

Representation of the Jeep Trust [2010] JRC075

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This representation was made by the principal beneficiary of the Jeep Trust (“Mr K”). The Jeep Trust was established in May 1998 with Regal Trustees Limited (“Regal”) as trustee.

In 2003 Regal retired as trustee of the Jeep Trust in favour of a company incorporated in Mauritius called Dinard Trustees Limited (“Dinard”).

During 2007 Mr K considered terminating the Jeep Trust and sought to have the entire trust fund appointed to him by the trustee. Mr. K’s financial advisors attempted to make contact with Dinard to fulfil this appointment; however, they could not get a response from Dinard. Despite the fact that Regal had retired as trustee from the Jeep Trust, Mr K asked Regal for assistance. Regal established that the Mauritius Financial Services Commission had withdrawn Dinard’s licence. However, no other further information on Dinard could be obtained. The position at this time was that the Jeep Trust was without a functioning trustee and because of this, there wasn’t anyone in a position to give instructions to appoint the trust fund.

Mr K asked the Court to exercise its power under Article 51 of the Trusts (Jersey) Law 1984 (the “TJL”) to remove Dinard as trustee of the Jeep Trust and to appoint Regal in its place so that Regal could exercise its power of appointment under the trust deed to pay the whole of the trust fund to Mr K.

The removal of a trustee is a serious matter but it is a well known rule in equity that the Court will not allow a trust to fail for want of a trustee. The Court held that it has, apart from its statutory powers, an inherent jurisdiction to ensure the competent administration of a trust. The Court quoted from Lewin on Trusts:

“The general principle guiding the Court in the exercise of its inherent jurisdiction is the welfare of the beneficiaries and the competent administration of the Trust in their favour. In cases of positive misconduct the Court will without hesitation remove the trustee who has abused his trust but it is not every mistake or neglect of duty or inaccuracy of conduct on the part of the trustee that will induce the

Court to adopt such a course. Subject to the general guiding principle the act or omission must be such as to endanger the trust property or to show a want of honesty, or a want of proper capacity to execute the duties, or a want of reasonable fidelity”.

The Court also referred to the duties of a trustee which are set out in Article 21:

“(1) A trustee shall in the execution of his or her duties and in the exercise of his or her powers and discretions:

(a) act:

(i) with due diligence,

(ii) as would a prudent person,

(iii) to the best of the trustee’s ability and skill; and

(b) observe the utmost good faith.”

Decision

The Court held that Dinard had clearly not been fulfilling the above duties under Article 21 of the TJL which had led to such a nature as to endanger the Jeep Trust and to prejudice its proper administration. As a result of this the Court exercised its powers under Article 51 of the TJL to remove Dinard and appoint Regal as trustee of the Jeep Trust.

It is clear from this case that the Court will use its power of inherent jurisdiction to ensure the proper administration of a trust and remove trustees who are not fulfilling their statutory obligations.

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