

Jersey Royal Court blesses the momentous decision of the representative of minor and unborn beneficiaries

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Jersey Royal Court blesses the momentous decision of the representative of minor and unborn beneficiaries to settle claims against a trust

In its recent decision in the *Matter of the A Trust and the B Trust* [2021] JRC 019, the Royal Court considered for the first time the blessing of a momentous decision of a Court-appointed representative of minor and unborn beneficiaries of a trust to enter into a settlement agreement in respect of claims against the trust. While there can be no doubt that the decision to bless the decision of the representative of the minor and unborn beneficiaries was confined to the unusual facts of this case, it is an interesting decision nonetheless as it establishes the circumstances (albeit limited) in which the Court will bless such a decision.

Background

Both Trusts were established by Mr and Mrs H who have four children (the **Siblings**). The A Trust was governed by Jersey law and the B Trust by Guernsey law. The beneficiaries of the trusts were essentially the same, save that the spouses of the Siblings and remoter issue of the settlors were not beneficiaries of the A Trust whereas they were beneficiaries of the B Trust.

In short, the validity of certain transfers of assets on to the A Trust (the **Trust**) was challenged by some of the beneficiaries. All of the beneficiaries of the Trust were either attacking dispositions made to the Trust or expressly staying neutral, so the Court directed the representative of the minor and unborn beneficiaries to take the lead in defending the interests of the Trust and in conducting the defence of the claims made against the Trust and associated settlement negotiations. That of course would not ordinarily be a role undertaken by a representative of the minor and unborn beneficiaries but it was in the unusual circumstances of

this case that that happened and the Court's blessing of the representative's decision to enter into a settlement agreement was sought.

Decision

The judgment confirms that the Court has inherent jurisdiction to bless a momentous decision of an appointed representative of minor, unborn or unascertained beneficiaries of a trust if it thinks fit.

The basis for reaching that conclusion was that both the Court's inherent jurisdiction and jurisdiction under Article 51 of the Trusts Law to supervise, and where appropriate, intervene in the administration of a trust is a wide one which the Court noted extends not only to trustees but to other persons such as protectors and settlors (to the extent that the latter have fiduciary powers).

The Court confirmed that as a Court-appointed representative, the representative of the minor and unborn beneficiaries owes fiduciary duties to such beneficiaries and must act solely in their best interests, as a consequence of which, the Court said that it follows that it is entirely reasonable that a person so appointed by the Court should be able to seek the Court's blessing where appropriate in the same way as a trustee can.

An analogy of the position of a Court-appointed representative of the minor and unborn beneficiaries was drawn with the position of a guardian *ad litem* of a minor bringing a civil claim for personal injury, and a delegate appointed under the Capacity and Self Determination (Jersey) Law 2016 to manage the property and affairs of a person lacking mental capacity. A guardian can request the approval of the Court to any settlement of the claim the guardian proposes entering into and a delegate can ask the Court to bless a momentous decision such as to settle litigation brought on behalf of the person lacking mental capacity whom the delegate represents. In both circumstances, the Court's approval/blessing ensures that the settlement is reached in the best interests of the person represented and provides finality in terms of protection to the guardian or delegate to possible future challenge to any such decision to settle. Those are considerations which the Court said might be thought to be equally applicable to a Court-appointed representative of minor and unborn beneficiaries.

The judgment confirms that the Court's approach to blessing a momentous decision of a representative of minor and unborn beneficiaries should be the same as when considering a momentous decision by a trustee, that is to say that the Court must satisfy itself that (i) the representative has made the decision in good faith; (ii) the decision is one a reasonable representative, properly instructed, could have made; and (iii) the decision has not been vitiated by any actual or potential conflict of interest.

The Court did however emphasise that:-

- a. it will rarely be necessary for such a representative to seek the Court's blessing or if they do, for the Court to give such a blessing, because ordinarily the role of the representative is to consider a proposed decision by a trustee and to make submissions in relation to it. If the Court approves the decision, the decision becomes, by definition, a reasonable decision and does not amount to a breach of trust, in which case the Court noted that it is difficult to see how a minor, once an adult, could have any claim against his or her representative; and
- b. that if such an application is brought, it would expect the Court to often refuse such an application as being unnecessary and merely duplicating the blessing of the trustee's decision.

Discussion

It is clear from the judgment that while it is helpful in confirming that the Court has the jurisdiction to bless a momentous decision of a representative of minor and unborn beneficiaries to settle litigation, such applications are likely to be rare and the Court does not expect to see applications being brought by Court-appointed representatives in relation to proposed decisions of trustees. If the trustee considers that a blessing application is necessary, the Court-appointed representative of the minor and unborn representatives should leave the trustee to bring that application and not be tempted to use this judgment as a basis for pursuing its own related blessing application. If, on the other hand, a representative of minor and unborn beneficiaries should find itself in a similar position to the representative in this case, this judgment confirms that the Court has jurisdiction to bless any decision that the representative may find themselves having to make to settle such litigation.

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