

# The Representation of F Trustees Ltd

<b>Jurisdiction:</b>	Jersey
<b>Judge:</b>	Sir William Bailhache, Jurats Olsen, Austin-Vautier
<b>Judgment Date:</b>	08 March 2021
<b>Neutral Citation:</b>	[2021] JRC 63
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<b>Court:</b>	Royal Court

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## Text

[2021] JRC 63

ROYAL COURT

(Samedi)

Before:

Sir William Bailhache, Commissioner, and Jurats Olsen and Austin-Vautier.

In the Matter of the Representation of F Trustees Limited  
And in the Matter of Articles 51 and 53 of the Trusts (Jersey) Law 1984 (As Amended)

**Advocate C. Swart for the Representer.**

**Advocate S. Chiddicks for minor and unborn beneficiaries of 2014 Trust**

## Authorities

Trusts (Jersey) Law 1984 (as amended).

*B and C v Virtue Trustees (Switzerland) AG and Ors* [\[2018\] JCA 219](#).

Lewis on Trusts, 19th Edition at paragraph 4–069

Trusts. application for Rectification of a Trust Deed.

### THE COMMISSIONER:

- 1 This is an application for rectification of a trust deed made by B and F Trustees Limited executed on 15<sup>th</sup> October 2014. The alleged mistake in the deed was the failure to include in the class of Excluded Persons every individual who is for the time being resident in Jersey. The mischief is that property has been appointed to this trust by the trustees of the Declaration of Trust of 13<sup>th</sup> July 2007 which does include that definition of Excluded Persons and a question has arisen as to the validity of that appointment given the possibility that a person not entitled to benefit from that trust may do so at some point in the future.
- 2 We have received affidavit evidence from the administrators of the trustee company, and from the English solicitors involved in the drafting of the 2014 Deed, who are the advisers to the family intended for benefit under these trusts.
- 3 We have noted that all those who do benefit if the trust is rectified and all those who benefit if it is not, support the application. Advocate Chiddicks who is appointed to represent the minor and unborn beneficiaries of the 2014 Trust also supports the application.
- 4 The Legal Test is clearly set out in *B and C v Virtue Trustees (Switzerland) AG and Ors* [\[2018\] JCA 219](#), where Martin JA said at paragraph 21 of that judgment, skipping the earlier part he refers to Lewin on Trusts, 19<sup>th</sup> Edition at paragraph 4–069:

***“The conditions which must be satisfied in order for the court to order rectification of a voluntary settlement are as follows:***

***(1) There must be convincing proof to counteract the evidence of a different intention represented by the document itself;***

***(2) There must be a flaw (that is an operative mistake) in the written document such that it does not give effect to the settlor's intention;***

***(3) The specific intention of the settlor must be shown; it is not sufficient to show that the settlor did not intend what was recorded; it must also be shown what he did intend; and***

***(4) There must be an issue capable of being contested between the parties affected by the mistake notwithstanding that all relevant parties consent.”***

Judge Martin adds:

***“22. To these requirements I would add that there must be full and frank disclosure; that no other remedy is available to achieve the same end; and that even when the requirements for rectification are satisfied the court retains a discretion whether or not to rectify.”***

- 5 In this case it is clear from the affidavit evidence particularly the affidavit of D. At paragraph 14 he says this in his affidavit:

*“In late 2013, it was agreed by all relevant parties that the most appropriate way to proceed, having regard to the taxation implications and practicalities involved, would be to establish a new trust to hold the legal and beneficial title to [Property1], were the Trust 2 Trustees minded to transfer [that property] to the new trust. The new trust was to be called the [Redacted] 2014 Trust (“Trust 3”) and was to be created with the specific and sole intention of holding [Property 1], following a transfer of [Property 1] from Trust 2.”*

- 6 So, there is an integration of the specific intention that reflects the intention of the parties.
- 7 The early draft of the trustee did not include the full Excluded Person's definition. That was picked up by the administrators for the trustee which is apparent at paragraph 18 of D's affidavit where he says:

*“[E's] response of 10 January 2014 raised the issue of the excluded persons provisions in the Trust 3 trust deed and expressly stated that “...it is necessary to ensure that the excluded persons named in the [Redacted] 2007 Trust ...are excluded to ensure that the appointment is valid...”. The email proceeded to set out those individuals that would therefore need to be excluded from Trust 3 to ensure a valid appointment could be made from Trust 2. [And the] list expressly mentioned Jersey Residents.”*

And that email is exhibited to D's affidavit.

- 8 Unfortunately, in the months that followed that change was overlooked. Other points were being discussed in relation to the trust and that amendment to the first draft did not take place. That was clearly a mistake. Rectification is appropriate as a remedy. There is no other remedy that is possible for us to give conveniently and therefore we exercise our discretion to order Rectification of the Trustee as of the date of the Deed 15<sup>th</sup> October 2014 so that the definition of Excluded Persons includes every individual for the time being resident in Jersey.
- 9 No order for costs (as has been agreed between the parties).

