

Representation of the Jeep Trust

Jurisdiction:	Jersey
Judge:	Sir Philip Bailhache, Jurats King, Kerley
Judgment Date:	19 April 2010
Neutral Citation:	[2010] JRC 75
Reported In:	[2010] JRC 75
Court:	Royal Court
Date:	19 April 2010

vLex Document Id: VLEX-793344609

Link: <https://justis.vlex.com/vid/representation-of-the-jeep-793344609>

Text

[2010] JRC 75

ROYAL COURT

(Samedi Division)

Before:

Sir Philip Bailhache, **Kt.**, Commissioner and Jurats King **and** Kerley.

In the Matter of the Jeep Trust

Between

Mr K

Representor

and

Regal Trustees Limited

First Respondent

Dinard Trustees Limited

Second Respondent

and

Rothschild Bank International Limited
Third Respondent

Advocate R. S. Tremeceiro for the Representor.

Authorities

Trusts (Jersey) Law 1984.

Eiro v Equinox Trustees and Others [2006] JRC 119.

Lewin on Trusts (17th edition) 2000.

COMMISSIONER:

- 1 This is a Representation by the principal beneficiary of the Jeep trust which was established as a Jersey Law Trust by declaration of the 1st May, 1998. We shall refer to him as Mr K. The original trustee was Regal Trustees Limited (“Regal”) a Jersey company regulated by the Jersey Financial Services Commission. Mr K had been introduced to Regal by consultants in London trading under the name of Interglobe Financial Consultants. They, in turn, had been recommended by the American lawyer of Mr K. The proper law of the Jeep Trust is Jersey law and we accordingly have jurisdiction to hear this application.
- 2 The trust fund originally consisted of a little over US\$500,000; the trust fund is now held by Rothschild Bank International Limited (“Rothschild”) and Syndicate Asset Management (CI) Limited (“Syndicate”) both of which are established in Guernsey and regulated by the Guernsey Financial Services Commission. The Court understands that some €400,000 are now held by Rothschild and only a nominal sum by Syndicate. Clause 23(1) of the trust deed provides for a protector in whom the power of appointing new trustees is vested. The original protector was Gordon Nelson Radford but he resigned in May 1998 in favour of Dennis Shore. Mr Shore died in 2005 without nominating a successor. Clause 24(2) of the trust deed empowers the trustee for the time being to appoint a protector in such circumstances, but for reasons which will appear, that does not assist Mr K.
- 3 In 2003 it was apparently suggested to Mr K that Andrew Peat Finanz Consultants GmbH of Germany (“APG”) should be appointed as investment advisors in place of Interglobe Financial Consultants, and Mr K requested that this appointment be made. Regal accepted this suggestion and the appointment of APG was minuted on the 8th May, 2003. On 23rd April, 2004, Mr K wrote to Regal on the suggestion of APG asking them to retire as trustee in favour of a company incorporated in Mauritius called Dinard Trustees Limited. Regal

naturally agreed to do so and the relevant deed was executed by the parties, including Mr Shore on 23rd November, 2004.

- 4 Sometime during 2007 Mr K was contemplating, in discussion with APG, the termination of the Jeep Trust and seeking the appointment of the trust fund to him by the trustee. APG sought to make contact with Dinard Trustees Limited but could get no response. Notwithstanding the fact that Regal had retired in favour of Dinard Trustees Limited, Mr K sought the assistance of Regal to find out what was happening. An employee of Regal travelled to Mauritius and ascertained from the Mauritius Financial Services Commission that the licence of Dinard Trustees Limited had been withdrawn but no further information was forthcoming as to what had become of the principals of the company, nor indeed as to whether the company itself still existed. Regal established that the majority of the trust fund remained with Rothschild but that they had had no contact with Dinard Trustees Limited.
- 5 The present position therefore is that the Jeep Trust is without a functioning trustee and no-one is in a position to give instructions to Rothschild and Syndicate in Guernsey, by whom the trust fund is held.
- 6 We interpose here to state that during the course of his submissions, counsel for Mr K indicated that a representative of Regal was available and could give further evidence to the Court if that was thought desirable. We accordingly adjourned and, later in the morning, heard evidence from a director of Regal, Robert Douglas, who attended Court at very short notice. We are grateful to Mr Douglas for the additional light which he shed on events between 2004 and 2007. It appears that following the completion of the appointment of Dinard Trustees Limited as new trustee, no action was taken to vest the trust fund in the new trustee. Mr Douglas suggested that the reason might have been that the trust fund consisted of a rolling investment and that it had not been the appropriate time to break the deposit and transfer the funds. He would have expected pressure to have come from the new trustee which would have resulted in the vesting of the trust fund. In the event the file is completely silent and no-one completed the task of transferring the trust fund into the control of Dinard Trustees Limited. Mr Douglas told us that the representative of Regal had attended on the Mauritius Financial Services Commission but, apart from ascertaining that the licence of Dinard Trustees Limited had been withdrawn, was unable to procure any further information from that Commission. Mr Douglas confirmed that Regal was willing to be re-appointed as trustee in the event that the Court considered that that was desirable.
- 7 The prayer of Mr K's Representation requests the Court to exercise its power under Article 51 of the Trusts (Jersey) Law 1984 to remove Dinard Trustees Limited as trustee of the Jeep trust and to appoint Regal in its stead. Counsel for Mr K also ask the Court to order Regal to exercise the power of appointment conferred by the trust deed to pay the whole of the trust fund to Mr K.
- 8 The power of appointing a new trustee is vested by clause 23 of the trust deed in the protector or, failing a protector, in all the trustees for the time being. There is no protector

and no means of appointing a protector; as to the trustee it has either ceased to exist or ceased to function. It was served with notice of these proceedings at its last known address but has failed to respond.

- 9 The removal of a trustee is a serious matter but it is a well known rule of equity that the Court will not allow a trust to fail for want of a trustee. The Court has, apart from its statutory powers, an inherent jurisdiction to ensure the competent administration of a trust. In *Eiro v Equinox Trustees and Others* [2006] JRC 119, to which counsel drew the Court's attention, the court referred to a passage from Lewin on Trusts (17th edition) 2000 which conveniently encapsulates the principle:-

“The general principle guiding the Court in the exercise of its inherent jurisdiction is the welfare of the beneficiaries and the competent administration of the Trust in their favour. In cases of positive misconduct the Court will without hesitation remove the trustee who has abused his trust but it is not every mistake or neglect of duty or inaccuracy of conduct on the part of the trustee that will induce the Court to adopt such a course. Subject to the general guiding principle the act or omission must be such as to endanger the trust property or to show a want of honesty, or a want of proper capacity to execute the duties, or a want of reasonable fidelity”.

- 10 Article 21 of the Trusts Law sets out the duties of a trustee. For the purposes of this application of the relevant revisions are as follows:-

“(1) A trustee shall in the execution of his or her duties and in the exercise of his or her powers and discretions:-

(a) act:-

(i) with due diligence,

(ii) as would a prudent person,

(iii) to the best of the trustee's ability and skill; and

(b) observe the utmost good faith.

(2) Subject to this Law, a trustee shall carry out and administer the trust in accordance with its terms.”

Has Dinard Trustees Limited been fulfilling these duties as required by law? The answer is clearly no. Its omissions are of such a nature as to endanger the trust and to prejudice its proper administration. It has demonstrated a want of proper capacity to execute the duties of a trustee. It has, as we have stated, been properly served at its last known address in Mauritius but has failed to respond and is not represented in Court.

- 11 Counsel for Mr K framed the prayer of the Representation in the alternative but during the

course of his oral submissions, conceded that there were difficulties in the way of ordering Rothschild and Syndicate to pay over the assets to Mr K without more. Although it is possible for the Court to assume the discretionary powers of a trustee in certain circumstances, we have no hesitation in concluding that those circumstances do not obtain in this case.

- 12 The alternative order sought by counsel for Mr K is that the Court should exercise its power, having removed Dinard Trustees Limited, to re-appoint Regal as trustee of the Jeep trust. It will then be open to Regal to make such appointment as it thinks fit.
- 13 We conclude that we should exercise our jurisdiction to remove Dinard Trustees Limited as trustee of the Jeep trust and we make that order. We also exercise our jurisdiction to appoint Regal as trustee of the trust.
- 14 We add a short postscript; this is not a matter for us but in view of the relative smallness of the trust fund, we express the hope that Regal might perform the functions which it has agreed to perform for a modest or even a nominal fee. Regal did not complete the task of vesting the assets in the new trustee as it should have done, although it must be added that it is probably in the interests of Mr K that they did not do so.