



Transcript of Proceedings

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Date: 22 April, 2003

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

JONES J

Application No 157 of 2003

GERALD JOHN MIER

Applicant

and

RACEMOON PTY LTD (in liquidation)
(ACN 010 719 552)

Respondent

CAIRNS

..DATE 15/04/2003

JUDGMENT

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

HIS HONOUR: The applicant is the liquidator of Racemoon Pty Ltd (in liquidation) and was at all material times, and remains, the trustee of the BMR Investment Trust. This is a discretionary trust established by deed on the 4th of September 1995.

That deed provides for three classes of beneficiary, namely primary beneficiaries, Mr and Mrs Terence Martin, secondary beneficiaries, the family and extended family of Mr and Mrs Martin, and tertiary beneficiaries, any corporation or trust in which a beneficiary holds an interest.

The liquidator, in the administration of the company, must exercise his discretion as to the distribution of the cash reserves of the applicant company, which reserves total approximately \$16,000. The liquidator intends to distribute the funds equally between the three classes of beneficiary. However, he sees in his action, a potential conflict of interest because the tertiary beneficiary is a company also in liquidation of which the applicant is the liquidator.

The primary beneficiaries, Mr and Mrs Martin, are bankrupt and their respective estates are being administered by the Insolvency and Trustee Service of Australia. Because of this situation the applicant seeks directions of the Court, pursuant either to section 479(3) of the Corporations Act, or perhaps more specifically, section 96 of the Trusts Act of 1973.

The decision of the liquidator has the support of Mr and Mrs Martin and of their children Rachel Martin and Sophie Martin who are two of the 14 members of the class of secondary beneficiaries. They are however, the only direct descendants of Mr and Mrs Martin. The other members of this class have not been notified of the application and such notification, in my view, is not necessary.

A potential beneficiary of a discretionary trust has no interest in the trust property, but merely an unenforceable expectation. See Chief Commissioner of Stamp Duties v Buckle (1988) 192 CLR 226 at 234. The decision of the liquidator has the support also of the creditors of the tertiary beneficiary.

In all the circumstances, it seems to me that the discretion exercised by the liquidator which is unfettered, is, apart from the requirement that it be reasonable, is an appropriate one and it is one which would have the support of this Court. I have come to the view also, as I have mentioned, that it is not necessary for the liquidator to serve the individuals who constitute the secondary beneficiaries, other than the direct descendants of Mr and Mrs Martin.

...

HIS HONOUR: I make orders in terms of the draft initialled by me and placed with the papers.
