

### 6.11 The Removal of Trustees

Following on from the leading case of *Letterstedt v Broers* [1883-84] LR 9 App Cas 371, the High Court emphasised that it was not necessary to prove wrongdoing or dishonesty for the court to order the removal of trustees. Lack of capacity was enough and when appointing new trustees the court should have regard to the welfare of the beneficiaries and the circumstances of the trust.

***Thomas Jones, Ian Firkin-Flood and others v Daniel Firkin-Flood, Louise Firkin-Flood.*** [2008] EWHC 2417 (Ch)

The will of Douglas Firkin-Flood left trusts for his three children: Ian, Daniel and Louise. The trustees were Ian, the eldest son, Jones, the family solicitor and two long-serving employees of the Flood businesses: Levy and Bramley. Daniel and Louise claimed that Ian was gaining too large a share of their father's trusts and sought the removal of the trustees.

HELD: Biggs J.

The trustees were in breach of trust.

At para. 239:

"I regret to have to say that the facts as I have found them reveal not merely a number of isolated breaches of trust by the Trustees, but rather a total abdication of their duties by all of them..."

The other three trustees had let Ian run the trust on his own, failed to supervise Ian or the companies that the trust owned, failed to invest and failed to compile accounts.

The professional trustee, Flood, did not "provide appropriate advice and guidance to his lay colleagues".

Because of this, the trustees had to be removed by the court.

At para. 285:

"The present case is not one of dishonesty or even of deliberate breach and only to a limited extent one involving a breach of aspects of the duty of fidelity. It is pre-eminently a case of want of capacity, or, as I would prefer to put it, of unfitness. The Trustees have, quite simply, amply demonstrated their collective unfitness to be trustees of the Trust."

There was still important business of the trust to transact, as the trust funds had to be distributed to the beneficiaries. Levy would be kept on, as a link to the family should be maintained and two professional trustees nominated by Louise and Daniel should also be appointed.

At para. 292:

"In my judgment, the governing criterion, consistent with the need to have regard first and foremost to the interests of the beneficiaries, is to constitute a body of trustees who will be able with the minimum of expense and dissension, and in particular with as little as possible further assistance from the court, to restore the administration of the Trust to a basis capable of commanding the confidence and

respect of all its beneficiaries, and dealing impartially with their separate claims to consideration for distribution.”

## 6.5 The appointment of trustees

### 6.5.1 Express powers

In *Thomas Jones, Ian Firkin-Flood and others v Daniel Firkin-Flood, Louise Firkin-Flood*. [2008] EWHC 2417 (Ch), at 6.11 above, the court decided that three out of the four trustees had to be replaced. One of those trustees, Ian Firkin-Flood, had the express power to replace trustees. The court could, if necessary, override his wishes because the power to replace trustees “is a fiduciary power rather than a beneficial right, and thereby subject to the supervision and control of the court” (at para. 296).