

## Representation of IFG

<b>Jurisdiction:</b>	Jersey
<b>Judge:</b>	F.C. Hamon, O.B.E., Jurats Bullen, Morgan
<b>Judgment Date:</b>	21 December 2007
<b>Neutral Citation:</b>	[2007] JRC 250
<b>Reported In:</b>	[2007] JRC 250
<b>Court:</b>	Royal Court
<b>Date:</b>	21 December 2007

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### Text

[2007] JRC 250

ROYAL COURT

(Samedi Division)

Before:

F.C. Hamon, **Esq.**, O.B.E., **Commissioner, and** Jurats Bullen **and** Morgan.

Representation of the Ifg Trust (Jersey) Limited

In the Matter of the N Settlement

And in the Matter of Articles 51 and 53 of the Trusts (Jersey) Law 1984 (Revised Version)

**Advocate J. Gleeson for IFG Trust (Jersey) Limited.**

### Authorities

Trusts (Jersey) Law 1984.

*Public Trustee v Cooper* [\[2001\] WTLR 901](#).

*In the matter of the S Settlement* [\[2001\] JRC 154](#).

## THE COMMISSIONER:

- 1 At the start of these proceedings, Advocate Gleeson, for IFG Trust (Jersey) Limited (“the Trust Company”), asked that the hearing be in private. We granted this request. Also, because of the sensitivity of the matters contained in the representation, he asked that the parties be made anonymous. This is a short judgment of our finding which is to grant the relief asked for.
- 2 The Trust was established in Jersey on 27<sup>th</sup> July 1995. It was made by Mrs X as Settlor and the Trustee. It is a Jersey Trust within the meaning of Article 1(1) of the Trusts (Jersey) Law 1984. The original beneficiaries of the Trust were Mrs X and her sister Miss B, who died in 1998. Two beneficiaries were added by a Deed of Addition dated 11<sup>th</sup> May 2001. They were La Maestranza and the Jersey Wildlife Preservation Trust (as it then was).
- 3 We have carefully examined all the assets of the settlement which includes a substantial property in Spain. Mrs X was very careful about terms of the settlement and of the assets contained in it. Mrs X wrote a memorandum of wishes on 27<sup>th</sup> July 1995 and again on 3<sup>rd</sup> May 2001. She said in the later memorandum that her “*aims and aspirations regarding my wishes ... have become more focused*” following the death of her sister.
- 4 Mrs X made a will of her U.S. property but when Mrs X's sister died there was a very bitter legal argument between the sisters' children and Mrs X which was eventually compromised. It made for bad feelings.
- 5 On 21<sup>st</sup> July 2004, La Maestranza and the Jersey Wildlife Preservation Trust were removed as beneficiaries of the Trust. On 1<sup>st</sup> June, 2007, the Durrell Wildlife Conservation Trust (formerly the Jersey Wildlife Preservation Trust) was re-added as a beneficiary of the Trust, the World Wildlife Trust having been added on 21<sup>st</sup> July 2004.
- 6 Mrs X was constantly in touch with Mr Kevin O'Connell, a director of the Trustee, and had proposed a meeting with Mrs Lee Durrell to discuss the details of how the operation would be conducted. Sadly, Mrs X died before the meeting took place.
- 7 We said at the conclusion of the hearing that the Court had been much impressed by the relationship between Mrs X and the Trustee and in particular, the way that the Company had dealt with her affairs over the many years of their relationship.

- 8 The sale of the Spanish property is a momentous decision for it departs materially from Mrs X's expressed beliefs. This is not, in our view, a case of surrender of discretion. We have studied with some care the opinions of lawyers learned in the laws of Spain and the U.S.A.
- 9 In *Public Trustee v Cooper* [\[2001\] WTLR 901](#), Mr Robert Walker J (as he then was) said:–
- “The second category is where the issue is whether the proposed course of action is a proper exercise of the trustees' powers where there is no real doubt as to the nature of the trustees' powers and the trustees have decided how they want to exercise them but, because the decision is particularly momentous, the trustees wish to obtain the blessing of the court for the action on which they have resolved and which is within their powers. Obvious examples of that, which are very familiar in the Chancery Division, are a decision by trustees to sell a family estate or to sell a controlling holding in a family company. In such circumstances there is no doubt at all as to the extent of the trustees' powers nor is there any doubt as to what the trustees want to do but they think it prudent and the court will give them their costs of doing so to obtain the Court's blessing on a momentous decision”***.
- 10 This case, clearly, falls into the “second category” mentioned in the judgment and derives statutory support from article 51 of the Law. It is also most noteworthy that the analysis in *Public Trustee v Cooper* was specifically approved by the learned Deputy Bailiff *In the matter of the S Settlement* [\[2001\] JRC 154](#).
- 11 We have read the detailed papers filed by Advocate Gleeson and he has answered any questions that we raised impeccably. Mr O'Connell was also present throughout the hearing to answer any questions that we might have.
- 12 We have no doubt but that the property should be sold and we are content that the deed of gift (having read and considered the opinions of Spanish and U.S. lawyers) is valid and the items mentioned by Mrs X in her letters of 29<sup>th</sup> September and 18<sup>th</sup> November 2001 are encompassed in the deed of gift. If any items of residue fall outside the deed of gift then these can be dealt with in Spain as part of the intestate moveable estate in Spain.
- 13 The property in Spain which we are convinced is not able to be conducted in accordance with Mrs X's then wishes is to be sold at the best price obtainable on the open market and with the deed of gift declared valid the World Wildlife Fund and the Durrell Conservation Trust will benefit accordingly.
- 14 Under the terms of Article 53 we declare that the reasonable costs incurred to date and to be incurred by the Representor of and incidental to the present application for directions (including the costs of obtaining legal opinions from U.S. and Spanish lawyers) shall be

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indemnified out of the assets of the Trust in respect of the same.