

## In the matter of the A Trust (2012) JRC 066: Blessing a Momentous Decision Opposed by...

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### In the matter of the A Trust (2012) JRC 066: Blessing a Momentous Decision Opposed by Beneficiaries

The Royal Court has, once again, played an invaluable role in the administration of a trust by blessing a trustee's decision to widen the class of beneficiaries of the trust in the face of opposition from the existing individual beneficiaries.

#### The facts

The husband and wife Settlers of the A Trust had four children - the Siblings. The Settlers had appointed a Protector of the A Trust, who was a close business associate and friend of the Settlers. Under the terms of the A Trust, the Settlers were designated the life tenants. Other than charities, no other beneficiaries were named at the point of settlement. The Settlers also settled the B Trust, which named the Siblings and the Settlers' remoter issue and spouses as beneficiaries. The assets settled into both trusts were substantial. There were no letters of wishes for either trust.

The family dynamics were pivotal in this matter. Disputes had arisen between certain members of the family prior to the settling of the two Trusts. Those dynamics contributed to the Settlers' reluctance to set down in writing exactly how they wished the succeeding generations to benefit upon their deaths.

The Trustee understood that it was the Settlers' intention that the Trusts should be enjoyed by the wider family with the assets cascading down to future generations.

#### The Trustee's decision

Upon the Settlers' deaths, the Trustee became involved in ensuring that the Siblings could inherit

the wife's estate in as tax-efficient a manner as possible. The wife had left the freely disposable portion of her personal estate to the A Trust, rather than to the Siblings. This resulted in a restructuring plan, of which the first step was to add the Siblings as beneficiaries to the A Trust so that the Trustee could then renounce its inheritance, allowing the Siblings to inherit in its place. As a later step, it was the Trustee's intention, based on its understanding of the Settlers' wishes, to add the remoter issue of the Settlers as beneficiaries of the A Trust.

## **The Court application**

Without any warning, at a routine Trustee/Siblings/Protector meeting in 2010 mid-way through the restructuring process, the Siblings presented the Trustee with a letter requesting the Trustee to distribute all the assets of the A Trust to them, after paying a modest sum to charity (in deference to the charitable beneficial class). The Trustee did not accede to this request - it explained that it had been considering the need to plan for future generations, and one of the matters under consideration was the addition of the remoter issue of the Settlers to the class of beneficiaries of the A Trust. The Siblings' response was to state that they had lost faith in the Trustee and that the Trustee should either wind up the A Trust as requested, or retire. This was followed by a threat that if the Trustee exercised its discretion to expand the beneficial class of the A Trust, the Siblings would issue immediate proceedings (1) seeking to set aside the decision and (2) for the removal of the Trustee.

As a result of the opposition surrounding the widening of the class of beneficiaries the Trustee considered that a decision to add the remoter issue was momentous in the circumstances, and in light of the Siblings' demand to be given the bulk of the trust assets which (as the court found) gave the "unavoidable impression" that the Siblings wanted to get their hands on the money and which was contrary to the Settlers' wishes, the Trustee decided to add to the beneficial class justified seeking the Court's approval (a position with which the Court later agreed). The Trustee therefore issued proceedings seeking the Court's approval of its decision. This was later followed by the Siblings issuing proceedings seeking the Trustee's removal.

## **The Court's analysis**

The Siblings contested the Trustee's Representation. As a result the Court had to determine what the Settlers' wishes were vis-à-vis the future of their assets. The Protector supported the Trustee's view that the Settlers intended for the assets to pass down to future generations.

Based on the evidence from the Trustee and the Protector and contrary to the Siblings' case, the Court concluded that it was the intention of the Settlers that the A Trust would be inter-generational with assets cascading down to future generations, and that it would have been the expectation of the Settlers that the remoter issue would have been added to the beneficial class of the A Trust in due course following the death of both Settlers.

The Court did give some consideration to the question of whether a trustee should make such a significant decision when a broad spectrum of the beneficial class had asserted a loss of confidence in the trustee. The Court held that it was right for the Trustee in this instance to have made such a decision and sought the Court's blessing of it prior to the outcome of removal proceedings because:

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Commissioner Clyde-Smith stated that "*the efficient and satisfactory execution of this trust going forward requires this issue to be clarified now.*" He went on: "*blessing the decision will avoid difficulties for any future trustee*". The Court considered the three questions set out under the second category of cases in Re S Settlement, and granted the Trustee's application.

In response to the Siblings' contention that the Trustee was unfit to act for the reasons discussed in Jones -v- Firkin Flood [2008] EWHC 2417. Whilst it could make no finding in the absence of evidence the Court did point to the fact that in that case the finding of unfitness was predicated on a "*total abdication of the Trustee's duties*".

## **Comment**

Whilst this is clearly a case which turns on a detailed analysis of the documents and witness evidence in determining the intentions of two deceased Settlers, the Court's approval of the way in which the Trustee proceeded in terms of handling hostile beneficiaries whilst at the same time seeking to uphold the unwritten intentions of the Settlers should be of some use, and comfort, to trustees in a similar situation. Further, it is helpful to have some judicial guidance on how a trustee should act when faced with unproven allegations regarding its conduct.

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