

The Estate of Constantin Mattas

Jurisdiction:	Jersey
Judge:	Sir Michael Birt
Judgment Date:	03 November 2022
Neutral Citation:	[2022] JRC 237
Court:	Royal Court

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Text

In the Matter of the Estate of Constantin Mattas
And in the Matter of a Representation by Equiom Trust (CI) Limited

[2022] JRC 237

Before:

Sir Michael Birt, Commissioner

ROYAL COURT

(Samedi)

Estate

Authorities

[State Immunity Act 1978.](#)

[State Immunity \(Jersey\) Order 1985.](#)

General Dynamics United Kingdom Limited v State of Libya [2022] AC 318.

Pattni v Ali [2006] UKPC 51.

Cambridge Gas Transport Corp v Official Committee of Unsecured Creditors of Navigator Holdings plc [See] [2006] UKPC 26.

Brunei Investment Agency v Fidelis Nominees Limited [2008] JLR 337.

Service of Process Rules 2019

Advocate S. J. Williams for the Representor.

Advocate S. A. Meiklejohn for the Attorney General.

THE COMMISSIONER:

- 1 The matter before me raises an issue as to how the Government of Greece is to be served with these proceedings and this in turn raises an issue as to whether this is an action in rem.

Background

- 2 For present purposes, it is not necessary to give much detail about the factual background. Suffice it to say that Constantin Mattas ("the deceased") died domiciled and resident in Jersey in 1979. His will and two codicils ("the Will") was proved in the Probate Division of the Royal Court on 16 January 1980.
- 3 The Representor was the executor of the estate and is now the trustee of certain trusts created pursuant to the Will. In the events which have happened, the residue of the estate ("the trust fund") is held upon trust to pay the income in equal shares to two nephews of the deceased during their lives and, following the death of the survivor, is to be paid to the Greek Government in Athens to hold upon certain specified trusts ("the Intended Capital Trust").
- 4 An issue has arisen as to whether the Intended Capital Trust creates a valid trust. If it is invalid, there will be a partial intestacy. The Representor ("the Trustee") has issued the present proceedings seeking a decision from the Court as to the validity of the Intended Capital Trust.

The procedural issue

- 5 Clearly, the Greek Government should be convened to the proceedings so that, if it

chooses, it can participate and put forward such arguments in connection with the validity of the Intended Capital Trust as it thinks fit.

- 6 Section 12(1) of the [State Immunity Act 1978](#) (as extended to Jersey pursuant to the [State Immunity \(Jersey\) Order 1985](#)) is in the following terms:

“12(1). Any writ or other document required to be served for instituting proceedings against a State shall be served by being transmitted through the Foreign and Commonwealth Office to the Ministry of Foreign Affairs of the State and service shall be deemed to have been effected when the writ or document is received at the Ministry.”

- 7 Section 12(2) goes on to provide that any time for entering an appearance shall begin to run two months after the date on which the writ or document is received by the Ministry.
- 8 In its recent decision in *General Dynamics United Kingdom Limited v State of Libya* [2022] AC 318, the UK Supreme Court held by a majority that the provisions of Section 12(1) are mandatory and that accordingly service on a State by any means other than that set out in Section 12(1) is not permissible, regardless of what any rules of court may say.
- 9 However, Section 12(7) of the Act provides (so far as relevant):

“(7) This section shall not be construed as applying to an action in rem ...”

The question therefore arises as to whether the present proceedings are an action *in rem*.

- 10 In *Pattni v Ali* [2006] UKPC 51, the Privy Council had to determine whether the judgment of a Kenyan court was a judgment *in rem* or *in personam*. Speaking for the Privy Council, Lord Mance discussed the distinction between actions *in rem* and actions *in personam* at [19] – [23]. I would refer in particular to the following passages:

“21. For present purposes, a judgment in rem in the sense of rule 40 is thus a judgment by a court where the relevant property is situate adjudicating on its title or disposition as against the whole world (and not merely as between parties or their privies in the litigation before it). The distinction is shortly and accurately put in Stroud’s Judicial Dictionary, 7th ed [2006] at p 2029, cited (in an earlier edition) by Deemster Kerruish:

‘A judgment in personam binds only the parties to the proceedings as distinguished from one in rem which fixes the status of the matter in litigation once and for all, and concludes all persons’.”

- 11 At [23], having referred to the case of *Cambridge Gas Transport Corp v Official Committee*

of *Unsecured Creditors of Navigator Holdings plc* [See] [2006] UKPC 26, Lord Mance went on to say this:

“In paragraph 13 of its opinion the Board referred to judgments in rem and in personam as ‘judicial determinations of the existence of rights: in the one case, rights over property and in the other rights against the person’.

However, their Lordships take the present opportunity to emphasise that in the former case, in order for a judgment to have in rem effect in the sense of rule 40 in Dicey, Morris & Collins, the determination must be a determination regarding the status or disposition of property which is to be valid as against the whole world. The fact that a judicial determination determines or relates to the existence of property rights between parties does not in itself mean that it is in rem.”

- 12 The decision of the Privy Council in *Pattni* was followed by this Court (Commissioner Clyde-Smith) in *Brunei Investment Agency v Fidelis Nominees Limited* [2008] JLR 337 where, at [49] the Commissioner said:

“It was held by the Privy Council that a judgment to have effect in rem had to be a determination regarding the status or disposition of property which was to be valid as against the whole world and not merely between the parties. An order purporting actually to transfer or dispose of the property was to be distinguished from a judgment determining the contractual rights of parties to property.”

- 13 In my view, applying the above approach, the present proceedings clearly constitute an action *in rem*. The Court is being asked to determine who is entitled to the trust fund. Although the parties convened will be the only parties who address the Court, the Court's determination will be valid as against the world. Thus, in law, whoever is determined to be entitled to the trust fund will be the owner of the trust fund as against the world. So, for example, any creditor of any of the parties will be bound by the determination of the Court as to whether that person does or does not have an entitlement to the trust fund and therefore assets potentially available to a creditor.
- 14 It follows that section 12(1) of the Act does not apply to these proceedings by virtue of section 12(7). The position is therefore governed by the Service of Process Rules 2019 (“the 2019 Rules”). Rule 11 sets out the procedure for serving a summons or other document on a State and requires transmission through the Bailiff to the Foreign and Commonwealth Office with a request that that Office arranges for the documents to be served. However, the evidence is that this process will take a number of months. For reasons related to the position of one of the nephews, there is urgency in this matter. Rule 14 of the 2019 Rules allows for the Court to make orders for substituted service. In my judgment this an appropriate case for substituted service, such service to be effected by post and by email upon the Education Office of the Greek Embassy in London.