Rep of Mourant and Company Trustees

Jurisdiction:	Jersey
Judge:	The Bailiff
Judgment Date:	08 December 2006
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Text

[2006] JRC 185

ROYAL COURT

(Samedi Division)

Before:

Sir Philip Bailhache, **Kt.**, Bailiff, **and** Jurats Le Breton, **and** Allo.

In the Matter of the B Trust

Representation of Mourant and Co Trustees Limited

Advocate M. H. Temple **for the Trustee.**

Advocate D. J. Petit **for the "wife".**

Advocate J. P. Michel **for the minor and unborn beneficiaries.**

Advocate S. A. Franckel **for the "husband" and other beneficiaries.**

Authorities

Trusts (Amendment No. 4) (Jersey) Law 2006.

re the H Trust [2006] JRC 057.

Trusts (Jersey) Law 1984.

Matrimonial Causes Act 1973.

J v M [2002] JLR 330.

Matrimonial Causes (Jersey) Law 1949.

Brooks v Brooks [1995] 2 FLR 13.

The Abidin Daver [1984] 1 ALL ER 470 at 476.

Lane v Lane [1985–86] JLR 48.

re Rabiotti 1989 Settlement [2000] JLR 173.

re The Fountain Trust [2005] JLR 359.

The Bailiff

1 This is an application by Mourant & Co Trustees Limited for directions in relation to the administration of the B Trust following an order dated 6th February 2006 of the Family Division of the High Court in England ("the English order") in matrimonial proceedings between J "the wife" and S "the husband". The trustee had submitted to the jurisdiction of the English court and this application might have been straight-forward but for the coming into force of the Trusts (Amendment No. 4) (Jersey) Law 2006 ("the Trusts Law amendment"). The Trusts Law amendment was registered in this Court on 20th October 2006 and came into force at midnight on 26th October. Entirely fortuitously, this application came on for hearing on 27th October. Mr Franckel appeared for the husband and for certain other family members, namely all the adult beneficiaries of the trust other than the wife. We refer to him for convenience as "counsel for the husband".

2 The B Trust was established by a deed of settlement dated 8th December 1988 and was made between E, the settlor, a cousin of the husband, and Granby Trustees Limited. At that time the settlor was domiciled in Jersey but he put no significant assets into the trust. On 27th November 2003 Granby Trustees Limited retired from the office of trustee in favour of Mourant & Co Trustees Limited ("the trustee"). The principal beneficiaries of the trust are the issue and remoter issue of W the husband's mother, and the spouses and widows and widowers of those issue and remoter issue. For practical purposes the beneficiaries

comprise two branches of the B family, namely that of the husband and that of his brother N. The trust fund consists of the issued share capital of a Jersey company which in turn holds, inter alia, real property in England. The B Trust is a Jersey trust the proper law of which is Jersey law.

3 The trustee was joined as party to the matrimonial proceedings in England and, having sought the directions of this Court, submitted to the jurisdiction and gave evidence before the English court while maintaining a neutral stance as between the husband and the wife. The English court found that the B Trust was a post-nuptial settlement and liable to be varied in accordance with provisions of the English statute. Its order purported to vary the trusts of the B Trust in the following manner –

> ***"(i) The sum of £1,500,000 should be settled into a sub-trust of the Trust together with interest on that sum running from 6th February 2006 to the date on which the sub-trust is established;***
>
> ***(ii) [the Wife] should have a life interest in the funds comprised in the sub-trust;***
>
> ***(iii) the sub-trust should include a power of advancement of capital in favour of [the Wife];***
>
> ***(iv) [the Wife] should be entitled to nominate the trustee of the sub-trust;***
>
> ***(v) following the death of [the Wife] the funds comprised in the sub-trust should revert to the Trust;***
>
> ***(vi) the trustees of the sub-trust should make available to the trustees of the Trust -***
>
> > ***a) any annual accounts of the sub-trust (provided that a copy of such accounts is requested by the trustees of the Settlement within a reasonable period after the expiry of the accounting period to which they relate); and***
> >
> > ***b) any document disclosing the exercise of the power of advancement in relation to the whole or any part of the capital of the sub-trust fund."***

4 The Trustee now seeks directions from this Court as to how it should respond to the English order. The representation was served upon the adult beneficiaries of the Trust who are all represented by counsel, and upon Advocate Michel as *guardian ad litem* of the minor and unascertained beneficiaries. Prior to the coming into force of the Trusts Law amendment the matter might well have been regarded as relatively uncontroversial. The Trustee had submitted to the jurisdiction of the English court and had been heard in the English matrimonial proceedings. As Birt, Deputy Bailiff, stated in *re the H Trust* [2006] JRC 057 at paragraph 16 –

> ***"The significant factor from the point of view of whether the trustee should***

submit to the jurisdiction of the overseas court is that it will remain a matter of discretion for the Court as to the course it should take in the light of the overseas order if the trustee has not submitted, whereas if the trustee has submitted, the overseas order is likely to be enforced without reconsideration of the merits."

5 The Trusts Law amendment has however introduced new provisions which affect the relevant rules of private international law. It substitutes a new Article 9 of the Trusts (Jersey) Law 1984, the relevant parts of which are in the following terms –

"9 Extent of application of law of Jersey to creation, etc of a trust

(1) Subject to paragraph (3), any question concerning –

(a) the validity or interpretation of a trust;

(b) the validity or effect of any transfer or other disposition of property to a trust;

(c) the capacity of a settlor;

(d) the administration of the trust, whether the administration be conducted in Jersey or elsewhere, including questions as to the powers, obligations, liabilities and rights of trustees and their appointment or removal; or

(e) the existence and extent of powers, conferred or retained, including powers of variation or revocation of the trust and powers of appointment and the validity of any exercise of such powers;

shall be determined in accordance with the law of Jersey and no rule of foreign law shall affect such question.

…

(3) the law of Jersey relating to –

…

(b) conflicts of law, [sic]

shall not apply to the determination of any question mentioned in paragraph (1) unless the settlor is domiciled in Jersey.

(4) No foreign judgment with respect to a trust shall be enforceable to the extent that it is inconsistent with this Article irrespective of any applicable law relating to conflicts of law [sic]

…

(6) In this Article –

'foreign' refers to any jurisdiction other than Jersey;

…

(7) Despite Article 59, this Article applies to trusts whenever constituted or created."

6 Mr Temple for the trustee contended that the Court should give effect to the English order. This was opposed by counsel for the husband. First, he submitted that the effect of Article 9 was to render the English order unenforceable on the basis that the finding that the B Trust was a post-nuptial settlement was inconsistent with Jersey law. Secondly, he submitted that the jurisdiction to enforce a foreign judgment on the basis of comity had been removed on a proper interpretation of Article 9(4).

7 We take first the issue relating to post-nuptial settlements. Section 24(1)(c) of the Matrimonial Causes Act 1973 empowers an English court to make –

"an order varying for the benefit of the parties to the marriage and of the children of the family or either or any of them any ante-nuptial or post-nuptial settlement (including such a settlement made by will or codicil) made on the parties to the marriage."

8 We can find no discussion in the judgment of Bennett J as to the rationale for the finding that the B Trust was a post-nuptial settlement. It seems to have been assumed and, we have no doubt, correctly assumed as a matter of English law that the B Trust was a post-nuptial settlement. On that basis the court exercised the statutory power conferred by section 24(1)(c) of the 1973 Act and made the English order.

9 Counsel for the husband submitted that, while no issue was taken as to the finding that B Trust was a post-nuptial settlement in accordance with English law, it was not a post-nuptial settlement under Jersey law. Counsel referred to a judgment of this Court in *J v M* [2002] JLR 330 where the court had to construe the meaning of the phrase "post-nuptial settlement" under Article 27 of the Matrimonial Causes (Jersey) Law 1949, as amended. The court there considered the terms of section 24 of the Matrimonial Causes Act 1973 and cited an extract from the judgment of Lord Nicholls in *Brooks v Brooks* [1995] 2 FLR 13 which includes the following passage at 19 –

"Beyond this the authorities have consistently given a wide meaning to settlement in this context, and they have spelled out no precise limitations. This seems right, because this approach accords with the purpose of the statutory provision. Financial provision that is appropriate so long as the parties are married will often cease to be appropriate when the marriage ends. In order to promote the best interests of the parties and their children in the

fundamentally changed situation, it is desirable that the court should have power to alter the terms of the settlement. The purpose of the section is to give the court this power. This object does not dictate that 'settlement' should be given a narrow meaning. On the contrary, the purpose of the section would be impeded, rather than advanced, by confining its scope. The continuing use of the archaic expressions 'ante-nuptial' and 'post-nuptial' does not point in the opposite direction. These expressions are apt to embrace all settlements in respect of the particular marriage, whether made before or after the marriage."

10 This Court found that the corresponding provision in the Jersey statute, which referred to a settlement "between the parties to the marriage" could not be so widely construed, and that the power to vary settlements under the terms of Article 27 of the Matrimonial Causes Law had been more narrowly drawn than the equivalent provision in the English statute. The court continued, at paragraph 13–14 –

> ***"Even if we were wrong in that conclusion, we would also find, for the second reason advanced by counsel for the trustee, that the X Trust was not a post-nuptial settlement.*** A post-nuptial settlement must, of necessity, have some nuptial quality about it. It must be referable in some way to the marriage in question. This may often be easier to sense than to describe. But it is clear that if a settlement is to be construed as a post-nuptial settlement, it must confer benefits upon its beneficiaries qua husband or wife. Counsel for the wife argued that X knew that the marriage existed, and that the husband and the children of the marriage were beneficiaries of the trust. It followed, he submitted, that there was a nuptial quality to the trust. We cannot accept that submission. It would be tantamount to accepting that almost every discretionary trust was ipso facto a post-nuptial settlement. A settlement takes its colour from all the circumstances surrounding its creation. We have no doubt that X intended to benefit his family, not in any nuptial capacity, but as blood relatives. In our judgment, the X Trust is not a post-nuptial settlement within the meaning of Article 27 of the Matrimonial Causes (Jersey) Law 1949 and, accordingly, we have no power to vary or modify any of its trusts."

11 It is unnecessary, for reasons which will appear, for us to make a finding in this respect, but we incline to the view that counsel for the husband is right in submitting that the B Trust is not a post-nuptial settlement under Jersey law.

12 Mr Franckel submitted that in such circumstances we had no power to give effect to the English order. He contended that the substituted Article 9 of the 1984 Law was intended to protect Jersey trusts from attack from foreign courts. The English order was founded upon the power conferred by section 24 of the 1973 Act to vary a post-nuptial settlement. But Article 9(1) of the 1984 Law now provided that –

> ***"any question concerning … (e) the existence and extent of powers … including powers of variation … shall be determined in accordance with the law of Jersey and no rule of foreign law shall affect such question".***

If one applied Jersey law to the question whether the B Trust was a post-nuptial settlement capable of variation, the answer would be in the negative. For good measure counsel contended that Article 9(4) delivered the *coup de grace*. That paragraph provides that –

> ***"no foreign judgement (sic) with respect to a trust shall be enforceable to the extent that it is inconsistent with this Article irrespective of any applicable law relating to conflicts of law (sic)".***

The English order was based, counsel submitted, on a finding that the B Trust was a post-nuptial settlement which was — ***"inconsistent with this Article"*** —and therefore unenforceable.

13 Counsel for the husband was asked what consequences would flow if his submissions were to be accepted by the court. Counsel very candidly stated that, notwithstanding the facts that the trustee had submitted to the jurisdiction and that all relevant parties had been heard before the High Court, the wife would have to return to the English court to report that effect could not be given to the English order. The wife would accordingly have to seek her just portion from alternative assets of the husband. If such alternative assets were not available, the award to the wife would have to be reduced. If the purpose of the amended Article 9 really is to protect trust assets to the extent that a manipulative spouse can evade the enforcement of a carefully considered judgment designed to do justice between husband and wife on divorce, that would seem to us to be a very unhappy state of affairs. But fortunately, we do not consider it to be the effect of these statutory provisions nor, we trust, do we believe it to have been the intention of the legislature.

14 Mr Temple for the trustees submitted that, as the settlor of the B Trust was domiciled in Jersey at the time when the settlement was made, Article 9(3) meant that questions relating to the exercise of the trustee's powers of administration and appointment pursuant to sub-paragraphs 1(d) and (e) of Article 9 would be governed by Jersey law. This is probably correct although we do not find it necessary to construe this rather obscure provision for the purposes of this judgment. We agree that in the context of the provisions of the B Trust it is clear that all these matters are to be governed by Jersey law.

15 The application of Jersey law by this Court to issues relating to the variation of a trust and the appointment out of monies to a sub-trust brings us to Article 9(4). Contrary to the submission of counsel for the husband we do not think that the application of English law by the English court to the question whether the B Trust was a post-nuptial settlement renders the English order unenforceable. We reach that conclusion for the following reason. We find it to be altogether unsurprising that the English court should have applied English law in the exercise of a statutory jurisdiction conferred in matrimonial proceedings to vary the terms of a trust in order to do justice between the parties. Nothing in the law of Jersey could oust such a jurisdiction which is in conformity with the Hague Convention on the law applicable to trusts and on their application; and we take judicial notice of the fact that the Hague Convention has been extended to Jersey. This court is however not exercising a matrimonial jurisdiction under Article 27 of the Matrimonial Causes Law. We

are not concerned with the question whether or not the B Trust is a post-nuptial settlement. We are not even being asked to vary the trusts of the B Trust. We are exercising a jurisdiction under Article 51 of the 1984 Law to give directions to a trustee which has sought the assistance of the court. We also have an inherent jurisdiction over trusts as a court applying principles of *équité* but we do not need to draw from that reservoir. It is immaterial that the English court applied English law in matrimonial proceedings before it in order to arrive at what it considered to be a just conclusion. Our function is different; it is to decide whether, and if so to what extent, to give effect to the conclusions at which the English court arrived. In doing so, and in exercising our jurisdiction to give directions under Article 51, we will naturally apply the law of Jersey. It is equally immaterial that the B trust may not be a post-nuptial settlement capable of variation under the Matrimonial Causes Law. We accordingly reject the first submission of counsel for the husband.

16 We turn to the second submission of Mr Franckel, namely that the jurisdiction to enforce a foreign judgment on the basis of comity has been removed on a proper interpretation of Article 9 (4). This is a bold submission. Comity is one of those principles of private international law which enable the courts of one country to show respect to the courts of another, each court exercising its own jurisdiction in its proper sphere. Comity helps to avoid the delivery of conflicting judgments in different countries. At its simplest, comity is good manners. As no less a judge than Lord Diplock put it (admittedly in a slightly difference context) in *The Abidin Daver* [1984] 1 ALL ER 470 at 476 –

> ***"Judicial chauvinism has been replaced by judicial comity".***

It would be surprising if the legislature had sought to remove such a fundamental principle, and by a side wind at that.

17 Counsel for the husband conceded that the amended Article 9(3) of the Law was less than completely clear. It provides that –

> ***"the law of Jersey relating to —…(b) conflicts of law (sic) shall not apply to the determination of any question mentioned in paragraph (1) unless the settlor is domiciled in Jersey".***

This seems rather circular because the rules set out in paragraph (1) must themselves be conflicts rules. Counsel submitted however that the effect was to oust the application of the doctrine of comity because comity was itself a rule relating to the conflict of laws. Reading paragraph (3) with paragraph (4), which rendered a foreign judgment unenforceable to the extent that it was inconsistent with Article 9, ruled out, counsel submitted, the possibility that it was open to this Court to apply the doctrine of comity in giving effect to the English order.

18 We find both these paragraphs of the amended Article 9 rather obscure, but we do not need to decipher their meaning. We are quite clear what they do not mean and that they do not exclude the application of the doctrine of comity. It would, in our judgment, take very clear and express words to persuade us that the legislature intended to deprive this Court of the flexibility to do justice in a wide range of cases on the basis of a principle of almost

universal applicability. We accordingly reject the second submission of counsel for the husband.

19 We turn therefore to the exercise of our jurisdiction under Article 51 of the Trusts Law. In deciding how to exercise that jurisdiction we must have regard to the interests of **all** the beneficiaries of the trust. As Birt, Deputy Bailiff, explained in *re the H Trust* –

> ***"In this respect it is important to note that the roles of the two courts are very different.*** The Family Division is concerned to do justice between the two spouses before it. It is sitting in a matrimonial context and its objective is to achieve a fair allocation of assets between those spouses. It has no mandate to consider the interests of the other beneficiaries of any trust involved. Conversely, this Court is sitting in its supervisory role in respect of trusts, as is regularly done in the Chancery division of the High Court. This Court's primary consideration is to make or approve decisions in the interests of the beneficiaries. It has therefore a very different focus from the Family Division".

The submissions on behalf of the trustee made it clear that the trust fund was regarded as notionally held in equal parts for the two branches of the family. The trustee could not of course fetter its discretion, but in principle it would be unlikely to exercise its discretionary powers to the advantage of one branch of the family rather than the other. It seems equally clear that Bennett J in the Family Division was aware of the practical realities.

20 The evidence showed that the total value of the B Trust was in the region of £5.3 million. The cash element of that value is £2,628,168. Notionally dividing the value of the trust fund by two, one arrives at £2.65 million for each of the branches of the family. The creation of a sub-trust in favour of the wife in the sum of £1.5 million would clearly not prejudice the interests of N and his branch of the family.

21 So far as the interests of the minor and unborn beneficiaries are concerned, they are represented, as we have stated, by Advocate Michel as *guardian ad litem*. Mr Michel was appointed by order of this Court of 21 st July 2006. The minor beneficiaries are not of an age where consultation with them would be appropriate. Mr Michel would have opposed any suggestion that a sum greater than £1.5 million should be made available for the wife's proposed sub-trust. He did not however oppose the suggestion that effect should be given to the order of the High Court.

22 The husband has one adult child from his first marriage and the husband and wife together have one surviving daughter who is also an adult. Their interests were represented by counsel for the husband. One other matter was raised for consideration which is particularly material to them, and that is the extent of the power of the sub-trustee to advance capital. The order of Bennett J was that after the death of the wife the capital of the sub-trust should be returned to the B Trust. As to the power of advancement, the judge stated –

> ***"At the end of this hearing the husband will have retained all his interests***

> ***in [another family trust] and in the three companies.*** None of his free capital will be taken for the wife (I shall come to [the marital home] in due course). None of his income will be at risk from the wife because there is to be a clean break. And, in my judgment what is also very significant, he will remain a beneficiary under the B Trust and thus can ask the trustees to exercise the power of advancement in his favour. By contrast, after decree absolute the wife cannot. True it is that the husband is unlikely to ask the trustees and/or the trustees are unlikely to exercise it if the tax consequences are prohibitive. But why should not the wife be in the same position vis-à-vis the trustees of the sub-trust as the husband is vis-à-vis the trustees of the B Trust and [the other family trust]? Why should not the wife, who suffers from a troublesome back as a result of the accident, to which I have referred, be in a position to ask her trustees to advance a sum or sums of capital to pay for medical fees were she to have to undergo expensive surgery in the future or to ask for an advance for a presently unforeseen crisis or calamity? Moreover, I am confident that the wife is likely to be very circumspect about asking for capital, given the prohibitive tax consequences of a distribution. She told me in evidence that she wanted "the option" of asking the trustees to advance capital but her doing so was likely to be a remote possibility.
>
> ***Finally on this topic, I take notice of Mr Scott's submission that the wife must agree to a life interest under a sub-trust only because of the prohibitive cost of a distribution to her by way of a lump sum order.*** The power of advancement will go some way in recognizing that it is impractical for her to ask the court to exercise its full powers of financial provision. Accordingly, for these reasons, there will be a power of advancement written into the sub-trust".

23 Counsel for the husband submitted that the power to advance capital to the wife ought to be specifically limited to a need to meet medical fees and/or to meet some "presently unforeseen crisis or calamity". Counsel submitted that that was what was intended by Bennett J and furthermore that the B Trust was established to meet the needs of future generations. That purpose would be potentially undermined by an unlimited power to advance capital.

24 Mr Petit for the wife contended that the power to advance capital should be unfettered. Mr Temple for the trustee concurred with counsel for the wife. He regarded the judge's comments in relation to medical fees or some crisis as being merely indicative of the kind of circumstances in which the power to advance capital might be exercised. Furthermore, counsel submitted, the power to advance capital would be a fiduciary power. The trustee of the sub-trust would be aware of the contingent interest in the capital of the sub-trust of the beneficiaries of the B Trust and would have to take those interests into account in any exercise of the power of advancement. We accept the submissions of counsel for the wife and counsel for the trustee, and agree that the power to advance capital should be unfettered.

25 Having disposed of all the issues raised by way of objection by those opposed to giving effect to the judgment of the English court, we turn to the application of the trustee for directions. In the exercise of our discretion, we see no reason why, in the interests of comity, substantial effect should not be given to the judgment of Bennett J. The trustee submitted to the jurisdiction and all other parties were heard before the English court or have had the opportunity to address submissions to this court. It is fair to give substantial effect to the English order. We accordingly authorise and direct the trustee to execute the Deed of Addition and Appointment annexed to its representation subject only to the following qualifications.

26 First, the following recital shall be substituted for the draft recitals *G and H* –

> *"On application by the trustees to the Royal Court for directions pursuant to Articles 51 and 53 of the Trusts (Jersey) Law 1984 the Court has authorised and directed the trustees to exercise the Power of Addition and the Power of Appointment in respect of the Appointed Fund in the manner set out below so as to give substantial effect to the Court order".*

27 Secondly, we do not think it is in the interests of either the wife or the beneficiaries as a whole that there should be a different trustee of the sub-trust nor that the power of appointing new trustees of the sub-trust should be vested in the wife. We appreciate that the question of whether there should be a different trustee of the sub-trust was argued before Bennett J and that he reached the conclusion that such a different trustee should be appointed. That conclusion was reached on the basis that –

> ***"in the light of the very close involvement that the husband and N have had in the past with Mourants in the running of [the Jersey company], I have no doubt that in respect of the sub-trust's investments and/or in connection with the request by the wife to the trustees of the sub-trust to exercise the power of advancement, Mourants would consult the husband and N who would then have the opportunity to be obstructive".***

28 We do not think that these concerns, which may well be concerns of the wife, are well founded. The trustee is a professional trustee subject to the regulation of the Jersey Financial Services Commission and to the Codes of Practice issued by the Commission. It is clear that the sub-trust is to be established to provide an income for the wife. We have no doubt that the trustee would conduct itself properly in the interests of the wife and would not be influenced in any way by its continuing (but separate) relationship with the husband and N. On the other hand if, to take an extreme example, the wife were to request a capital advance of £500,000 so that she could make a donation to the local dogs' home, we would expect the trustee to consider such a request carefully in the light of the reversionary interest of the beneficiaries of the B Trust. Such an eventuality (even if only remotely possible) is one reason why we think that the potentially conflicting interests of the wife and the beneficiaries of the B Trust can be best resolved by having the same trustee of both the main trust and the sub-trust, and by vesting the power of appointment of a new trustee of the

sub-trust in the trustee itself.

29 For all these reasons we do not think it right to give effect to that part of the judgment of Bennett J. We propose therefore to modify further the terms of the draft Deed of Addition and Appointment as follows. Recitals C and F shall be deleted. Paragraphs 3.4, the words "'the Trustees' were replaced by references to 'the Appointee' and as in references to" in paragraph 3.5.1, paragraph 3.5.2, paragraph 3.7 and the Second Schedule shall all be deleted; and the paragraphs of the recitals and of the operative part of the deed re-lettered and re-numbered respectively.

Postscript

30 Much time and expense have been consumed in considering the interrelationship between the purported variation of the B Trust pursuant to English statutory powers on the one hand, and the recently enacted provisions of the Trusts (Amendment No. 4) (Jersey) Law 2006 on the other. In the event we have found ourselves able to deal with the matter on the basis of judicial comity. With some diffidence, we express the hope however that English courts might in future exercise judicial restraint before asserting a jurisdiction pursuant to section 24 of the Matrimonial Causes Act 1973 to vary a Jersey trust. This Court has shown itself sensitive (long before the enactment of the Trusts Law Amendment) to perceived interference with its jurisdiction to supervise Jersey trusts. Such sensitivities were expressed in *Lane v Lane* [1985–86] JLR 48, *re Rabiotti 1989 Settlement* [2000] JLR 173, and in *re The Fountain Trust* [2005] JLR 359, to name but a few of the cases in which these considerations have arisen. In *re Rabiotti 1989 Settlement* the court stated –

> ***"The court regards it as unlikely that an English court would so exceed the normal bounds of comity as to purport to vary a settlement governed by Jersey … law administered in Jersey by Jersey trustees, and which had no connection with England save that some of the beneficiaries resided there."***
>
> In *re The Fountain Trust*, the court added –
>
> ***"We agree with counsel that as a general rule, … it would be an exorbitant exercise of jurisdiction for a foreign court to purport either to vary the terms of a Jersey settlement or to declare such a settlement to be a sham."***

31 The jealousy with which the court guards its supervisory jurisdiction over Jersey trusts does not mean that it is insouciant of the reasoned decisions of other courts exercising a matrimonial jurisdiction. As Birt, Deputy Bailiff, stated in the matter of the *H Trust*–

"The observations which we have made do not lead to the conclusion that this Court will ignore a decision of the Family Division or other overseas court. Far from it. That court will have investigated the matter very fully and will have made a decision intended to achieve a fair allocation as between the spouses. In such cases the

interests of comity as well as the interests of the beneficiaries will often point strongly in favour of this Court making an order which achieves the result contemplated by the order of the Family Division. Indeed this Court has made such orders in the past and will no doubt do so again in the future".

32 It would, in our view, avoid sterile argument, and expense to the parties, if the English courts were, in cases involving a Jersey Trust, having calculated their award on the basis of the totality of the assets available to the parties, to exercise judicial restraint and to refrain from invoking their jurisdiction under the Matrimonial Causes Act to vary the trust. Instead they could request this Court to be auxiliary to them. Such an approach is adopted by courts exercising jurisdiction in relation to insolvency and in other areas of law too. It is true that such jurisdiction to seek assistance from a foreign court may usually have its basis in statute. Nonetheless we can see no reason why the trustee or one or more of the parties before the English court as the case might be, should not be directed to make the appropriate application to this court for assistance in the implementation of the English court's order. It appears to us that this would be a more seemly and appropriate approach to matters where the courts of two civilised and friendly countries have concurrent interests. It would furthermore be more likely to avoid the risk of the delivery of inconsistent judgments.