

Representation of BNP Paribas

Jurisdiction:	Jersey
Judge:	The Deputy Bailiff
Judgment Date:	16 January 2012
Neutral Citation:	[2012] JRC 17
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Text

[2012] JRC 17

ROYAL COURT

(Samedi)

Before:

W. J. Bailhache, **Q.C.**, Deputy Bailiff, **and** Jurats Le Cornu **and** Olsen.

IN THE MATTER OF THE REPRESENTATION OF BNP PARIBAS JERSEY TRUST
CORPORATION LIMITED

AND IN THE MATTER OF THE PW TRUST

Between
BNP Paribas Jersey Trust Corporation Limited
Representor
and
A

First Respondent
B
Second Respondent
C
Third Respondent
D
Fourth Respondent
E
Fifth Respondent
F
Sixth Respondent
G
Seventh Respondent

Advocate J. P. Speck for the Representor.

Authorities

Representation of BNP Paribas [\[2010\] JRC 199](#).

Representation of BNP Paribas [\[2011\] JRC 213](#).

Trust — application for a payment from the Trust.

The Deputy Bailiff

- 1 Two matters have been raised with the Court today in connection with this trust. The first was an application by G for a stay of the proceedings, but having investigated that matter with him, he agreed that it would be right to withdraw that application. He does of course have liberty to restore the application in the future. In the circumstances his application for a stay was withdrawn and we noted that liberty to apply exists.
- 2 The second issue that was raised today was a request by G for payment of 500,000 Singapore dollars and there was some discussion as to whether it should be treated as an advancement or a distribution. The request was that the money should be paid by the trustees out of trust assets. It is right that I reflect again that there is argument as to the legitimacy of the transfers into the trust and that argument seems to turn upon whether the assets genuinely belonged to the widow Settlor, G's mother or whether by contrast they belonged to the estate of the Deceased, the late husband of the widow Settlor and G's father.
- 3 The Deceased died as a national and domiciliary of Indonesia in January 2000. Under the Will, we have been told previously, the residue of the estate is disposed of as to 50% to his

widow, the settlor in this trust, 15% to each of his two sons, one of whom is G and 5% to each of his four daughters. We mention those percentages because, if it is right that G's application in Singapore is well-founded, then we must not forget that there is a maximum which each of the sons and daughters are entitled to on the face of what we have been told at the moment under the Will of their late father.

- 4 In relation to this application the trustees have surrendered the exercise of their discretion to the Court. They have done so in the light of the conflict in which they have found themselves as a result of proceedings commenced in Singapore by G and by the Act of the Court of 3rd November, 2011, the Royal Court on that occasion accepted that the discretion should be surrendered and indeed in those circumstances we certainly accept that today.
- 5 The application is for 500,000 Singapore dollars. That falls within the amount which, if G is successful, he would be entitled to receive from the estate of his late father as a minimum and we have taken that from previous information given to us that although we do not know how much the estate of the late father would amount to, it cannot amount to less than what has been placed into the trust fund as far as we understand it. In those circumstances the amount of \$500,000 falls within that total which G could hope to receive. Similarly it falls within the total that each of his brother and sisters might hope to receive if the estate were to be distributed in accordance with the Will.
- 6 We are not looking at a distribution of the Will and emphasise we are looking at the matter as a trust distribution but it is right not to take one's eye of the possibility that the Will entitlements would be the operative ones if G were to be successful. Having considered the matter we think that there is every reason to permit G a payment of monies from the trust estate to ensure that he is not prevented from bringing the claims which he wishes to bring on account of financial hardship. We also think that it is important to treat G and his brother and sisters equally and accordingly, subject to a condition which I am going to mention in a moment, it is ordered that the trustees make a distribution of 500,000 Singapore dollars to each of G and, subject to receiving the beneficiaries' consent to receive the payment because they may not wish to receive it for any particular reason, to his brother and sister and that payment should be made within the next two months.
- 7 The money will be paid as a distribution from the trust and the Court is assuming the validity of the trust and of the payments into it. If the result of the litigation in Singapore is that the transfers into trust were not valid then G will presumably apply to this Court, or the trustee will apply to this Court for further directions in relation to the trust but on the face of it the trustee would then hold the assets on trust for the estate of the late father of G. In those circumstances the payments which are currently being made out of the trust as distributions from the trust are, we take it, payments by way of advancement against the share in the estate of the Deceased, the late husband of the settlor. We hope that tackles the uncertainty around the use of the words distribution or advancement. As far as we are concerned it is currently a distribution. If for any reason the action by G in relation to the validity of the transfers should be successful then no doubt it will be treated as an advancement.

- 8 I mentioned earlier a condition and I have canvassed that condition with G since we returned to Court. In this Court on the 4th November, 2010, the judgment which was issued makes it plain that it was wholly unacceptable for the uncertain state of affairs surrounding this trust to continue and I quote what I then said:-

“It is quite wrong that the trustee of what appears to be a perfectly valid Jersey trust should be hamstrung in the performance of its’ trustee duties by an unparticularised and vague complaint which has neither been substantiated by detail provided to the trustee nor taken forward by any hostile litigation. It is not fair to the trustee that it should be placed in this position. Neither is it fair to the other beneficiaries of the trust who are precluded thereby from receiving any benefit out of the trust for as long as the trustee does not know whether it holds assets on the trusts of the settlement or on trust for the would-be Claimant.”

I went on to say:-

“It goes without saying that this Court makes no finding whatsoever today as to the merits or otherwise of any claim which the seventh respondent might bring.”

- 9 Now of course we still make no finding whatsoever as to the merits of any claim which the seventh respondent, G, might bring. That is now before the Singapore Court and as Commissioner Clyde-Smith accepted on the 3rd of November, 2011, the Singapore Court is the appropriate forum for adjudicating on this substantive issue and nothing that I have said today touches on that at all. But the purpose of the Order in November 2010 was to ensure that the Jersey trustee could act as a trustee, and, provided it did so properly, do so without fear of reprisals elsewhere. It is for that reason that we add this condition that the payment of 500,000 Singapore dollars to G is not to be made unless G removes from the Singapore proceedings his claims that a payment made by way of distribution by the trustees in June and July 2011 was made in breach of trust. Those claims against the trustees must be removed. It does not prevent other claims being brought again in Jersey where the trustees are resident and incorporated but it is not appropriate that the Order of the Court of 4th November, 2010, should be ignored and a claim made in the Singapore Courts which goes against the Order of the Royal Court in November 2010.
- 10 Now I emphasise that G is not being directed to withdraw the claim in Singapore although he has undertaken to do so. The limit of how far we go is to say that the trustee should not make the payment of 500,000 Singapore dollars unless this claim has been withdrawn. The reason for that is that it does not sit easily with now asking for the Court's discretion to be exercised in his favour for G to have the benefit of ignoring the purpose of the Order of the 4th of November. I hope that is clear and understood.