COLLAS CRILL

In the representation of Summit Services: Court sides with trustee's decision in family trust dispute

DECEMBER 2024

In a recent judgment, in the Representation of Summit Services [2024] JRC 222, the Royal Court of Jersey (the **Court**) addressed a trustee's decision to separate and reallocate trust-owned assets which were held in four Jersey law discretionary family trusts. The case highlights the complex challenges faced by trustees when trying to manage intergenerational family wealth - particularly within a family comprising multiple generations and branches. The judgment not only underscores the importance of a trustee's structured decision-making process but also sheds some light on the evolving judicial debate surrounding the role of protectors in trust administration.

A decades-long process

The allocation of assets within the branches was an iterative process. Each step of the process was deemed momentous and therefore, over a four year period, the trustee made numerous Court applications and secured multiple blessings.

Although the Court process was itself lengthy and challenging, it followed nearly two decades of deliberations between family members and the trustee on how to fairly divide the assets. The debate took into account family dynamics, values, and individual contributions to the family business. While the principle allocation between the main family branches was largely agreed, a dispute arose within one particular branch. The issue was whether the assets in that branch should be sub-divided equally or unequally, to reflect historical contributions to the collective wealth and cultural influences between male and female beneficiaries.

The trustee, after consulting extensively with the beneficiaries and seeking professional advice, decided on an equal division and sought the Court's blessing for this final stage of the four-year process.

The Court's blessing of the trustee's decision

The Court applied established principles, focusing on whether the trustee's decision for the sub-division was:

- made in good faith;
- one a reasonable trustee could reach, and;
- as free from conflicts of interest.

It held that the trustee had followed a thorough process, including considering the historical contributions and financial needs of family members. Cultural values were promoted as an important factor by some of the beneficiaries. The trustee

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acknowledged that they played a role in the trustee's considerations, but concluded that they did not justify departing from an equal division of assets. The Court blessed the trustee's decision.

The role of the protector: A legal debate

The protector had refused to consent to the sub-division. As part of the blessing process, the Court examined the protector's refusal which created a deadlock of the kind envisaged in Re Piedmont and Riviera Trusts [2021] JRC 248 namely, two competing decisions – one taken by the protector and one taken by the trustee. The protector's refusal brought into focus the broader and ongoing legal debate over the scope of the protector's discretion, as highlighted in two contrasting landmark cases:

- Re Piedmont and Riviera Trusts [2021], where the Royal Court endorsed a wide view, allowing protectors to exercise independent judgment and potentially veto trustee decisions if they believe their own view better serves beneficiaries' interests.
- Re X Trusts [2023], where the Bermuda Court of Appeal adopted a narrow view, confining the protector's role to assessing whether the trustee's decision is reasonable, thereby avoiding unnecessary interference (and which currently remains the subject of appeal).

Guidance on the protector's role

In this case, when addressing the deadlock, the Court made it clear that the protector's function was subsidiary to the trustee's decision-making authority. It gave guidance to the protector and urged it to focus on assessing the reasonableness of the trustee's decision, rather than substituting its own preferences. While the Court stopped short of itself breaking the deadlock, it encouraged the protector to reconsider its position in light of the judgment and the Court's comments, ensuring its decision-making remained objective, transparent, and free from undue influence.

Conclusion

It is hoped that the Privy Council will resolve the uncertainty created by the divergent views of the Jersey and Bermuda Courts following Re Piedmont and Re X Trusts. In the meantime, this judgment provides some guidance to trustees who are navigating the complexities of modern trust administration, and juggling the often challenging interplay between trustees and protectors. Although the judgment does not provide a clear answer to what should happen in the event of a deadlock, the Court nevertheless endorsed the importance of collaboration in order to try to avoid a deadlock and, by reaffirming the primacy of the trustee's authority, it has arguably reinforced the hierarchy of the decision makers.

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COLLAS CRILL

For more information please contact:

Damian James

Partner (Advocate) | Jersey

t: +44 (0) 1534 601733 | **e:** damian.james@collascrill.com

Lynne Calder

Partner (Advocate) | Jersey

t: +44 (0) 1534 601784 | **e:** lynne.calder@collascrill.com

Catia Barros

Legal Assistant | Jersey

t: +44 (0) 1534 601725 | **e:** catia.barros@collascrill.com

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