

Ocorian Trustees (Jersey) Ltd v Cristiana Crociani

Jurisdiction:	Jersey
Judge:	Sir Michael Birt, Jurats Olsen, Ramsden
Judgment Date:	04 January 2018
Neutral Citation:	[2018] JRC 1
Date:	04 January 2018
Court:	Royal Court

vLex Document Id: VLEX-793914741

Link: <https://justis.vlex.com/vid/ocorian-trustees-jersey-ltd-793914741>

Text

[2018] JRC 1

Royal Court

(Samedi)

Before:

Sir Michael Birt, Commissioner, and Jurats Olsen and Ramsden

Between

Ocorian Trustees (Jersey) Limited

Representor

and

Cristiana Crociani

Respondent

and

Camilla de Bourbon des Deux Siciles

Intervenor

Advocate J. M. P. Gleeson for the Representor.

Advocate A. D. Robinson for the Respondent.

Advocate A. D. Hoy for the Intervenor.

No Authorities

Trust — application by the Intervenor for leave to intervene in a representation brought by the Representor.

THE COMMISSIONER:

- 1 This is an application by the Intervenor (“Camilla”) for leave to intervene in a representation brought by the Representor (“the New Trustee”) seeking directions on certain matters in relation to its position as trustee of a trust known as the Grand Trust. We shall for convenience use first names as was done in the main proceedings referred to below, without thereby intending any disrespect.
- 2 At the conclusion of the hearing, the Court dismissed Camilla's application. It then went on to give directions to the New Trustee pursuant to the matters raised in the representation. This judgment is concerned only with the reasons for rejecting Camilla's application to intervene.

Background

- 3 The Grand Trust was constituted by deed dated 24th December, 1987, between Edoarda Crociani (“Madame Crociani”) as settlor and Madame Crociani and others as original trustees. BNP Paribas Jersey Trust Corporation Limited (“BNP”) was appointed as a trustee on 2nd October, 2007, and thereafter acted as co-trustee along with Madame Crociani and Mr Paul Foortse, who had been appointed a trustee in 1999 (together “the Former Trustees”).
- 4 Madame Crociani had two daughters namely Camilla and the Respondent (“Cristiana”). Because of the points made by Advocate Hoy in his submissions, we need to set out certain provisions of the trust deed of the Grand Trust. The Recital was in the following terms:-

“The Settlor wishes to record that she intends by this Agreement to have set aside a separate trust for each of her children CAMILLA (aged Sixteen (16) years as of the date of this Agreement) and CRISTIANA (aged Fourteen (14)

years as of the date of this Agreement). The Trustees shall receive as the initial Trust Fund the Secured Term note (the "Note") described in the annexed Schedule A. The Trustees shall retain the Note until its maturity or until its prior redemption, without regard to rules concerning diversification of investments or theories or principles of investment for fiduciaries. The Trustees shall collect the income from and proceeds of the Note when due, but shall not be required to institute litigation to enforce payment or to enforce any right which the trustees may have as owner of the Note. The Trustees shall divide the property described in the annexed Schedule A into two (2) substantially equal (as to value) separate trusts, one of which shall be identified by the name of CAMILLA and one of which shall be identified by the name of CRISTIANA. Each such separate trust shall be disposed of as hereafter directed in this Agreement."

- 5 As set out in the Recital and as confirmed in subsequent provisions of the trust deed, two separate trusts were therefore created, one for Camilla and one for Cristiana. Despite there being two trusts, Clause Fifth (P) provided that the assets could be retained in one fund for the purpose of investment and re-investment. It read as follows:-

"P. Whenever more than one trust is in existence hereunder, the Trustees may retain the several trusts in one fund for the purpose of investment and re-investment, crediting each trust with its proportionate share of income, profits and appreciation in value and charging each trust with its proportionate share of expenses, losses and diminution in value. This provision is solely for the purpose of convenience in administration and shall not be deemed to destroy the individual character of each trust or prevent the release of principal upon the termination of any such trust or the making of discretionary payments from principal of such trust in different amounts. It is clearly understood that after the initial division of the trust assets into two equal funds, one each for CAMILLA and CRISTIANA, the separate trusts and the separate trust funds may be invested in different manner and may (and probably shall) cease to be equal in value and amount."

- 6 The terms applicable to each of the two trusts are set out in Clause Second as follows:-

"SECOND The property identified by the name of a child of the Settlor shall be held by the Trustees separately IN TRUST:

During the life of the Settlor's child whose name identifies the trust, the Trustees shall pay to or for the benefit of any one or both of such child and the CAMILLO CROCIANI FOUNDATION, LTD., so much of the income of such trust as the Trustees may deem advisable from time to time. All income which the Trustees do not direct to be paid for any year shall be accumulated by adding it to the principal of such child's trust.

At any time and from time to time the Trustees may, in the Trustees' sole and absolute discretion, pay to or for the benefit of such child so much (even all) of the principal of such child's trust as the Trustees may from time to time in their

sole and absolute discretion determine to be necessary or desirable.

Upon the death of the Settlor's child whose name identifies the trust, the remaining principal of such child's trust shall pass as such child may appoint by her Last Will and Testament in favor of her issue, or the other issue of the Settlor (but not the Settlor). Any principal which is not effectively appointed pursuant to such child's testamentary power of appointment shall pass on such child's death to the then living issue of such child, in equal shares per stirpes, or in default thereof, to the Settlor's other then living issue, in equal shares per stirpes, or if there be none, to the Settlor if she is then living, and if the Settlor is not then living, to the CAMILLO CROCIANI FOUNDATION, LTD."

The Main Action

- 7 In 2013, Cristiana and her two children ("the Plaintiffs") instituted proceedings against the Former Trustees, Camilla and others in respect of various appointments and actions concerning the Grand Trust. There were many procedural disputes on the way but in due course the matter came to trial and the Royal Court issued its judgment on 11th September, 2017. It made a number of findings including findings of breach of trust and invalidity of various appointments.
- 8 The effect of the judgment was recorded in an Act of the same date. For present purposes there were two key orders which the Court made:-
 - (i) The Former Trustees were removed as trustees of the Grand Trust and the New Trustee was appointed as sole trustee in their place and joined to the proceedings.
 - (ii) BNP and Madame Crociani were ordered jointly and severally to pay the sum of just over US\$100m to the New Trustee by way of reconstitution of the trust fund of the Grand Trust within 28 days.
- 9 In its judgment, the Royal Court found that Camilla had acquiesced in and benefitted from a number of the actions of the Former Trustees. In the circumstances BNP contended that, even if it had to reimburse Cristiana's Trust, it should not have to reimburse Camilla's Trust. The Royal Court decided against BNP in that respect and also refused a stay of execution in respect of payment of the \$100m pending appeal. However, it directed that Camilla could not benefit from Camilla's Trust without further order of the Court.
- 10 BNP does not intend to appeal against the payment of \$50m to Cristiana's Trust but it has appealed against the award of \$50m to Camilla's Trust. On 3rd October, 2017, McNeill JA, sitting as a single judge of the Court of Appeal, granted BNP a stay of execution pending appeal in respect of the payment of \$50m to Camilla's Trust.

- 11 Accordingly, the present position is that \$50m has been paid to Cristiana's Trust and the

New Trustee has credited that sum to that Trust.

- 12 Although she did not participate in the proceedings before the Royal Court, Camilla has now lodged an appeal against certain aspects of the Royal Court's judgment, including the appointment of the New Trustee.

The New Trustee's Representation

- 13 On 16th October, 2017, the New Trustee issued a representation seeking the Court's blessing to certain decisions which it had reached. The major part of the representation related to the part which the New Trustee should play in respect of the various appeals from the decision of the Royal Court to the Court of Appeal.
- 14 The second aspect of the representation related to a distribution which the New Trustee proposed to make to Cristiana out of Cristiana's Trust.
- 15 The New Trustee convened Cristiana to the representation but did not convene Camilla although it notified Camilla of the existence of the representation.
- 16 It is in these circumstances that Camilla has applied to intervene in the New Trustee's representation. Advocate Hoy accepts that Camilla has no part to play in respect of the various appeal matters because she is an adverse party in that respect. He has therefore confined his application to intervene to the matter of distributions to Cristiana.

Camilla's contentions

- 17 Advocate Hoy submits that, on a correct interpretation of the trust deed of the Grand Trust, any monies coming in to the Grand Trust must be divided equally between Camilla's Trust and Cristiana's Trust. He argues therefore that the sum of \$50m paid by BNP as equitable compensation should be allocated as to one half (i.e. \$25m) to Camilla's Trust and one half to Cristiana's Trust. If, as he understood was the case, the New Trustee had in fact paid the entire \$50m to Cristiana's Trust, the position of Camilla's Trust must be protected pending the appeal by ensuring that no distribution should be made to Cristiana which exceeded one half of the value of Cristiana's Trust (i.e. \$25m) because the other half ought to be credited to Camilla's Trust.
- 18 He based this submission on the terms of the Grand Trust. He pointed out that the Recital (set out at para 4 above) provided that the initial trust fund (comprising the Note referred to in the recital) was to be divided equally between Camilla's Trust and Cristiana's Trust. He relied also on the provisions of Clause FIFTH (P) with its reference to *'the initial division of the trust assets into two equal funds'*.

19 He also relied upon para 666 of the judgment of the Royal Court which stated:-

“The Promissory Note comprises one indivisible debt due to the trustees of the Grand Trust and although the issue has not been the subject of discussion and therefore remains open, we doubt that it would have been possible for Appleby Mauritius to call in half the accrued interest for the benefit of Cristiana's trust alone, as any payment received would have to accrue for the benefit of both trusts. However, it would seem likely that out of the share of any interest received for Camilla's trust, the trustees in the exercise of their discretion could have made loans or distributions to Camilla out of her trust, which she could in turn use to reduce the financial burden, if any, on Croci BV under the Promissory Note.”

20 He submitted therefore that because, for the reasons stated above, there was an obligation upon the New Trustee not to distribute more than US\$25m to Cristiana, Camilla should be a party to the New Trustee's representation so that she would be aware of any proposed distribution to Cristiana and able to make submissions if such proposed distribution might prejudice the interests of Camilla's Trust.

Decision

21 We have no hesitation in rejecting the application to intervene and the premise upon which it is based.

22 We would summarise our reasons for so concluding as follows:-

(i) The Recital deals only with the initial property, which comprised the Note. One cannot infer from that Recital that all subsequent additions to the Trust have to be given equally to Camilla's Trust and Cristiana's Trust.

(ii) Indeed, although we were not referred to it by counsel during the hearing, Clause NINTH deals specifically with this and envisages the possibility of unequal additions. Thus it says:-

“The Trustees are empowered to receive additional real or personal property which is transferred to the Trustees at any time or bequeathed to the Trustees at any time by the Settlor or any other person. ... Unless otherwise specified in any instrument or Will under which such property is transferred or bequeathed or made payable to the Trustees, all such property shall be added in equal shares to the principal of the separate trusts existing hereunder. ...” (emphasis added)

The judgment of McNeill JA has ‘otherwise specified’.

(iii) Paragraph 666 of the Royal Court's judgment does not assist Advocate Hoy. It is

dealing specifically with the Note which, as the Recital makes clear, is held equally for Camilla's Trust and Cristiana's Trust.

(iv) To restrict the New Trustee as Camilla suggests would be to act contrary to what was clearly envisaged by McNeill JA. As paras 35 and 38 of his judgment of 3rd October make clear, one of the reasons which influenced him in imposing a stay on payment of \$50m to Camilla's Trust was that this would not deprive the Plaintiffs of the fruits of their victory because Cristiana's Trust would receive the whole sum due to it i.e. \$50m. Contrary to the decision of McNeill JA, Camilla is suggesting that half of the \$50m should in fact be paid to Camilla's Trust with the consequence that, even though there is no appeal against the award of \$50m in respect of Cristiana's Trust, that latter Trust should only receive half of that sum at the moment. Her suggestion also leads to the result that, despite the Court of Appeal having ordered a stay of payment of equitable compensation by BNP to Camilla's Trust, half of the sum of \$50m would nevertheless be paid to Camilla's Trust. That is wholly inconsistent with the decision of the Court of Appeal to grant a stay on the payment of \$50m to Camilla's Trust.

(v) If Advocate Hoy is correct and \$25m ought to be paid to Camilla's Trust at this stage, it is not clear what happens if BNP's appeal is successful with the consequence it will never have to pay the remaining \$50m to Camilla's Trust. Cristiana's Trust would be left with only half of the amount which the Court has said it was entitled to, as the other half would be in Camilla's Trust despite the Court of Appeal (on that hypothesis) saying that Camilla's Trust was not entitled to be reconstituted. Advocate Hoy submitted that the New Trustee could at that stage exercise its power under Clause ELEVENTH to appoint to another trust but in our judgment, the fact that the New Trustee could be left in such a position points strongly to the fact that what is put forward on Camilla's behalf is erroneous.

23 In our judgment, these reasons are ample to reject the application to intervene. In our judgment, Camilla has no legitimate interest in seeking to restrict or prevent distributions to Cristiana out of Cristiana's Trust.

24 It was for these reasons that we dismissed Camilla's application to intervene as a party in the New Trustee's representation. Following the withdrawal of Advocate Hoy, the Court went on to consider and approve the decisions of the New Trustee both in relation to the proposed distribution to Cristiana and in relation to the various appeals.