VOISIN LAW

The tale of the trustee who could not get off the pot | 1

Some people simply do not know when to quit. Just take a snapshot of our modern day world. Arsene Wegner refuses to quit as manager of Arsenal, Theresa May refuses to resign as Prime Minister and Jersey politicians have simply invented an 11th Commandment: thou shalt not resign for any reason. Perhaps they adopt the "Richard Nixon approach" when he said: "*I have never been a quitter*"!

However there are those who do want to resign and are simply unable to do so. Perhaps certain members of the Trump presidency feel this way. One is particularly thinking of his family members.

Why am I talking about this? Well I happened upon a judgment concerning a trustee application in the Royal Court of Jersey, the circumstances of which even the Royal Court regarded as unusual. A "Guernsey Trustee" brought an application to the Royal Court under Article 51(2) of the Trusts (Jersey) Law 1984 (as amended) (the "Law") seeking to appoint itself as trustee of an employee benefit trust (the "Trust") of which it was the original trustee but from which it had resigned its position.

Article 51 empowers a trustee to apply to the Royal Court for direction concerning the manner in which a trustee may or should act in connection with any matter concerning a trust.

The background to the application was simple. The Trust was established in 2001 and the Guernsey Trustee was the original trustee. Notwithstanding the fact that the Guernsey Trustee was Guernsey based and the proper law of the Trust was that of England and Wales, the Trust had been administered in Jersey since 2008 and the Royal Court thus had jurisdiction to make the order sought.

The trust deed gave the usual powers of appointment and retirement.

In 2014, the Guernsey Trustee had become concerned about the accuracy of certain information which had been provided to it and wished to retire. It took legal advice. The advice was that it could retire albeit if no new trustee was appointed, the Guernsey Trustee would have to hold the assets on the same trusts as existed prior to its retirement. However and importantly, the Guernsey Trustee could not take any action as an active trustee.

There seems to have been a somewhat tortuous history regarding the appointment of a new trustee. In short, no new trustee was appointed.

Having reviewed the law and leading UK Counsel's opinion, the Royal Court found that the Guernsey Trustee had "*a duty to look after and take proper care of the trust property but it no longer has any of the other powers and discretions conferred on it under the Trust Deed*". Accordingly the Trust was in a state of paralysis.

The Royal Court noted that there were some 180 beneficiaries. It was therefore imperative that a trustee be appointed so that the powers and discretions contained under the Trust could be exercised for the benefit of those beneficiaries. The paralysis that currently existed was wholly unsatisfactory.

Given the fact that the Guernsey Trustee could not find a replacement, it had determined that it should seek reappointment so that the Trust could be properly administered.

The Court had no hesitation in concluding that it should exercise its power under the Law and appoint the Guernsey Trustee as trustee of the Trust.

So notwithstanding the fact that the Guernsey Trustee wanted to get off the pot, it was left with no choice but to remain on it. More than a little uncomfortable.

Speaking of people hanging on to their jobs, I note that the debate with regard to the Bailiff's dual role in Jersey as both the Island's Chief Judge and President of the States of Jersey shows no signs of being resolved in the short term. Our Foreign Secretary (and former Bailiff) is certainly creating debate and distraction with talk of another referendum. I hate referendums. Look at Brexit! What is the point of having an elected body who then absolves itself of its decision making by referring difficult questions to an unengaged public? Given the apathy that exists with the public in Jersey with regard to voting, the likelihood is that the referendum will not reflect the view of the majority but only of the few who can be bothered to get off the pot and vote.

It would be nice for this saga to come to an end one way or another. I am resigned to the fact that this is unlikely.