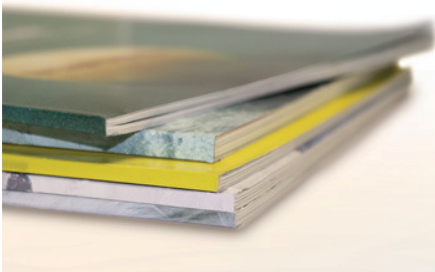


Removal of Trustees

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BY ADAM HARRISON

A trustee occupies an office by virtue of which it will hold assets on behalf of another. The trustee has duties in respect of those assets – put broadly it must act in the best interests of the beneficiaries on whose behalf it holds the assets. Specifically a trustee must discharge its duties, which are set out in Article 21 of the Trusts (Jersey) Law 1984, as amended.

It is inevitable that on occasion a trustee, for whatever reason, will fail to properly discharge its duties and in such circumstances the beneficiaries (amongst others) may apply to the court to intercede and seek an appropriate order. Where the circumstances justify it the order might be for the removal of the trustees.

In the recent case of **Representation of the Jeep Trust** [2010] JRC 075, the Royal Court reiterated the principles to be applied in determining whether or not to remove a trustee.

The case concerned an application by the principle beneficiary of the Jeep Trust (“the Trust”) to have the trustee, Dinard Trustees Limited, a company incorporated in Mauritius, removed as trustee and to appoint Regal Trustees Limited in its stead.

The need for the application arose because the principle beneficiary, in discussion with his financial advisors, was contemplating the termination of the Trust and seeking the appointment of the trust fund

to him by the trustee.

The principle beneficiary’s financial advisors sought to make contact with the trustees but got no response. Enquiries were made and it was discovered that the licence of Dinard Trustees Limited had been withdrawn - no further information was available as to what had become of the principles of the company or whether the company itself still existed. The position was that the Trust was without a functioning trustee and that no-one was in a position to give instructions to the institutions by whom the trust fund was held.

Rule of Equity

The court stated that the removal of trustees was a serious matter, but that it was a well known rule of equity that the court would not allow a trust to fail for want of a trustee.

The court stated that not only did it have its statutory power to order the removal of a trustee under Article 51 of the **Trusts (Jersey) Law 1984** (the “Trust’s Law”), but also an inherent jurisdiction to ensure the competent administration of a trust. The court cited **Eiro v. Equinox Trustees and Others** [2006] JRC 119, in which the court referred to a passage from **Lewin on Trusts** (17th Edition) 2000, which the court said conveniently encapsulated the principle:

“The general principle guiding the Court in the exercise of

its inherent jurisdiction is the welfare of the beneficiaries and the competent administration of the Trust in their favour. In cases of positive misconduct the Court will without hesitation remove the trustee who has abused his trust but it is not every mistake or neglect of duty or inaccuracy of conduct on the part of the trustee that will induce the Court to adopt such a course. Subject to the general guiding principle the act or omission must be such as to endanger the trust property or to show want of honesty, or want of proper capacity to execute the duties, or a want of reasonable fidelity.”

The court set out the relevant principles of Article 21 of the Trusts Law:-

- (1) *“A trustee shall in the execution of his or her duties and in the exercise of his or her powers and discretions –*
 - (a) *act –*
 - (i) *with due diligence,*
 - (ii) *as would a prudent person,*
 - (iii) *to the best of their ability and skill;*
 - and*
 - (b) *observe the utmost good faith.*
- (2) *Subject to this law, a trustee shall carry out and administer the trust in accordance with its terms.”*

Applying the facts, the court determined that Dinard Trustees Limited had not been fulfilling its duties as required by law. The court found that the trustee’s omissions were of such a nature as to endanger the Trust and to prejudice its proper administration, and that it had demonstrated a want of proper capacity to execute the duties of a trustee. The court noted that it had been properly served at its last known address in Mauritius but had failed to respond and was not represented in court. The court exercised its jurisdiction to remove Dinard Trustees Limited as trustee of the Trust, and appointed Regal in its place.

Want of Honesty

It appears that the court’s approach to the question of whether or not to remove a trustee is firstly to determine whether or not the trustee is fulfilling its duties as set out in Article 21 of the Trusts Law. If not, the court will then consider whether the act or omission is such to endanger the trust property, show want of honesty, want of property capacity to exercise its duties, or want of reasonable fidelity. If so, the court will exercise its direction and remove the trustee so as to secure the welfare of the beneficiaries and the competent administration of the trust.

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