

Jersey Trusts, Foreign Divorce Proceedings and the Rule in Saunders v Vautier

In the Matter of the Turino Consolidated Limited Retirement Trust (hearing 13 March 2008; Judgment delivered 20 June 2008).

The facts

This case concerned a fixed interest retirement trust established in February 1993 by Turino Consolidated Limited for the benefit of a husband and wife only. The terms of the trust provided that the husband's and wife's interests were to be allocated to each of them in accumulated funds in respect of the contributions made by each of them. The husband and wife were the sole beneficiaries of the trust and between them absolutely entitled to the trust fund in accordance with their contributions. There was no power to vary the trust.

The sole asset of the trust was a farm situated in the Netherlands which the husband and wife lived in as their matrimonial home. The contributions made by the husband and the wife to purchase the property differed such that the Trustee calculated that their respective accumulated funds amounted to 83.33% as to the husband and 16.67% as to the wife.

In 1996 the husband and wife agreed that in the event of divorce their assets would be shared equally.

In May 1999, the husband and wife signed a letter of wishes (sent to the Trustee in 2001) which provided that notwithstanding the contributions made by each of them in relation to the purchase of the property, in the event of their

divorce, the property shall be held within the trust to benefit each of them equally.

The problem

In April 2000, the husband and wife separated. A divorce was granted by the Dutch Court in 2001. The Trustee did not participate in the divorce proceedings nor submit to the jurisdiction of the Dutch Court but confirmed that, so long as it was in the best interests of the beneficiaries, it would abide by any final court decision in relation to the distribution of the property.

In May 2003 the Dutch Court determined the financial issues between the parties. The Dutch Court accepted that the property held within the trust could not be treated as part of the general community of property to be divided in accordance with the 1996 deed as they were separate from the assets of the parties. However it rejected the husband's argument that the property held by the trust must be divided in accordance with the husband's and wife's respective accumulated funds (83.3% and 19.67%), instead ordering that the property be sold and the proceeds be distributed equally by virtue of the 1999 letter of wishes. The husband appealed, stating that the 1999 letter of wishes did not in fact have any standing since it was not an expression of his wishes. He said that the letter was drafted on the initiative of his wife, when he was under duress and when she knew he was suffering from severe depression. He provided a new letter of wishes to the Trustee asking that in the event of his death his accumulated fund be held for the benefit of his daughter.



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In 2004 the Dutch Appeal Court rejected the husband's arguments and held that the 1999 letter of wishes constituted a binding agreement between husband and wife that the assets of the trust would be divided equally between them in the event of divorce. In 2005 the Dutch Courts ordered that the property be sold to the wife pursuant to a formula and ordered the husband to sign a formal declaration to instruct the trustee to sell the property to the wife pursuant to the formula (which included provision for division of trust assets equally and payment of other sums). The husband tried to appeal but was out of time. He signed the declaration but endorsed upon it that it was subject to appeal. He also told the Trustee that the declaration did not truly reflect his wishes.

The Trustee was caught in the middle. It was under pressure from the wife to sell the property to her pursuant to the Dutch orders and to distribute the proceeds on a 50/50 basis but faced strong objection from the husband not to do so other than in strict accordance with the terms of the trust and each party's accumulated interest. The Trustee felt that it was bound by the terms of the trust and the fixed interests of the husband and wife. The Trustee sought directions.

The law

The parties agreed that the Royal Court had no general power of its own volition to vary a fixed interest trust. The Royal Court accepted the husband's argument that the Dutch Appeal Court had no power to vary the trust so that it was held equally for both beneficiaries and that, further, the Royal Court had no power to give effect to any such order.

However, the Royal Court found that the Dutch Court had not in fact attempted to vary the terms of the trust. The Royal Court accepted the wife's argument that the 1999 letter of wishes amounted to an instruction varying the terms of the trust on the grounds that, between them, the husband and wife were beneficially entitled to the entire fund and that they could direct the Trustee accordingly. The letter was effective when received by the Trustee in 2001. The fact that the letter was entitled 'letter of wishes' made no difference.

The Royal Court cited *Saunders v Vautier* (1841) Cr & Ph 240 - where all the beneficiaries of a trust are in existence, have been ascertained and are of full age, they may require the trustees to terminate the trust. This is reflected in Article 43(3) of the Trusts (Jersey) Law, 1984. The Royal Court held that "it was equally true" that such beneficiaries "can vary the terms of the trust".

The decision

The Royal Court held that the husband was not entitled to renege on the 1999 letter of wishes. The 1999 direction to the Trustee could only be further varied by the direction of both beneficiaries. This had not happened. The Royal Court emphasised that the trust was not varied by any order of the Dutch Court or the Royal Court. The only relevance of the Dutch judgment was that the Court had rejected the husband's argument that he did not have the necessary mental capacity or that he was under the undue influence of his wife when he signed the letter of wishes in 1999.



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The Royal Court therefore held that the terms of the trust had been varied such that the beneficiaries' interests were equal. The Royal Court ordered the Trustee to sell the property to the wife in accordance with the formula laid down by the Dutch Appeal Court, and to distribute the sale proceeds to the husband and wife equally or, at the wife's election, allow her to set the value of her interest in the trust against the purchase price of the property.

Comment

This is an important decision as the Royal Court held that it has no power to vary a fixed interest trust notwithstanding a foreign matrimonial order. The Royal Court held that a letter of wishes can amount to a direction to the trustees varying a fixed interest trust under the rule in Saunders v Vautier.

Please note that this briefing is only intended to provide a very general overview of the matters to which it relates. This briefing is not intended as legal advice and should not be relied on as such.

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