment Charity*, [1989] Ch. 484, ***dicta of Nicholls, L.J. followed;****In re E Trust*, 2008 JLR N [17], ***considered).*** Given the importance attached to the wishes and intentions of the settlor in relation to a charitable trust, he will normally have such an interest and can therefore be convened to proceedings concerning the trust. A settlor's heirs (including those taking under a will) and executors can also be convened if they can assist the court as to the settlor's wishes and intentions. A person who has merely a general interest in a charity should not be given leave to intervene in proceedings concerning it."

3 Mr Journeaux submitted that a central question for the Beddoes Court will be how far, if at all, should YT be directed to defend the structure by reference to the need to uphold the wishes of the late settlor. As endorsed by the Court in the March 2011 judgment, he said the representor was a useful person from whom the Beddoes Court could receive submissions on the subject of the settlor's wishes and as to their importance. The representor was in a good position to inform the Beddoes Court and make submissions as to the importance of directing YT to resist Trilogy's efforts to undermine her late husband's intentions in regard to the Charitable Foundation.

4 I accept, as did the Court in the March 2011 judgment and as do the parties to the Beddoes application, that applying the above test the representor is a person who may be convened as a party to the Beddoes application, but it is a matter of discretion whether she should be.

5 YT as trustee of the Charitable Foundation is unable to function because its constitution requires unanimity amongst the directors and they are not unanimous as to the stance YT should take in the main proceedings. In that situation, one should look to those who are interested in the Charitable Foundation to assist the Beddoes Court and they are the eight sub-trusts, which the Beddoes Court has now convened. Ordinarily, that should be sufficient, as the first respondent "Trilogy" and the second respondent "RBC" are more than capable of putting forward the views of each of those sub-trusts and, together with YT to the limited but still material extent that it can, of providing the Beddoes Court with the assistance it needs.

6 The Beddoes Court was persuaded, however, in order to help resolution of these issues (mediation is due to follow the Beddoes application on 4 th and 5 th February 2013) to give the eight children an opportunity to be heard, although not as parties and at their own cost. They each have a formal role within the sub-trusts as "guardians", and it was not inappropriate, therefore, for them to be given that opportunity, although in making that

concession I did not have full regard to the case management implications.

7 The representor has no role in the Charitable Foundation or in the eight sub-trusts, her *"functional connection"* being limited to that of a minority shareholder in YT and its subsidiary. I am prepared to accept that as the late settlor's widow she may have information as to the settlor's wishes of which the respondents and the eight children may be unaware and which might be of assistance to the Beddoes Court, but it is not necessary that she be made a party to the proceedings or be given an opportunity to be heard in order for that information to be provided to the Beddoes Court. That information can be made available to any one or more of the respondents to be provided in turn, should they think it relevant, to the Beddoes Court.

8 The board of YT are divided as to whether the representor's application should be granted and are therefore unable to assist the Beddoes Court. Mr Steenson, for RBC, does not oppose the application. Trilogy opposes the application for the following reasons put forward by Mr Baker (in brief summary):–

(i) The representor has no interest in the Charitable Foundation or the eight sub-trusts.

(ii) She is already a party to the main proceedings and will therefore have every opportunity to make her submissions directly to that Court.

(iii) It is not feasible for the Beddoes Court to direct YT to oppose the application in the main proceedings, bearing in mind the deadlock between the directors, unless the Court were itself to take over the conduct of that opposition. In reality, the Beddoes Court will have a choice between directing an active or passive form of neutrality.

(iv) Any arguments the representor may wish to bring before the Beddoes Court can be brought by MC and LC (at least), who apparently take the same position in the main proceedings as the representor.

(v) The representor is liable to hi-jack the proceedings.

9 In my view, the Court already has convened everyone with an interest in this matter, namely Trilogy and RBC, in their capacity as trustees of the eight sub-trusts and they are more than capable of ensuring that the Beddoes Court has whatever information may be necessary to enable it to determine the issue before it. In addition, the Beddoes Court will have the separate views of each of the eight guardians of the sub-trusts. It is not necessary for the representor to be either convened or heard.

10 I was initially minded, however, if case management considerations permitted, by way of concession to allow the representor the same facility as the eight children, notwithstanding her lack of any role within the Charitable Foundation or the eight sub-trusts, but Mr Speck's letter of 14 th January 2013 on the timetable for the Beddoes application has given me real

cause for concern as to whether this is manageable.

11 The Court has one day set aside for the Beddoes application. It is not a straightforward matter and as things currently stand, it will be hearing submissions on extensive documentation from:–

(i) YT through Mr Speck.

(ii) Trilogy through Mr Baker.

(iii) RBC through Mr Steenson.

(iv) MC, through Mr Dickinson.

(v) LC, through Mr Renouf.

(vi) PC and AC in person.

(vii) JC, MWHC and CC through Mr Baker.

12 I accept that it is important that the hearing is completed in the time allotted and in advance of the mediation set for 4 th and 5 th February 2013. It would be wrong to offer the representor the facility to be heard in the same manner as her children when it is not necessary and when it could threaten the ability of the Beddoes Court to deal with the application in the time allotted. In my view, there is a real danger of this happening as it is quite clear from Mr Journeaux's address that he and his client would intend playing a major and forceful role in the proceedings.

13 I am therefore going to decline the relief sought by the representor. I have every confidence that the parties convened and the eight children, as guardians, will be able to make all proper submissions and to provide the Beddoes Court with whatever evidence they may respectively regard as relevant to the issues that will be before it.

14 I have not heard argument on the issue of costs but I thought it might be helpful to say that I have considered the representor's skeleton argument on costs and am minded to agree with her primary position that her application should be regarded as hostile litigation with the consequence that the usual order should be made against her as the unsuccessful party, namely that she pays the costs of the other parties on the standard basis (at least). The respondents are all parties in their capacity as trustees and may well seek to argue that any shortfall in what they recover from such an order should be paid out of the trust fund. I can hear brief oral arguments on costs generally when this judgement is handed down.