

V Trustees (formerly G Trustees Ltd) v Mr A

Jurisdiction:	Jersey
Judge:	J. A. Clyde-Smith OBE., Jurats Dulake, Austin-Vautier
Judgment Date:	09 December 2020
Neutral Citation:	[2020] JRC 255
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Text

[2020] JRC 255

ROYAL COURT

(Samedi)

Before:

J. A. Clyde-Smith OBE., Commissioner, and Jurats Dulake and Austin-Vautier

In the Matter of the Representation of V Trustees Limited (Formerly G Trustees 1985)

and

In the Matter of the K and N Trusts

and

In the Matter of Article 51 of the Trusts (Jersey) Law (As Amended)

Between

V Trustees (formerly G Trustees Limited)

Representor
and
Mr A
First Respondent

and
Mrs C
Second Respondent

and
Mr D
Third Respondent

and
Mr E
Third Respondent

Advocate M. P. Renouf for the Representor

Mr A **appeared personally by videolink**

Advocate R Christie for the Third Respondent

Authorities

Trusts (Jersey) Law (As Amended)

Representation of V Trustees Limited (formerly G Trustees) re K and N Trusts
[\[2020\] JRC 220](#)

Trust — re new trustee of the K Trust.

THE COMMISSIONER:

- 1 Further to the Court's substantive judgment of 21st October 2020 (*Representation of V Trustees Limited (formerly G Trustees) re K and N Trusts* [\[2020\] JRC 220](#)) the Court sat on 17th November 2020 in order to review the progress made in the appointment of a new trustee of the K Trust. We will use the same definitions as contained in the substantive judgment, this being a matter arising consequential to it.
- 2 For the reasons set out in the substantive judgment, the Court had made this order at paragraph 116(ii):

“(ii) [V Trustees Limited] should retire as trustee of the [K] Trust as soon as possible and exercise its powers under Clause 18 of and the 5th schedule to the trust deed to appoint a new regulated trustee in this jurisdiction, nominated by [Mr D]. We will adjourn this representation to 17th November at 9.00 a.m. so that we can review the progress made in this respect. That date can be vacated if before then a new trustee has been appointed.”

- 3 Mr D had nominated R&H Trust Co (Jersey) Limited (“R&H”), a locally based and regulated professional trustee, to take on the trusteeship of the K Trust and V Trustees Limited was content to exercise its powers to appoint it. Mr A opposed the appointment. The Court directed V Trustees Limited to proceed with the appointment of R&H and we now set out briefly our reasons.
- 4 Mr A had written to Advocate Christie, who acts for Mr D, at length in a letter dated 30th October 2020, objecting to the appointment of R&H as trustee of the K Trust and he confirmed those objections orally at the hearing. We will not set out those objections, but in essence it transpires that he and his father had approached R&H, meeting with Mr Matthew Christensen (“Matthew Christensen”), with a view to the possibility of R&H being appointed as trustee of both the N Trust and the K Trust. For that purpose, Mr A supplied R&H with information about both trusts, and in particular, about the complaints of Mr A and Mr E as to the conduct of V Trustees Limited as trustee. A number of meetings took place, but nothing came of that approach.
- 5 Matthew Christensen is the son of Jurat Christensen who sat on the substantive application. As a consequence, the Jurat Christensen did not sit on this subsequent matter, his place being taken by Jurat Austin-Vautier. Mr A informed us that he is about to launch an appeal against the substantive judgment following which he said further hearings before this Court would be inevitable and for consistency and for the retention of knowledge, Jurats Christensen and Dulake should be retained for that purpose, in which event, R&H could not act as trustee. Mr A understood that the daughter of another Jurat, namely Jurat Blampied, also worked at R&H and he was concerned that the relationship between the Court and R&H could be perceived as being unhealthy in this respect
- 6 Matthew Christensen, who attended the hearing, explained in his letter of 12th November, 2020 why R&H did not regard it being approached in this way as giving rise to any conflict in it being appointed as trustee of the K Trust alone; he said he was not aware of R&H receiving any privileged documentation or seeing anything that a new trustee of the K Trust might not expect to see. In any event out of an abundance of caution, the documents supplied by Mr A had been locked away so that they could not be viewed by anyone involved in the administration of the K Trust should R&H be appointed.
- 7 In his oral submissions, Mr A further submitted that this being a Bermudan proper law trust, any new trustee should be resident in that jurisdiction. We take this issue first. Both

Advocate Renouf and Advocate Christie confirmed that there was no restriction under the trust deed or Bermudan law requiring a new trustee to be resident in Bermuda – indeed, V Trustees Limited is itself a Jersey incorporated company.

- 8 Secondly, V Trustees Limited is exercising its power to appoint R&H in its capacity as trustee of the K Trust, of which Mr D is effectively the only beneficiary, and from which Mr A has been irrevocably excluded. We doubt, therefore, that Mr A has any locus or standing on the issue of who should be the new trustee of the K Trust. It was significant that V Trustees Limited, which will remain as trustee of the N Trust, had no concerns over the appointment of R&H.
- 9 Thirdly, it is the case that historically these two trusts have been administered on a holistic basis, and their affairs intertwined to a very significant extent. Any reading into the history of the K Trust, which in layman's terms gave birth to the N Trust, by any new trustee of the K Trust would inevitably involve that new trustee gaining a great deal of information about the affairs of the N Trust.
- 10 Fourthly, much of the documentation which Mr A listed as being supplied to R&H seemed to us to be information which any new trustee of the K Trust, because of its inter-related history, would expect to see. Mr A's concern, as with his father, is as to the past conduct of V Trustees Limited and the strategy they have in mind in pursuing claims against V Trustees Limited are of no relevance to the K Trust and any new trustee will have no involvement in those claims. There is no suggestion that R&H has received privileged or confidential information about the Estate or the loan between the two trusts which are the issues with which any new trustee of the K Trust will be principally concerned.
- 11 Fifthly, the basic rule as to conflict is that a trustee cannot put himself into a position in which his duties and interests as trustee would conflict with other duties and interests, he may have. By taking on the trusteeship of the K Trust, W Trust Co (Jersey) Limited will have no duties that we can see towards the beneficiaries of the N Trust. If for some reason such a conflict were to arise, then it would be for R&H to manage that conflict in accordance with well-established principles.
- 12 Sixthly, we were informed by Advocate Christie that R&H was approached by Mr D after the Court in the substantive action had sat, and it was pure coincidence that Jurat Christensen's son worked there. Such coincidences can arise, and the appropriate course was for Jurat Christensen to stand down, as he had. The constitution of any future proceedings will be a matter for another day.
- 13 Finally, the Court was concerned with the good administration of the K Trust which requires the appointment of a new trustee for the reasons explained in the substantive judgment. Mr D is effectively the only beneficiary of the K Trust and he has nominated R&H to be appointed. It was important, in our view, that the appointment proceed as soon as

possible. We therefore approved the appointment of R&H as trustee and directed V Trustees Limited (with its consent) to exercise its powers accordingly.

- 14 Having given that direction, Advocate Christie raised with the Court an issue as to the due diligence exercise that R&H needed to complete in order to take on the trusteeship, which we were informed would ordinarily require documentation to be provided by [Redacted] as settlor (a certified copy of his passport, utility bill etc). In the circumstances that have arisen here, [Redacted] is most unlikely to cooperate in any way in the provision of such documentation. Time did not permit a discussion about the regulatory requirements, but we can say that the history of the K Trust, the identity of the settlor and the source of its funding is set out in the Court's un-anonymised substantive judgment as handed down; and of course, the Court has approved the appointment. We give leave for the substantive judgment, together with this judgment, to be disclosed by R&H to the extent necessary to enable its due diligence to be completed so that it can assume this trusteeship as soon as possible.
- 15 For the avoidance of any doubt, we can confirm that V Trustees Limited can only appoint R&H as trustee of the K Trust, as it has been directed to do, when R&H is ready to accept such appointment. The Court would wish to be informed when that appointment has taken place.