

## Guernsey Royal Court's expertise in complex trust cases

Insights - 02/05/2019

Two recent cases in the Guernsey Royal Court - one relating to the variation of a settlement and one relating to the winding up of a trust - demonstrate the complex trusts cases that come before the Court on a regular basis.

### Application for a variation of a professional footballer's trust to provide for his children

In the matter of the PQ Employer Financed Retirement Benefit Plan [2019] GRC013

*In this case the Royal Court granted an application from two mothers on behalf of their children, whose father is a famous professional footballer. The mothers' application requested that the Court approve a variation of the footballer's trust to ensure the creation of two sub-funds for the benefit of their children.*

The case involved a famous professional footballer (PQ) and his wife (RS). PQ settled a retirement fund on 7th December 2010 for the benefit of PQ during his lifetime, his widow, any children of his living at his death and any other person who, in the opinion of the trustees, is dependent on PQ for the ordinary necessities of life upon his death.

PQ had had two natural children in England born to two different mothers (neither of which were RS). In 2014, the mothers had brought proceedings before the High Court of Justice, Family Division seeking adequate support and maintenance for their children.

As part of those proceedings PQ and RS consented to an order which included irrevocable undertakings by PQ, RS and the children's mothers B and D to ensure the creation of two equal (50%) sub-funds of half the value of the PQ Trust for the benefit of the children A and C (the 2014 Orders). There were also lump sum payments and orders for periodic payments of school fees.

The 2014 Orders had not been complied with. So, the mothers B and D brought an application before the Royal Court, requesting that the Court approve a variation of the terms of the PQ Trust

so that the 2014 Orders were complied with.

The Royal Court considered whether the variation of the trust benefited A and C, for whom consent was sought. The Court gave 'benefit' a wider meaning than simply pecuniary and found that it did. As a result, the application was granted. Judge Finch Esq, O.B.E. added that "There is very good reason for PQ (and RS) to be held to what they solemnly accepted in 2014".

### **Discretionary class of beneficiaries apply for trust to be terminated**

Rusnano Capital AG (in liquidation) v Molard International (PTC) Limited and Pullborough International Corp [2019] GRC011

*An investment firm, which was the sole member of a discretionary class of beneficiaries, applied for a trust to be terminated and the trust fund to be distributed to them. The respondents argued that the investment firm didn't have a beneficial interest in the trust property and wasn't entitled absolutely, as they were not a closed class of beneficiary.*

Rusnano Capital AG (Rusnano) applied to the Royal Court for an order that the RNPharma Trust be terminated and the trust fund, being primarily shares in Pro Bono Bio PLC (PBB), be distributed to them.

The rule established in *Saunders v Vautier* (1841) Cr & Ph 240 and codified in section 53(3) of the Trust (Guernsey) Law, 2007 (the Trust Law) provides that 'where all the beneficiaries are in existence and have been ascertained, and none is a minor or a person under legal disability, they may require the trustees to terminate and distribute the property among them'.

Rusnano made the application as the sole member of a discretionary class of beneficiaries. The respondents argued that, since it was a discretionary class of beneficiaries, the class was not closed and Rusnano could not be regarded as having a beneficial interest in the trust property or entitled absolutely.

The Court held that just because there is a real possibility that the power to appoint additional beneficiaries might be exercised, it does not follow that anyone who Pullborough International Corp appoint is a beneficiary for the purposes of the Trusts Law and, more particularly, section 53(3).

The Royal Court granted Rusnano's application and held that as the sole beneficiary of the RNPharma Trust, they were entitled to require Molard International (PTC) Limited to terminate the trust and distribute the trust fund to them.

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