

The Westbury Settlement; and the Trusts (Jersey) Law 1984, as amended and of the Royal Court (Jersey) Rules, 1992, as amended

Jurisdiction:	Jersey
Judge:	Sir Peter Crill, Jurats de Veulle, Allo
Judgment Date:	26 March 2001
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Text

[2001] JRC 072

ROYAL COURT

(Samedi Division)

Before:

Sir Peter Crill, Commissioner, and Jurats de Veulle and Allo.

In the matter of the Westbury Settlement
And in the matter of the Trusts (Jersey) Law 1984, as amended and of the Royal Court
(Jersey) Rules, 1992, as amended.

Advocate K. Lawrence for the Representor.

Advocate J.P. Speck for the unascertained beneficiaries**Advocate S.J. Young for the 'Cousins'****Authorities**

In re Moody Jersey "A" Settlement [\(1990\) JLR 264](#) .

In re: Representation of Détente Ltd (26th November, 1998) Jersey Unreported .

The Representation of Standard Chartered Grindlay

Trust Corporation (Jersey) Limited, applying for leave to rectify the Deed of Settlement

THE COMMISSIONER:

- 1 This matter arises from a Deed of Settlement made on 28th September, 1994, between the Trustees, Michael Baron Pascoe and Deanne Mary Pascoe, and the Settlor, Brian Robert Westbury, The Westbury Settlement.
- 2 The intended beneficiaries as set out in the Trust are the Settlor, his spouse, children, and remoter issues and their spouses, widows, widowers, the Settlor's siblings, parents, step-parents and cousins of the Settlor's spouse's mother.
- 3 This is a straightforward application to rectify an error in the Deed of Settlement which, if the rectification were not agreed by the Court would exclude those whom the Settlor wished to benefit. That would clearly be a nonsense.
- 4 There were a number of tests laid down by this Court, for allowing such a rectification. The most recent case to which our attention has been drawn is *In re: The Representation of Détente Limited*, (26th November, 1998) Jersey Unreported. I notice that Mr Speck, who is appearing today for one of the parties, was in that very case. On that occasion, the Court reviewed an earlier case, on which I had sat: *In re: Moody "A" Settlement* [\(1990\) JLR. 264](#). However, it is not very much in point because the question of avoiding tax does not arise here.
- 5 The tests which that Court laid down and which this Court has followed in the past, and no doubt will wish to follow in the future, are fourfold: (1) There must be sufficient evidence of the error; (2) it must be established to the highest degree of civil probability that a genuine mistake has been made; (3) there must be full and frank disclosure; and (4) there should be no other remedy, that is to say no other practical remedy. Finally I should add that in the *Détente* case the warning was that the longer it takes to come to the Court the greater the risk or the greater the burden that is on the Representer.

- 6 Accordingly we are satisfied from the evidence adduced to us, and particularly as the other parties affected concur with the application: (1) that there is sufficient evidence for us to find that it was the intention of the Settlor to benefit a number of people; (2) that that intention was not carried out due to an error, about the reason for which we can only speculate; (3) that the evidence adduced satisfies the highest probability test; (4) that there has been full and frank disclosure; and (5) that there is no other practical remedy.
- 7 Under the circumstances we will make the Order sought by the Trustees, who are now different Trustees from those originally appointed, but that makes no difference; the principle remains the same.