B v Erinvale: the Jersey Royal Court intervenes to set aside a trustee decision

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In the case of B v Erinvale, the Royal Court intervened to set aside a decision of the trustee not to make the spouse of the settlor a beneficiary in her own right. The Court's decision has implications for trustees and their obligation to act reasonably despite the trustee setting out reasons for its original decision.

Summary

This case concerned an application made by B under Article 51 of the Trusts (Jersey) Law 1984 to be added as a beneficiary of the A Settlement in her own right. B was already a beneficiary of the A Settlement in her capacity as the spouse of the settlor. However, the settlor was in ill-health and had issued divorce proceedings, such that B had become concerned about her status as a beneficiary. The trustee had previously resolved not to add B as a beneficiary in her own right and had set out its reasons for not doing so in a detailed minute. However, the Royal Court found that, despite the detailed and carefully considered minute, the decision ultimately reached by the trustee not to add B as a beneficiary in her own right was one which no reasonable trustee would have made. The Royal Court therefore intervened in order to set that decision aside.

Background

The settlor and B married in 1997. They had one child together and each had two children from previous marriages. The settlor established the A Settlement – a discretionary settlement governed by Jersey law - in 2012, with the whole of his free estate. It provided the main source of financial support for both the Settlor and B and was thought to have a value of some £50 million. The beneficial classes were described in the trust instrument as "the Settlor, the Settlor's spouse and the Settlor's children and remoter issue". In 2013, the settlor expressed a wish in his two letters of wishes for £4 million to be set aside for B on his death.

On 30th May 2017, the settlor, who was by that time in ill-health, issued a divorce petition. In 2018 the settlor was found by the Court to lack capacity. B, who was in her late sixties, became

concerned about the impact on her status as a beneficiary, given that she was a beneficiary as the settlor's spouse and not otherwise. Although the settlor had agreed not to apply for the decree absolute until after the conclusion of B's claim for ancillary relief, B was still concerned. Even if the decree absolute was not to be sought until a later date, there was a real chance of the settlor dying in the meantime, such that B would become a widow and no longer the settlor's spouse. Similarly, if the settlor were to die after the making of a decree absolute but before orders for ancillary relief were made, the financial matrimonial proceedings could continue but B would still cease to be a beneficiary of the A Settlement as she would no longer be the settlor's spouse.

B therefore asked the trustee to consider adding her as a beneficiary of the A Settlement in her own right so that her status as a beneficiary would not be dependent on her marriage to the settlor or indeed his survival.

The decision of the trustee

The trustee considered the request before resolving to not add B as a beneficiary in her own right at that time. The reasons given by the trustee in a minute of directors dated 10 January 2020 can be paraphrased as follows:

1. A decree absolute had not yet been granted so there would be no material difference in adding B now because she remained the spouse and so was already a beneficiary
2. The settlor lacked capacity so the trustee could not consult him
3. The settlor's children and grandchildren confirmed they were not in favour of B's addition as a beneficiary in her own right at that time
4. The trustee, in reaching its decision, had considered the settlor's original intentions as to who should benefit from the trust, including the trust instrument and the two letters of wishes.
5. The trustee was within the jurisdiction of Jersey and was to be added as a party to the proceedings before the Matrimonial Court such that it would be bound by (and in any event intended to comply with) any orders directed at it which would be within the jurisdiction of that Court
6. The trustee assumed that the divorce would be on a clean-break basis so there would be no need to name her as a beneficiary in her own right
7. The trustee was of the view that a previous judgement of the Court suggested that an application to add B now was unnecessary
8. Without fettering its future discretion, B could be added at a later date in any event; and
9. The risks to B didn't justify a decision at that time

As you would perhaps expect, this was not the outcome B had hoped for and she therefore sought

the supervisory jurisdiction of the Court over the A Settlement under Article 51 of the Trusts (Jersey) Law 1984 to be added as a beneficiary in her own right.

In considering the application and the parallel sets of proceedings, the Court referred to Sir Michael Birt in the case of Re the H Trust [2006] where he said:

"In this respect it is important to note that the roles of the two courts are very different. The Family Division is concerned to do justice between the two spouses before it. It is sitting in a matrimonial context and its objective is to achieve a fair allocation of assets between those spouses. It has no mandate to consider the interest of the other beneficiaries of any trust involved. Conversely, this Court is sitting in its supervisory role in respect of trusts, as is regularly done in the Chancery Division of the High Court. This court's primary consideration is to make or approve decisions in the interests of the beneficiaries. It is therefore a very different focus from the Family Division.

The decision of the Royal Court

In consideration of the application by B, the Court noted that, "whilst its jurisdiction [under Article 51] is wide, it must be exercised on a sensible and principled basis". The Court noted that the position in Jersey on intervention as per S v Bedell Cristin [2005] JRC 109 is in essence also that reflected in Lewin on Trusts (20th Edition) and should not be controversial, that is to say:

1. Where a power is given to trustees to do or not to do a particular thing at their absolute discretion, the Court will not restrain or compel the trustees in the exercise of that power, provided that their conduct is informed, bona fide and uninfluenced by improper motives
2. It is settled law that when a testator has given a pure discretion to trustees as to the exercise of a power, the Court does not enforce the exercise of the power against the wish of the trustees, but it does prevent them from exercising it improperly
3. The principle is both that the Court will not interfere before the trustees have acted to compel a particular exercise of the power and, except as stated, that after they have acted it will not overturn their exercise of the power. The mere fact that the Court would not have acted as the trustees have done is no ground for interference. The settlor has chosen to entrust the power to the trustees, not to the Court

With this in mind, the Court noted that the test for intervention is high. However, the trustee is of course still required to act reasonably. On this occasion, the Court found that the trustee did not act reasonably in not adding B as a beneficiary in her own right and, as such, intervened and set that decision aside.

In doing so, it noted that there was a very real prospect of the settlor dying before the conclusion of the divorce proceedings. It was troubled by one of the key reasons put forward by the trustee around timing: namely, that it would not add B now but it probably would in the future. The Court

noted a trustee cannot fetter the future exercise of its discretion. It also noted that any future application by B would probably be opposed by the other beneficiaries and it could not find any good reason to not add her now in order to remove the uncertainty she faced. Her own need to remain in the beneficial class far outweighed the interests of the other beneficiaries.

The Court questioned why a reasonable trustee would leave B in this state of uncertainty, something which is of understandable concern to her. It did not think the trustee should treat the wife of the settlor of some 23 years, a woman in her late sixties with no other means of support and the mother of one of the settlor's children, in this way, particularly given the clear intention of the settlor in the two letters of wishes.

Comment

What makes this case unusual is that the trustee had very carefully considered its decision - giving a total of nine different reasons in the minute of directors – and yet the Court still felt that the decision was ultimately an unreasonable one and as such intervened. It could find no good reason for not appointing B now but every good reason for doing so, so that she would be able to receive whatever was decided should be distributed to her in the future.

When assessing whether a decision was reasonable and one which the Courts would intervene, a trustee would normally consider that a reasoned decision would cross this threshold. This is therefore a reminder that even if a trustee has gone through a process it must still ensure that the overall decision is appropriate and the reasons upon which it is relying are good ones.

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