

Royal Court.
(Samedi Division)

210A

25th November, 1997.

**Before: Sir Philip Bailhache, Bailiff,
and Jurats Vibert and Herbert**

Between	Barbara Toinette Maister Roger Alan Maister Frank Alexis Maister Leslie Alister Maister and Edward Lester Landau as Guardian ad Litem of Dominic Gregory Maister (a minor)	First Applicant Second Applicant Third Applicant Fourth Applicant Fifth Applicant
And	Alan Michael Rind Christopher Edward Lloyd Moulin Trustees Limited Goddard Trustees (Jersey) Limited Season Realty Limited	First Respondent Second Respondent Third Respondent Fourth Respondent Fifth Respondent

Application, under Article 47 of the Trusts (Jersey) Law 1984, by the Applicants, the beneficiaries of the Phi settlement, for distribution to be made to the second, third and fourth Applicants.

**Advocate A.J.N. Dessain for the Applicants
Advocate W.J Bailhache for the First and Fifth Respondents
Advocate M.J. Thompson for the Second, Third and Fourth Respondents.**

JUDGMENT.

THE BAILIFF: This an application made by members of the Maister family pursuant to Article 47 of the Trusts (Jersey) Law, 1984 which seeks the authority of the Court to the making by the Trustees of further distributions to Frank, Leslie and Dominic Maister, the children of the First and Second Applicants, to whom we shall refer collectively as "the Children".

This is a further chapter in the long saga of a family dispute which has already lasted far too long and which the Court, presided over by the Deputy Bailiff, urged the parties last year to endeavour to settle. The history and background were fully set out in a judgment delivered by the Deputy Bailiff on 14th June, 1995, and it is unnecessary to repeat them here.

The principle to be applied by the Court in exercising its discretion does, however, bear repetition. The Deputy Bailiff cited the headnote of the decision of the Privy Council in Marley & Ors. -v- Mutual Security Merchant Bank & Trust Co. Ltd. [1991] 3 All ER, p.198, which recorded:

“A trustee who seeks the approval of the court to the exercise of his discretion about the propriety of any contemplated course of action in the exercise of his fiduciary duties surrenders his discretion to the court and accordingly must put the court in possession of all the material necessary to enable that discretion to be exercised. If the discretion which the court is called upon to exercise in place of the trustee involves for its proper execution the obtaining of expert advice or a valuation, the trustee’s duty is to obtain that advice and place it fully and fairly before the court, since the court should not be asked to act on incomplete information .

In exercising its jurisdiction to give directions on a trustee’s application, the court is essentially engaged solely in determining what ought to be done in the best interests of the trust estate and not in determining the rights of adversarial parties. Accordingly, the principles applicable to the court’s approval of the trustee’s exercise of his discretion are not the same as those applicable in a case where the conduct of the trustee is impeached by the beneficiaries and therefore the question for the court is not whether the trustee has exercised due diligence but whether there is sufficient evidence before the court to enable it properly to exercise its discretion.”

On the face of the application this is a straightforward request for further distributions to be made to the three children of Barbara and Roger Maister for their benefit, education or maintenance, such distributions having been authorised by the court in 1995 and 1996. In round figures the Court authorised the payment of \$885,149.61 in 1995 and \$277,946.64 in 1996.

The complicating issue which has been put before us by Mr. Thompson acting for all the trustees save Mr. Rind, and by Mr. Bailhache acting for Mr. Rind, is that it appears that not all those funds were actually paid over to the Children. The sum of \$273,365 was retained by Messrs. Bedell and Cristin, it is said with the consent of the Children, in order to meet legal costs and expenses. Mr. Thompson asked rhetorically whether all relevant information had been placed before the Court when the 1995 and 1996 applications were made. He pointed out that the information about the retention of funds by Bedell & Cristin had not been in the possession of the trustees and submitted that in such circumstances it was the duty of the party, within whose knowledge the information lay, to place the information before the Court. It is accepted by Mr. Dessain that the information was not disclosed in the affidavits placed before the Court in 1996 nor was it disclosed in the 1995 affidavit, if indeed the decision to retain a proportion of the distribution had then been made.

Mr. Dessain sought to persuade us that all relevant information was already before the Court and that we ought to be able to determine the application in favour of the applicants at this stage. He pointed out that the applications were not opposed. This last point is certainly true but avoids the fact that an issue has been properly raised by Counsel for the trustees and for Mr. Rind as to the destination of the funds of which the Court authorised the release in

1995 and 1996. This issue needs to be resolved to the satisfaction of a Court before we are prepared to authorise any further distributions.

The Deputy Bailiff in delivering the judgment of the Court on 14th June, 1995, made very clear the purpose of the Court in authorising that distribution. After considering whether the unborn children of Mr. and Mrs. Maister should be represented he stated at page 3.

“However, because we have a letter of confirmation and undertaking from Mr. and Mrs. Maister that if any distributions are made to their children or to the Trustees of their irrevocable Trust Agreements such payments will be used exclusively for their benefit, education and maintenance and because no one actively opposed the matter proceeding in this way we are prepared to allow the application to proceed.”

Later in the judgment at page 9 he continued:

“Just as Mr. Landau, the guardian ad litem of Dominic and a Solicitor, has no doubt that the application in its present form is for the benefit of Dominic so this Court not only shares that view but agrees that the application is of benefit to Frank and Leslie. They have taken every step to advance their education and they have attained much already. Each of the brothers has a well-managed and well-invested Trust which gives the Trustees a discretion to pay out or accumulate income until the children reach the age of 25. There is an obligation to pay all the income out at age 25 and to transfer the capital out at age 30. Hitherto, certain scheduled expenses have been paid by Mr. and Mrs. Maister over and above educational expenses that have been paid from the separate funds. The children are now young adults and they wish to be self-sufficient in the context of this application with the added incentive to build up a modest fund for savings is praiseworthy.

It also seems to us reasonable to follow Mr. Frank Maister’s reasoning that the initial intention of the distributions was to help build up individual funds for the three children.”

It seems clear, however, that the sum of \$273,365 has been retained by Bedell and Cristin in order to meet legal fees and expenses. Is it the case that the monies have been applied exclusively for the benefit of the Children? An affidavit sworn by Frank Maister has been placed before us stating that the sums retained by Bedell and Cristin, and subsequently applied by them, were so retained and applied with his written consent and with the consent of his brothers Dominic and Leslie. This does not, however, answer the question which we have posed. The Court has approved the payment by the trustees and *“to or for the maintenance or otherwise for the benefit”* of the Children. I am citing of course from the terms of the Trust instrument. Were the sums applied by Bedell and Cristin applied for that purpose? On the information presently before the Court we are not able to reach a conclusion.

We do not wish to imply that the payment of legal fees and expenses by Bedell and Cristin has not been for the benefit of the Children. Mr. Dessain submitted that this had been the purpose while at the same time suggesting that it would be a difficult and expensive

exercise to demonstrate the fact. If it be the case that a proportion of the monies advanced by the trustees for the benefit of the Children, pursuant to the Orders of this Court, has been placed in some notional Maister family pot for the purpose of meeting legal expenses connected with the litigation generally, without distinguishing the interests of the Children and their parents, then the Court should be told.

We therefore propose to adjourn the application so that further evidence may be placed before us.

Without in any way limiting what the applicants may consider to be necessary in the light of this judgment we wish to know when, to whom, and in respect of which services the legal costs and expenses were paid by Bedell and Cristin. We also wish to know when the decision was made, and by whom, and for what purpose to retain in Jersey part of the sums advanced by the trustees. It may also be relevant to know when and on receipt of what advice the written consent of the Children to the retention was obtained.

We accordingly adjourn the application *sine die*.

Authorities

Maister -v- Rind (14th June 1995) Jersey Unreported.

Marley & Ors. -v- Mutual Society Merchant Bank & Trust Co., Ltd. [1991] 3 All ER
198, P.C.