

EXPLODING STAR TRUSTS

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Statutes and International Conventions

Special Trusts (Alternative Regime) Law 1997 (Cayman)

Trusts Law (2001 Revision) Part VIII (Cayman)

Recognition of Trusts Act (1987) (UK)

Hague Convention on the Law Applicable to Trusts and their Recognition (1985)

Textbooks and Articles

Thomas & Hudson on *The Law of Trusts* (2004) Chapter 40

Paul Matthews — “*Shooting STAR: the new special trusts regime from the Cayman Islands*” (1997) 11 *Trust Law Intl* 67

Anthony Duckworth — “*STAR WARS: The Colony strikes back*” (1998) 12 *Trust Law Int* 16.

Paul Matthews — “*STAR: Big Bang or Red Dwarf*” (1998) 12 *Trust Law Int* 98

Anthony Duckworth — “*STAR WARS: Smiting the Bull*” (1999) 13 *Trust Law Int* 158

DJ Hayton, (1998) 8 *Offshore Taxation Review* 43

Elizabeth Kübler-Ross — “*On Death and Dying*” (1973) Routledge.

Case Law

Jones v Firkin-Flood [2008] EWHC 2417 (Ch)

The Claimants were the trustees of a Will trust set up by Douglas Firkin-Flood (allegedly a former member of Manchester's notorious "Quality Street Gang"). He died in 2001, leaving three adult children: Ian, Danny and Louise, all of who were discretionary beneficiaries of the trust.

There were four trustees, one of who was Ian; the others were a solicitor, Mr Jones, and two lay trustees.

The principal asset of the estate was a hotel business, which had been run by Ian since the testator's death with little or no supervision by the other trustees. The business was sold in 2008 for approximately £17.5 million. Following the sale, the trustees purported to pass a resolution distributing £2.5 million to Danny, £1.5 million to Louise, and the rest to Ian. Danny and Louise objected.

The Claimants issued proceedings seeking the court's approval of their resolution. Danny and Louise counterclaimed seeking the removal of the Claimants as trustees. They raised a number of allegations, including the following: (1) the trustees had held no meetings for over seven years, and had taken no steps to supervise or inform themselves of the way in which the companies were being run; (2) the companies had paid no dividends (a decision made by Ian alone) and Ian had decided on the amount of his own remuneration without any consultation with the other trustees; (3) money from the business had been used to fund a separate venture of Ian's; (4) until the sale of the business the trustees had never considered whether or not to exercise their discretionary powers; (5) the accounts

were inaccurate and incomplete; (6) the trustees had fettered their discretion on the sale of the business by covenanting with the purchasers not to distribute without their consent unless the beneficiaries provided warranties and indemnities.

Held: The trustees had demonstrated “a thoroughgoing unfitness to act.” There was an “undoubted failure to prepare estate accounts.” The facts revealed “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 lay Trustees “blundered into their office oblivious of the heavy responsibilities which they were undertaking.” Their “total abdication of their Bartlett duties was almost matched by a similar failure to consider, as a body, the important question whether the Trust Fund was appropriately invested...”

Mr Jones’ part in this was singled out for particular criticism. “The most charitable explanation for Mr Jones’ failure in that regard is that, despite his legal qualifications, he also was ignorant of the nature and extent of the Trustees’ duties.” He had “demonstrated beyond question his unfitness to be the sole professional trustee of this trust...I consider that his unfitness to continue as a trustee of this trust, in any capacity, even if assisted by one or more additional professional trustees, is beyond doubt.”

The judge therefore ordered the removal of three of the four trustees, leaving one lay trustee in office (to maintain the “family connection”) to act jointly with an independent professional. The purported resolution to distribute the fund was held to be invalid, leaving the new trustees to consider the exercise of their discretion afresh.