COLLAS CRILL

Royal Court varies footballer's pension trust to provide for his children

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The Royal Court has recently handed down judgment in one of the first local cases that addresses the interaction between family law and trusts law, an issue of considerable interest and importance to lawyers and trusts practitioners alike.

In an anonymised judgment handed down on 27th February 2019, the Royal Court of Guernsey has ordered a professional footballer's ("**PQ**") retirement benefit plan (the "**Plan**") be varied to provide benefits for two of his young children.

Collas Crill acted for one of the applicants – "C" – and successfully obtained the variation to secure compliance by their recalcitrant father, with an order that had been made by the Family Division of the High Court. Another local firm of Advocates acted for the other applicant, "A".

Background

The matter concerned an application brought by A and C, both natural children of PQ, by their mothers as Tuteurs (guardians). Made pursuant to sections 57 and 69 of the Trusts (Guernsey) Law, 2007 (the "**Law**"), the application sought to secure compliance by PQ with certain orders of the Family Division of the English High Court relating to the children's maintenance (the "**Family Division Orders**").

The Family Division Orders included orders that PQ pay lump sums to the children for their housing, pay regular maintenance and their school fees, and also that he was to create two equal sub-funds of the Plan, one for each child, and take the necessary steps in Guernsey to do so.

The Family Division Orders were made by consent in 2014 with both PQ and his wife, RS (who is not the children's mother), agreeing to them.

Unfortunately, PQ failed to comply with the Family Division Orders, and once A and C had exhausted enforcement options in England, it became clear that seeking to 'enforce' against the Plan was the only viable way in which to provide for the children's needs, which in the case of C, included special educational needs arising from Autism Spectrum Disorder.

Consequently, an application was brought by the children seeking the Royal Court's consent, under s.57 of the Law, for a variation of the Plan on behalf of both the applicant children and the “minor, unborn and unascertained” beneficiaries of the Plan - i.e. PQ's other minor children, any unborn children, and any unascertained persons who may be entitled to benefit.

Broadly, the variation envisaged a split of the Plan of 45% / 45% between A and C, with a smaller 10% sub-pot provided for the other minor, unborn and unascertained beneficiaries.

The Law

Two questions arise whenever the Royal Court is asked to provide its approval (on behalf of persons who are legally incapable of consenting themselves) to a variation of a trust under s.57 of the Law:

Firstly, is the arrangement one which varies the terms of the trust? The answer was plainly "yes" in this instance.

Secondly, is the arrangement one which benefits those on whose behalf the Royal Court is asked to consent?

Discussion

Benefit

The case provided a useful reminder of what a court may view as constituting “benefit”. Whilst benefit might manifest itself most clearly in a financial sense (i.e. a payment being made, or entitlement to financial benefit in the future) the Royal Court was quick to agree with the applicants who emphasised that – in line with *In re: the H Trust* (Royal Court 28/2007) – the word “benefit” should be construed widely, and includes educational and social benefit too. As Lord Denning once emphasised in an application under the English equivalent of s.57, "*there are many things in life more worthwhile than money.*"

PQ's Consent

PQ and RS consented to the Family Division Orders in 2014. However, despite his clear consent, PQ later sought to renege on that position and opposed the variation of the Plan. He filed two affidavits in opposition which were derided by the Judge as "*strong on rhetoric, but short on fact*".

The applicants argued that PQ and RS – in consenting to the Family Division Orders – had provided their irrevocable consent to the proposed variation, which sought to give effect to that Family Division Orders. Such consent is a key element of a s.57 variation application. as the Royal Court can only provide consent on behalf of those who are legally incapable of consenting themselves; any beneficiaries who are legally capable must have provided their own consent.

The Royal Court accepted the applicants' argument, noting the persuasive similarities of facts between this application and the infamous Jersey Court of Appeal case of *Mubarak v Mubarak, the Craven Trust Company Limited, S Mubarak, N Mubarak and Renouf* [2008] JLR 430, which upheld the decision of the Jersey Royal Court ([2008] JLR 250 B/41).

The Royal Court noted in particular the views of Birt DB at first instance, who said: “*He has made his choice and he is bound by it. We therefore have no hesitation in finding that he should be treated as consenting to the alteration to the trust [...] notwithstanding his later attempt to renege*.”

PQ and RS were thus held to what they had promised and agreed to in 2014, and not permitted to renege in line with the reasoning set out in *Mubarak*.

Decision / Conclusion

Ultimately, the Royal Court accepted A's and C's submissions and approved the variation of the Plan, holding that "*it was quite evident that the proposed variation did not achieve an undesirable result and was in accordance with the authorities*”.

Interestingly, the Royal Court determined that there was "*very good reason for PQ (and RS) to be held to what they solemnly accepted in 2014*", noting again the significance and similarity of the *Mubarak* case to the applicants' position.

The case serves to highlight not only how widely the term "benefit" can (and should) be construed by the Royal Court when considering beneficiaries' interests, but also how a party's agreement to an arrangement – even if that is in a different forum – can be taken into consideration by the Royal Court in s.57 applications and deemed to amount to consent.

It is an interesting case in an area of significant industry interest yet where there is very little local case law.

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