

Practical Analysis of Common Issues in Family Trust Disputes

Thursday 14 January 2021

Speakers: Adam Carvalho, Charlotte Fraser & Joanna Poole
(Farrer & Co LLP)

Chair: Fiona McFarlane (RBC)

STEP Jersey is sponsored by:

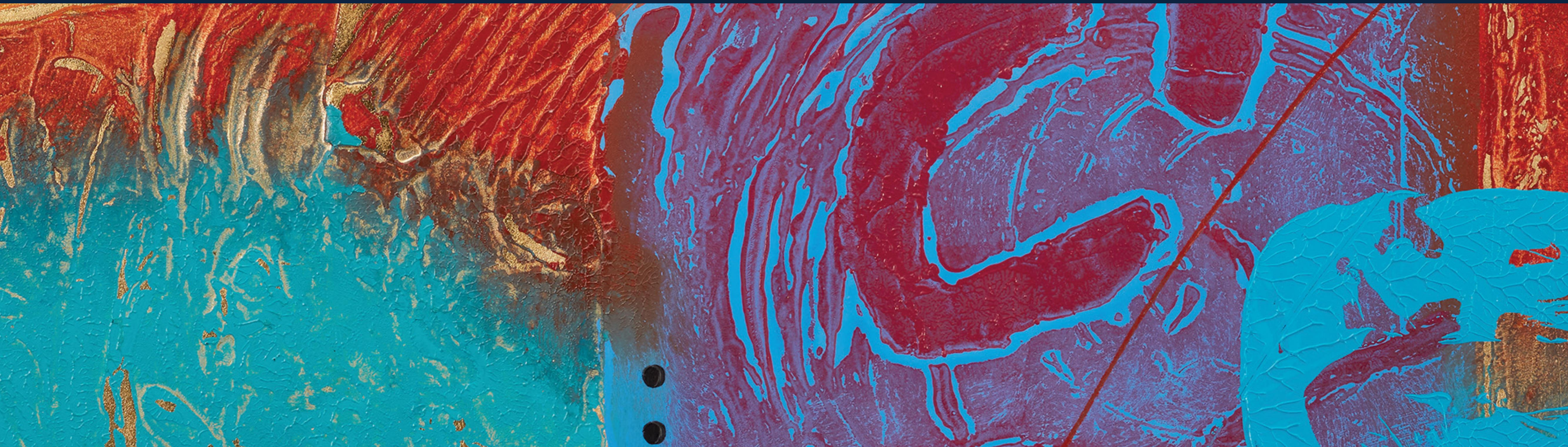


CAREY OLSEN

Case Study

Practical analysis of common issues in family trust disputes

Charlotte Fraser and Joanna Poole, Contentious Trusts and Estates Team



The Rossi Family Trusts

Background

Alberto Rossi is aged 78. He left Naples for London in the 1960s. After five years of working in an ice cream parlour, he established his own ice cream brand, “*Gelato*”, which grew to become the leading brand across Europe, with a current value in excess of £200m.

Alberto married Rosemary in 1970. Together they had four children, Marco, Bella, Sophia and Stephano, all of whom are now adults. Marco and Sophia each have two children who are between the ages of 2 and 13. Alberto and Rosemary divorced in 1987, after Rosemary got tired of Alberto’s philandering ways and, at times, erratic behaviour.

In 1985, Alberto settled the shares of Gelato on discretionary trust (the “Rosemary Trust”) for the benefit of his children and remoter issue. Alberto is not within the class of beneficiaries. However, he is the Protector of the Rosemary Trust. At the date of its establishment, Alberto wrote a letter of wishes setting out his dynastic intentions for the trust and his wish that future generations benefit from it. He also stated that during his lifetime he would like the trustee to be guided by him in relation to investment of the trust fund (and particularly the shares of Gelato), and also in relation to the exercise of their dispositive powers.

The current trustee of the Rosemary Trust is Premier Trustee Ltd. The directors of Gelato are Alberto, Marco and Stephano.

In 2000, Alberto is persuaded by Marco to set up a coffee business “*Espresso Express*”, the shares of which are held by the Lavender Trust through a holding company. The Lavender Trust is a discretionary trust with a similar class of beneficiaries to that of the Rosemary Trust. Premier Trustee Ltd is also the current trustee of this trust. The directors of Espresso Express are Marco and Bella. This business proves to be a great success and 2010 Marco persuades the trustee to purchase a coffee plantation, “Rio Roast Ltd,” in South America for the sum of £20m. The directors of Rio Roast Ltd are Marco and Bella.

The following events occur:

F&
Co

Capacity

1. Alberto's children and Premier Trustee receive a letter from Alberto in which he says that he has been possessed by evil spirits. They also receive notification that he has married a 21 year old, Kitty, a week after meeting her in a bar. It subsequently emerges that Alberto has sent a number of bizarre and offensive letters to key employees of Gelato as well as to some of their big purchasers and contacts.

A day after receiving Alberto's letter, the trustee receives an updated letter of wishes. In it, Alberto asks the trustee to ignore all previous letters of wishes. He no longer wishes any of his children to benefit, who he says are ungrateful and lazy. Instead, Alberto would like the trustee to add his wife Kitty to the class of beneficiaries, and she should be regarded as the principal beneficiary. Upon adding her as beneficiary, Alberto would like the trustee to make an immediate distribution to her of £6.5m to enable her to purchase her "dream" flat in Knightsbridge. So far as his consent as Protector is required, he gives it.

Marco has previously described his father to the trustee as bipolar and suffering from schizophrenia.

What should the trustees do?

2. Alberto's children are extremely concerned by his recent behaviour and the risk it poses to Gelato and its value. He is removed as a director but his role as Protector still gives cause for concern. They therefore write to the trustee asking it to make a distribution of Gelato to them to hold jointly.

What should the trustees do?

Disclosure

3. Premier Trustee receives an email from a lady called Poppy, who claims to be the daughter of Alberto Rossi, and the product of a 1982 romance between Alberto and her mother. She says that she has been told by Alberto that she is a beneficiary of family trusts which hold “*insane amounts of money*”. She requests:
 - (a) Confirmation of whether she is a beneficiary of any family trusts;
 - (b) Copies of any trust deeds; and
 - (c) Copies of trust accounts for the last 5 years.

Should the trustee provide Poppy with the disclosure she is seeking?

4. Sophia falls out with Marco and Bella because they refuse her request for a role in Espresso Express or Rio Roast. She decides to ask the trustee who tells her that, it was not appropriate for them to get involved in the matter. Sophia is not happy with this response. She believes the trustee has very little, if any, involvement in or oversight of these companies. She also believes that Marco has the trustee's ear and that it simply does whatever he asks. Sophia thinks Marco and Bella play fast and loose with their directors duties and is suspicious that they are syphoning off company funds, either by paying themselves huge salaries and bonuses, or by making "loans" to themselves. She finds out that Bella has just bought a new villa in Sardinia. This is the last straw for Sophia, especially as she has not received a penny from the Lavender Trust. She engages solicitors to write to the trustees to outline her concern that the trustee is not fulfilling its duties and requests the following information:
- (a) What investment advice the trustee took when it invested in Rio Roast and copies of that advice;
 - (b) An explanation for why the trustee not consult all the beneficiaries of the Lavender Trust before making such a large investment in Rio Roast;
 - (c) What dividends have been made by Espresso Express and Rio Roast up to the Lavender Trust;
 - (d) What distributions have been made from the Lavender Trust to other beneficiaries;
 - (e) What processes are in place for Marco and Bella reporting to the trustees; and
 - (f) Copies of all trustee minutes and resolutions in relation to the above.

How should the trustee respond to Sophia and should they provide her with the information she has requested?

Conflict of interest and settlement

5. Instead of acceding to Alberto's children's request to make a distribution to them of the Gelato shares, the trustees appoint out the shares to the "Basil Trust", which is in identical terms to the Rosemary Trust, save for the absence of Protector provisions.

Six months after the appointment out to the Basil Trust, Alberto recovers from his schizophrenic episode, and has his marriage to Kitty annulled. He instructs solicitors who write to the trustee seeking to set aside the original settlement of the Gelato shares on the basis that Alberto lacked capacity. They also make various breach of trust allegations, including in relation to the appointment out of the Gelato shares without his protector consent.

The family attempt a reconciliation and attend mediation (without involving the trustee). Heads of Term are agreed and they write a joint letter to Premier trustee asking for it to agree to them as well.

The heads of term include the following:

- Alberto and several mental health charities will be added as beneficiaries to the Rosemary Trust.
- Alberto's children and remoter issue will be excluded from the Rosemary Trust.
- The Rosemary Trust will then purchase 51% of the shares in Gelato from the Basil Trust, for the sum of £12m.
- The £12m received by the Basil Trust for the shares in Gelato will then be distributed between Alberto's four adult children.
- The £12m received by the Basil Trust for the shares in Gelato will then be distributed between Alberto's four adult children.

THANK YOU FOR YOUR ATTENDANCE

STEP Jersey is sponsored by:



CAREY OLSEN