

## CASE UPDATE

## Stepping into the trustee's shoes – when will the Royal Court Interfere with a trustee's decision?

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In *B v Erinvale PTC Limited* [2020] JRC 213, a recent case concerning a challenge to a trustee decision not to appoint a beneficiary of a discretionary trust, the Royal Court re-affirmed the well-established “non-intervention principle” which means that the role of the court is limited to ensuring that the trustees of a discretionary trust exercise their discretion properly and that the court does not interfere in the trustees’ exercise of a discretionary power unless they have acted improperly or unreasonably. Having carefully considered all the relevant circumstances, the Court nonetheless took the unusual step of overturning the trustee’s decision on the basis that no reasonable trustee would have reached the same decision with respect to the appointment of the applicant as a beneficiary in her own name.

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### Background

The case arose in the context of matrimonial proceedings commenced by the Settlor (“C”) of a Jersey trust (the “Trust”) against his wife, B. B was a beneficiary of the Trust, albeit by belonging to a class (namely, as C’s spouse) rather than in her own name. The Trust was central to the division of assets between B and C for two reasons. Firstly, a number of years before, C had settled the entirety of his free estate into the Trust. The Trust’s assets were therefore the sole means by which B might be provided for following the divorce. Secondly, C was suffering from a degenerative mental disease and there was a risk that he might die prior to the Family Division of the Royal Court determining the case. There was therefore a risk that B would at that stage become a stranger to the Trust in circumstances where she would no longer be C’s spouse and before any decision of the Royal Court in the exercise of its matrimonial jurisdiction had confirmed the extent of B’s entitlement to the Trust’s assets.

C started the matrimonial proceedings in 2017. Whilst a decree nisi was pronounced later that year, C had agreed not to seek decree absolute until B’s application for ancillary relief was determined to preserve her status as a beneficiary of the Trust.

Despite that agreement, B was concerned to ensure that her status as a beneficiary of the trust was not solely dependent upon being C’s spouse. B therefore issued proceedings in 2019 invoking the supervisory jurisdiction of the Royal Court under Article 51 of the Trusts (Jersey) Law 1984 (as amended) (the “Law”) seeking that she be appointed a beneficiary of the Trust in her own name.

In response, the trustee noted at a meeting held in January 2020 that:

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- B was already a beneficiary, albeit as a result of her status as C's spouse;
- B had already derived and would continue to derive substantial benefit from the Trust (comprising both a monthly income and settlement of her legal fees associated with the divorce) going forwards; and
- the trustee had been joined into the matrimonial proceedings and already indicated that, without fettering its future decision, it intended to comply with any order that the Family Division may make.

In those circumstances, the trustee concluded B already had the status of a beneficiary and that there was no need for her to be added as a beneficiary in her personal right 'at this time'.

In challenging the trustee's decision not to add her as a beneficiary of the Trust, B criticised the decision on two bases. Firstly, B submitted that the trustee's decision had been vitiated by conflicts of interest. Secondly, B submitted that no reasonable trustee could have reached the same decision. The trustee defended its January 2020 decision and did not surrender its discretion.

### Legal principles

B argued that the Court's jurisdiction under Article 51 of the Law was broad and included the power to make any order concerning the administration of a trusts, including to vary the trust to add beneficiaries. B also argued that the Court's jurisdiction under Article 51 was unrestricted and that the English law principles of "non-intervention" did not apply in Jersey due to the wider statutory footing of the Law.

The Court rejected those submissions and re-affirmed its earlier decision in *S v Bedell Cristin* [2005] JRC 109 that the principle of non-intervention was well settled under Jersey law. The Court also referred to three subsequent decisions in which the principle was confirmed as a matter of Jersey law: see *Garnham v PC* [2002] JRC 050 (at paragraph (67)), *Re HHH Employee Benefit Trust* [2015] JRC 193 (at paragraphs (11) – (12)) and an earlier decision in the same case, namely *B v Erinvale PTC Limited and Ors* [2020] JRC 174. Rather, the Court's jurisdiction under Article 51 had to be exercised within principled and rational constraints. As the Royal Court held in *S v Bedell Cristin* at paragraph 22: "A settlor does not choose the Court as a trustee, he chooses his appointed trustee. It is that trustee upon whom the various discretions conferred by the trust deed have been conferred... The court's role is a supervisory one and it is simply to ensure that decisions taken by trustees are reasonable and lawful. The Court does not simply substitute its own discretion for that of the trustee..."

In order successfully to challenge the decision, and in circumstances where the trustee had not surrendered its discretion, it therefore fell to B to show that either:

- a) the decision was vitiated by a conflict of interest;
- b) the decision was one that no reasonable trustee could have arrived at; or

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- c) in taking the decision, the trustee had failed to take into account a relevant consideration or had taken into account an irrelevant consideration.

**Analysis of trustee's decision**

The Court dismissed B's allegation that the trustee's decision had been vitiated by conflicts of interest on well-established principles. First, the Court noted that B had in fact benefitted substantially from the Trust's assets and had been treated as a beneficiary. Second, to the extent that the trustee had expressed concern regarding the level of B's legal fees, the Court considered that this was a matter of legitimate concern to the trustee. Third, whilst the beneficiaries had competing interests, the Court accepted the trustee's submission that it had balanced those interests impartially.

Turning to the decision itself, however, the Court expressed concern as to whether the trustee had properly considered B's concerns and given them sufficient weight. The Court noted that the trustee had produced a "*carefully worded*" minute and that its primary objection to B's appointment as a beneficiary in her own right appeared to be one of timing alone. The Court noted that, had the trustee surrendered its discretion, the Court would have been minded to appoint B as a beneficiary in her own right for a number of reasons as follows:

1. The Trust's assets represented the sole means from which B could be financially supported.
2. The Court recognised that B's "*status as a beneficiary is accordingly of vital interest to her*".
3. There was a very real risk, due to C's health, that B might become a stranger to the trust before the Family Division made a financial order in the divorce proceedings.
4. The trustee's decision left B in a state of considerable uncertainty. Given B had been married to C for some 23 years, and was the mother of one of C's children, this was not reasonable.
5. Considered from the point of view of the other beneficiaries, there was no material disadvantage to B being appointed, especially as she was currently deriving significant benefit from the Trust's assets.
6. Despite the trustee's indication that it would appoint B as a beneficiary in her own right if C were to die, the trustee had candidly recognised that it could not fetter its future discretion. There was therefore a possibility that she would not in fact be appointed as a beneficiary in her own right in the future, which refusal would undoubtedly have a significant financial impact upon her.

The Court recognised that the threshold for intervention was a high one. Nevertheless, and notwithstanding the reasons provided for its refusal, the Court concluded that the decision not to appoint B as a beneficiary of the Trust in her own right was a decision that no reasonable trustee could have reached. On that basis, the Court intervened to set aside the trustee's decision not to add B as a beneficiary in her own right. The Court did not take the step of itself ordering that B be appointed a beneficiary in her own right. However, it gave firm expression to its expectation that the trustee would without delay appoint B as a beneficiary (and indeed went further to say that C's delegate should give the consent required for that appointment to be valid).

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Commentary

Despite its ultimate outcome, the case is a powerful reiteration of a fundamental tenet of Jersey (and English) trust law, namely that a settlor selects his trustee and that the Court is not to intervene and itself act as trustee save in exceptional circumstances. Whereas the jurisdiction of the Court under Article 51 of the Law is on its face a wide and indeed vibrant jurisdiction, the Court must exercise its powers thereunder “*on a sensible and principled basis*”. The starting point in cases where the trustee has not surrendered its discretion is thus one of non-intervention. *Erinvale* can therefore be viewed within the framework of two leading UK Supreme Court decisions *Lehtimaki* [2020] UKSC 33 and *Pitt v Holt* [2013] UKSC 26 on the principle of non-intervention. As ever, each case will turn on its own facts and the facts of *Erinvale* were indeed unusual. Moreover, and whereas the court must proceed with considerable caution, as the Supreme Court noted in *Lehtimaki*, the categories of exceptional circumstances are by no means closed. It will be interesting to see whether, in any subsequent decisions challenging trustee’s decision-making, those categories are further extended.

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