

Representation of the Greville Bathe Fund [2013] JRC 201

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Representation of the Greville Bathe Fund [2013] JRC201 - consideration of trust objects and administrative powers of the trustee

Clarification was sought by the trustees regarding the objects and purposes of the Greville Bathe Fund (the Fund) and the trustees' administrative powers.

Background

The Fund was established in 1948 with a donation from the son of the founder of Ann Street Brewery Company Limited, now known as Citann Limited (the Company). The trustees resolved to hold the Fund 'for the general welfare of pensioners and employees', and that distributions would be at the discretion of the trustees, but no trust deed was ever created. Following a corporate restructuring, the Company became a holding company within a large group, but as a result, a number of employees within the group who were formerly beneficiaries of the Fund were no longer beneficiaries.

The trustees originally sought to vary the Fund to extend the beneficial class to all employees within the group, but ultimately this was deemed impractical.

Held

The Court considered whether the objects of the Fund were exclusively charitable. The Jersey Courts have looked to English law regarding the definition of charity and what constitutes a charitable gift (*Meaker v Picot* [1972] JJ 2161). The objects of the Fund comprised the Company's pensioners and employees, other persons in a subordinate position to the Company and victims of hardship in the ordinary course of employment and business with the Company. The class of objects was therefore defined by reference to their relationship with the Company. To be a valid

charitable trust, the purposes must be exclusively charitable and for public benefit (Meaker), ie they must benefit the community or an appreciably important class of the community. Employment by a common employer does not, as a general rule, meet the latter test (Oppenheim v Tobacco Securities Trust [1951] AC 297). The Court found that the Fund was not exclusively charitable.

The Court considered the meaning of persons in a subordinate position to the Company. The settlor's intention in respect of these words had to be construed against the background circumstances or matrix of facts (Alhamrani v Alhamrani [2005] JLR 236). When the objects were established a substantial number of persons working for the Company were not strictly employees, being rather in the position of agents or self-employed, including persons employed by subsidiaries of the Company and publicans. The settlor would have known this and was seeking to refer to persons in an equivalent position to employees, being here employees of the subsidiaries and tenants of the pubs.

The Court then determined on the true construction of the terms of the Fund that the beneficiaries and purposes were as set out in the statement before it.

The Court observed that the trustees were handicapped in the exercise of their duties by the lack of a trust instrument and whilst a number of powers were vested in them by the Trusts (Jersey) Law 1984 (as amended) (the Trusts Law), the trustees nonetheless proposed that a consolidated trust instrument including certain additional administrative powers be put in place. The additional powers were sought under Article 47(3) of the Law, ie by which, in summary, the Court can confer upon a trustee powers for such purposes as the Court thinks fit, where the relevant power is not already vested in the trustee by the trust instrument or by law. There was no guidance on that Article from Jersey case law, but it was similar to section 57(1) of the Trustee Act 1925. In *Alexander v Alexander and others* [2011] EWHC 2721, it was held there are 3 matters to be considered in an application under that section, ie whether the court has jurisdiction to act thereunder, whether it is expedient to confer the power sought and whether the court should in exercising its discretion confer the power. That case referred to *Royal Melbourne Hospital v Equity Trustees* [2007] VSCA 162 where the Supreme Court of Victoria described section 63(1) of the Australian Trustee Act (which is in similar terms to section 57(1)) as being in very wide and beneficial terms "that must be liberally construed". The powers could not be used to alter the beneficial trusts (Lewin on Trusts 18th edition, paragraph 45-15). In *Sutton and others v English and others* [2009] EWCA 327 Ch, with one exception the court approved, under section 57(1), a modern standard precedent with useful administrative powers for the trustees of a 1940 trust.

The powers sought here were inter alia the powers to borrow money, guarantee and appoint a protector and were all administrative provisions found in modern trust deeds. The Court therefore had jurisdiction to act and was satisfied that it would be of real benefit to the administration of the Fund to have the additional powers and that the Court should exercise its discretion to confer the powers.

It seemed to the Court that it was the settlor's intention that directors of the Company should act as trustees without charging for their services., The Court expressed the view that it would be a matter of some regret if the settlor's wishes that the trustees that the Fund would in effect be administered by the Company without cost to the Fund. The Court hoped, and believed the settlor would have wished, that directors of the Company as far as it was reasonably practical would continue to act as trustees rather than be replaced by a professional trust company. However, the Court accepted that, in the event it became necessary to appoint a professional trustee, such a trustee would need to be remunerated and allowed provisions regarding remuneration to be included in the trust instrument.

Finally, pursuant to Article 45 of the Trusts Law, the Court ordered that the trustees and their predecessors be excused from inadvertent breaches of trust arising out of payments made outside their powers or to non-beneficiaries (ie employees of companies within the group but not subsidiaries of the Company) as, in doing so, they had been following practice and custom adopted by previous trustees.

Conclusion and comment

In this case, the Court took a pragmatic approach and enabled the objects and the purposes of an old trust to be clarified and the terms of the trust to be brought up to date, ie such that the trustees now had a modern trust instrument to refer to, with the flexibility afforded by a wider range of administrative powers. The case was also useful for its examination of the test for whether a trust is "exclusively charitable". In this respect, the Court re-affirmed the test in the Meaker case - purposes must be exclusively charitable and for public benefit, ie they must benefit the community or an appreciably important class of the community.

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