

The Representation of C, D and E as Trustees of the B Settlement

Jurisdiction:	Jersey
Judge:	Bailiff
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Text

[2016] JRC 092

ROYAL COURT

(Samedi)

Before:

T. J. Le Cocq, Esq., Deputy Bailiff, and Jurats Olsen and Liston

In the Matter of the Representation of C, D and E as Trustees of the B Settlement
And in the Matter of Articles 51 and 53 of the Trusts (Jersey) Law 1984 as Amended

Advocate L. J. Springate for the Trustees.

Advocate N.M. C. Santos-Costa for Damian James as Guardian ad Litem for the minor, unborn and unascertained beneficiaries.

Authorities

Trusts (Jersey) Law 1984, as amended.

Trust — application by the trustees relating to the interpretation of Clause 3.1 of the Declaration of Trust.

Bailiff

THE DEPUTY

- 1 This is an application by C, D, and E (“the Trustees”) as trustees of a Jersey law settlement, the B Settlement (“the Settlement”).
- 2 The initial question before us is a matter of the interpretation of Clause 3.1 of the Declaration of Trust of the 3rd April, 1997, (“the Declaration of Trust”) that constitutes the Settlement. Clause 3.1 is the only provision in the Declaration of Trust that provides for the addition of beneficiaries.
- 3 Clause 3.1 of the Declaration of Trust is in the following terms:-

“ The Trustees may at any time during the Trust Period (but only during the lifetime of the Principal Beneficiary with the consent of the Principal Beneficiary) add to the Beneficiaries such one or more objects or persons or classes of persons as the Trustees shall (subject to the application (if any) of the rule against perpetuities) determine and no Beneficiary may prevent the nomination of new beneficiaries under this Settlement.”
- 4 The matter has a slightly complicated procedural history and there are in fact two Representations before us today. The first Representation, (“the 2015 Representation”) seeks the order of the Court to vary the Declaration of Trust so that the word “Beneficiaries” will include not only children and remoter issue who are legitimate, legitimated or adopted, but also illegitimate children and remoter issue of such illegitimate children. The Principal Beneficiary, A (“A”) is deceased. The 2015 Representation proceeds on the basis that, following the death of the Principal Beneficiary, Clause 3.1 of the Declaration of Trust no longer provides that power to the Trustees and therefore the Court's order to vary the Declaration of Trust is required.
- 5 The second Representation (“the 2016 Representation”) seeks the Court's interpretation of Clause 3.1 of the Declaration of Trust, to determine whether or not in fact, notwithstanding the death of the Principal Beneficiary, Clause 3.1 continues to confer a valid power to add beneficiaries and therefore the relief sought in the 2015 Representation is unnecessary.

- 6 We do not need to go into the detail as to why there are two separate Representations. Suffice it to say that the position that the Trustees initially took, and which gave rise to the 2015 Representation, was thrown into doubt by proceedings in connection with another related settlement in similar terms before the High Court, which suggested that Clause 3.1 was in fact a valid provision that would enable the Trustees to add beneficiaries. As a result, the Trustees took the view that it was the interpretation of Clause 3.1 which first needed to be considered by the Court, and only if the Court was not with the Trustees in submitting that Clause 3.1 of the Declaration of Trust contained an existing power, would it be necessary to go on to consider the 2015 Representation.
- 7 We do not need to set out the background of the Settlement or the detail of what the Trustees wish to achieve. Suffice it to say that the Trustees wish to have clarity on the terms of the Settlement and whether or not they have the power to add certain beneficiaries, following the death of A, in particular, whether or not they are able to add certain illegitimate children (who are direct descendants of A), to the class of beneficiaries. This is so that all of the children, whether legitimate, illegitimate or adopted are treated equally.
- 8 The affidavits before us confirm that whereas the Settlement (one of a number) was created for the benefit of A, his immediate family and direct descendants, the beneficial class extends into his wider family (his siblings and their descendants). Accordingly on the presentation of the 2016 Representation to the Court on the first occasion, we ordered that it be served on the adult members of A's immediate family and notified to the adult beneficiaries of his wider family. We also appointed a guardian *ad litem* for the minor, the unborn and unascertained beneficiaries. At this hearing the convened parties all approved in writing the Trustee's application and the notified parties made no representations. This is not surprising as the wider family has been provided for with similar trusts.
- 9 It is put to us in the very helpful skeleton argument filed on behalf of the Trustees that there is an ambiguity in Clause 3.1. Either, it is argued, the clause means that the power to add beneficiaries exists only during the lifetime of the Principal Beneficiary and with his consent and ends on his death, or that after the death of the Principal Beneficiary, the power to add beneficiaries still exists, but becomes unfettered. It is the latter interpretation for which both the Trustees and indeed the guardian *ad litem* argue. Therefore, either the Trustees have no power to add beneficiaries or their power is now in effect an unfettered one.
- 10 In the view of the Court the latter interpretation is quite clearly correct.
- 11 Firstly, Clause 3.1 purports to give a power to the Trustees to be exercised "*at any time during the Trust Period*". The Trust Period itself was expressed in Clause 1 of the Deed as "*the period ending on the earlier of (a) the last day of the period of one hundred years from the date of the Settlement; or (b) such date as the Trustees shall by deed at any time or time specify (not being a date earlier than the date of execution of any such deed or later than a*

date previously specified”).

- 12 It is clear that the Trust Deed was highly likely to extend beyond the life of the Principal Beneficiary and there would have been no need or indeed point in making reference to the Trust period in Clause 3.1 had it been intended to tie the power to appoint beneficiaries to the lifetime of the Principal Beneficiary. The reference to Trust Period in those circumstances would be simply unnecessary.
- 13 Secondly, it is clear from a viewing of the form of Clause 3.1 that the reference to the lifetime and consent of the Principal beneficiary is a qualification in parenthesis and should, it seems to us, be taken as a single qualification. In those circumstances, it becomes clear that that qualification subsists only during the lifetime of the Principal Beneficiary and not at any other time. It is a qualification to the general power given to the Trustees and that qualification is time-limited; and once that time is over, in other words when the Principal Beneficiary dies, the qualification itself ceases and the power becomes unfettered.
- 14 Accordingly in our judgment, the Trustees retain the power under Clause 3.1 of the Declaration of Trust to appoint beneficiaries.
- 15 Having decided the 2016 Representation in that way, it is not necessary to consider the 2015 Representation and at the request of the Trustees it is adjourned sine die pending discussion with the current beneficiaries over costs.