

## Family law news: In the Representation of U Limited [2011] JRC 131 The decision in BJ v MJ and Others [2011] EWHC 2708

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The decision of *BJ v MJ and Others* [2011] EWHC 2708 (Fam) again examines the treatment of offshore trust interests in the context of financial remedy proceedings on divorce and is essential reading for all those involved in such cases.

**Facts**

The parties married in 1980 and were both aged 65. They had one adult child. The wealth derived from the husband's interest in a company in which he had worked during the marriage. That wealth was settled into two Jersey trusts. The beneficial class of the No 1 Trust included the husband, the wife and their child. The husband and wife were excluded from the No 2 Trust, although there was power to add the wife after the divorce.

The judgment contains a summary of the '*various types of trusts which are commonly encountered in proceedings for financial remedy following a divorce*'.

**Outcome**

It was held that all assets, including the trust property, constituted matrimonial property and should be subject to the equal sharing principle. However, the '*implementation of that equal sharing should reflect the clear arrangement made during the marriage, assented to by the wife to set up a trust ultimately to benefit their child and future generations*'.

From the trusts, £1,475,735 was to be made available to the wife with £500,000 to be paid to her outright and £750,000 to be extracted from the settlements and settled on the wife for her life with the remainder to their child. The balance was to be by way of a charge against the former matrimonial home in favour of the trustees of the wife's new settlement.

**Practical considerations**

The judgment also touches upon the duties and the role of trustees who are joined to proceedings together with the applicant's obligations where the order being sought has an impact upon the interests of other beneficiaries.

Mostyn J held that 'it is incumbent upon the Applicant to draw the claim to the attention of any significant beneficiaries explaining that they are at liberty to apply to intervene or otherwise to make representations'.

In this case, Mostyn J invited the adult son to make representations which he did in the form of written submissions to the Court.

A consequence of the judgment is the risk of more applications by third parties to intervene where their interests under trust may be adversely affected by the orders being sought.

Mostyn J also recognised the dilemma that trustees often find themselves in when a court is considering the extent to which trust assets should be treated as a resource of the parties but he warned of the risks of trustees failing to engage. He said '*if the trustees have refused to participate meaningfully or helpfully in the inquiry then neither they nor the beneficiary can complain if the court draws robust conclusions as to the likelihood of future benefit*'.

So what should trustees do? One solution suggested by Mostyn J was for the trustees to participate 'qua witness' which he suggested could not be 'construed as a submission to the jurisdiction'. It must be debatable whether the trustees would be prepared to risk taking that approach and particularly in circumstances where they have been joined to the proceedings.

What is undoubtedly clear is that trustees will have to continue to consider their position carefully and it again highlights the need for trustees to ensure they fully understand the issues in the case and the types of orders that are being sought.

The wife has sought permission to appeal.

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