

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

Civil Suit No.1045 of 1997

**RACHAEL JOAN DUBOULAY
DAWN FRANCIS KRONE (nee DuBOULAY)**

-and-

**MICHAEL DuBOULAY
NATHALBERT HUSBANDS
TRUSTEES of the Trust of MARGUERITE SALTMAN**

Appearances:

Mr. Peter I. Foster and Ms. Claire Greene- Malaykhan for the Applicants
Mr. Joseph Baden Allain for the first-named Respondent
Second and Third-named Respondents absent and unrepresented.

1999: September 29

JUDGMENT

HARIPRASHAD-CHARLES J. [Ag.]

1. This matter came on for hearing in Chambers on 29th September 1999 and I gave Judgment in favour of the Plaintiffs and indicated that the reasons

therefor would be reduced into a written judgment subsequently. The following represents my reasoned judgment.

2. These proceedings commenced by way of an Originating Summons filed on 17th December, 1997 wherein the two Applicants sought an order to be appointed Trustees of a Settlement dated 28th September, 1973 made between Andre Cornibert DuBoulay,(deceased) ("the Settlor") of the one part and Denis Devaux (deceased) and Michael DuBoulay, the first-named Respondent ("the Trustees") of the other part, in favour of the principal beneficiary, Marguerite Saltman nee DuBoulay and her two children, who are the Applicants herein.
2. The Applicants also applied for the removal of the first-named Respondent, Michael DuBoulay as a Trustee in the Settlement. It is of paramount importance to state that the trust was set up by the Settlor in 1973 to make provisions for his daughter, Marguerite Saltman who was incapable of managing her own affairs and on her death, on trust for the other beneficiaries, her two daughters until the younger of the two children shall have attained the age of twenty-five years.
3. This matter came on for hearing on 27th February, 1998 before Archibald, J. [ag.] and he made the following order:

For the period commencing 27th February, 1998 and ending 28th February, 1999 the trustees shall be:

 - (1) Dawn Francis Krone (nee DuBoulay), the second Applicant and New Trustee.
 - (2) Michael DuBoulay, the first Defendant and existing Trustee.

- (3) Nathalbert Husbands, the second Defendant and existing Trustee.
 - (4) Cost of \$1,500.00 to each Defendant.

- 4. The said Order has since expired, the validity of which was for a year. By Summons filed on 17th April, 1999, the Applicants applied to the Court for the appointment of Trustees of the aforesaid Settlement dated 28th December, 1973. This application, like the previous one, was made pursuant to Article 2178 of the Civil Code. The Applicants applied for the following:
 - (1) that Dawn Francis Krone (nee DuBoulay) and Nathalbert Husbands do continue to be the Trustees of the Marguerite Saltman Trust; and
 - (2) that Rachael DuBoulay be appointed a Trustee of the said Marguerite Saltman Trust in place of Michael DuBoulay;
 - (3) further and or other relief;
 - (4) that provision be made for the cost of this application.

- 5. The trust property consists of the following:
 - (1) Deposits at Barclays Bank International Limited (Soufriere Branch) totaling \$85,000.00 as described in page 5 of the Settlement.
 - (2) 1000 shares of DuBoulay Holdings Limited, a Company duly incorporated under the Laws of Saint Lucia as No.40 of 1973.

- 6. The matter was heard on the basis of the affidavits filed on behalf of the parties. All of the affidavits were lengthy and substantial. The following facts were undisputed:
 - (1) That Andre Cornibert DuBoulay set up the Settlement for the benefit of his daughter, Marguerite Saltman (nee DuBoulay) and her two

children, Dawn DuBoulay, then six years of age and Rachael DuBoulay, then four years old.

- (2) That the principal beneficiary is Marguerite Saltman and the other beneficiaries are the Applicants herein who are absolutely entitled to the remainder of the trust if upon the death of the principal beneficiary, they have reached the age of 25.
 - (3) That the other beneficiaries have reached the age of 25.
 - (4) That Marguerite Saltman is incapable of managing her own affairs.
 - (5) That she is presently at Alleyne's Nursing and Convalescence Home, a nursing facility in Trinidad.
 - (6) That the Applicants are the daughters of Marguerite Saltman (nee DuBoulay) and the first-named Respondent is the sister of the said Marguerite Saltman.
 - (7) That the relationship between the Applicants and the first-named Respondent is unsatisfactory and strained.
 - (8) That the first-named Respondent, a septuagenarian is vehemently resisting his removal as a Trustee.
7. A Trustee may be removed from the trusteeship and replaced against his will if he remains out of the jurisdiction for more than 12 months, or refuses or is unfit to act or incapable of acting therein, under the statutory procedure. The Court also has an inherent equitable jurisdiction to remove a trustee against his will without replacement where the trustee's continuance in office would be prejudicial to the due performance of the trust, and so to the interests of the beneficiaries. It is trite law that it is not necessary for those seeking the trustee's removal to show misconduct on the part of the trustee. It may be

sufficient if there is friction between the trustee and the beneficiaries or simply lack of confidence in the trustee.

8. Counsel for the Applicants, Mr. Peter Foster referred the Court to the West Indian case of **De Mercado v Cititrust (Bahamas) Ltd. [1987] Supreme Court, The Bahamas, No.1252 of 1986 (unreported)**. In that case, the beneficiaries sought the removal of the trustee by the Court on the ground that the relationship between the trustee and the beneficiaries was unsatisfactory, and that such removal was in the interest of the beneficiaries. **Georges C.J.** delivering the Judgment of the Court of Appeal said:

"The principles to be applied in considering the removal of a trustee were discussed in **Letterstedt v Broers (1884) 9 App. Cas. 371**.

Their Lordships stated, **at page 387**:

' In exercising so delicate a jurisdiction as that of removing trustees, their Lordships do not venture to lay down any general rule beyond the very broad principle above enunciated, that their main guide must be the welfare of the beneficiaries [my emphasis]. Probably it is not possible to lay down any more definite rule in a manner so essentially dependent on details often of great nicety.' "

9. In the **Letterstedt's** case [supra] Lord Blackman, giving the Judgment of the Privy Council in that case on appeal from the Supreme Court of the then colony of the Cape of Good Hope, referred to a passage in **Story's Equity Jurisprudence (12th ed,1877) at page 1289** which reads:

"But in cases of positive misconduct, Courts of Equity have no difficulty in interposing to remove trustees who have abused their trust; it is not

indeed every mistake or neglect of duty, or inaccuracy of conduct of trustees, which will induce Courts of Equity to adopt such a course. But the acts and omissions must be such as to endanger the trust property or to show a want of honesty, or a want of proper capacity to execute the duties, or a want of reasonable fidelity."

See also: **Chellaram v Chellaram [1985] 1 All ER 1043.**

10. Counsel for the first-named Respondent, Mr. Baden Allain urged the Court to find that the first-named Respondent did what was expected of him as a Trustee. Counsel however did not elaborate what the first-named Respondent did during his trusteeship. The Court therefore relied on the two Affidavits in Reply both filed on 24th June, 1999 and both attested to on 22nd June, 1999. The essence of one was that the Applicant, Rachael DuBoulay has no business acumen or experience. The other stated, inter alia that the Applicant, Rachael DuBoulay lives abroad and it would be difficult for her to care for her mother, the principal beneficiary of the Trust. At paragraph 9 of this affidavit, he had this to say:

" I have always carried out my duties under the Trust Settlement in a manner which would have satisfied my father even though I am usually uninformed of the movements of my sister, Marguerite Saltman."

Except for these bare assertions of fact, there is no amplification of what duties he carried out.

11. The Applicants on the other hand were verbose in their interest of the welfare of their mother. They averred that because of delays of the first-named Respondent in responding to requests to payments to the psychiatric hospital in which Marguerite Saltman was placed in Barbados, she had to be removed

and placed in another nursing home in Trinidad. There is documentary evidence as to lateness in payments to that nursing institution as well: Exhibit R.D.9. The Applicants alleged that the said Respondent has never ever telephoned their mother, Marguerite Saltman. This allegation was not refuted by the said Respondent. In fact, Exhibit R.D.9 substantiated the Applicants' contention.

12. There could be little doubt that the relationship between the Applicants and the first-named Respondent is unsatisfactory and strained. It is also apparent that there is a lot of friction and tension between the said Respondent and other family members, including his own sister, Joan Devaux. His letter dated 21st June, 1998 written to the Firm of Floissac, Fleming & Associates is manifest of a family embroilment. I quote a few excerpts from the said letter to demonstrate same:

"Dear Mrs Fleming,

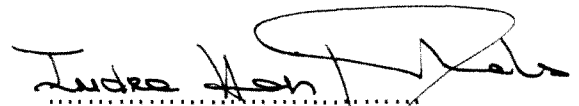
Your letter of 30th April, 1998 was received with astonishment and disbelief, as it displays an incredible degree of arrogance and ignorance. To begin with it has to be remembered that Andre DuBoulay despite intense and unremitting pressure from Joan Devaux [his sister] henceforth referred to as the Matt ...Mrs Krone's departure is of no concern to me as a Trustee except in so far as her expenses not be paid by Company but by the initiator (the Matt)."

13. Looking therefore at the whole circumstances of the instant case, the unfortunate hostility that has arisen, and the difficult and delicate duties that may yet have to be performed, I can come to no other conclusion but to remove the first-named Respondent.

14. All matters being considered, I accordingly ordered:

- (1) That the Applicants, Rachael DuBoulay and Dawn Francis Krone (nee DuBoulay) be appointed the Trustees of the Trust Settlement dated 28th December, 1973 and made between Andre Cornibert DuBoulay and Michael DuBoulay and Denis DuBoulay.
- (2) That Nathalbert Husbands do continue to be one of the Trustees of the Marguerite Saltman Trust.
- (3) That Michael DuBoulay, the first-named Respondent be removed as a Trustee under the said Trust.
- (4) Costs to the Applicants to be borne by the Trust.

15. There is one further observation that I feel impelled to make. I would hope that the bitterness of the conflict between this respected Saint Lucian family will be speedily forgotten and that the welfare of Marguerite Saltman should be, and remain the major concern.



Indra Hariprashad-Charles

High Court Judge [ag.]