

Representation of Alan John Roberts and James Robert Toynton (acting as Court-Appointed Receivers)

Jurisdiction:	Jersey
Judge:	Ramsden, Jurats Blampied, Sir Michael Birt
Judgment Date:	18 January 2021
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Text

[2021] JRC 8

ROYAL COURT

(Samedi)

Before:

Sir Michael Birt, Commissioner, and Jurats Blampied and Ramsden

In the Matter of the Representation of Alan John Roberts and James Robert Toynton and of
Esteria Trust (Mauritius) Limited

In the Matter of the Receivership of the Secured Long Term Promissory Note Dated 10
December 1987 and Related Assets

And in the Matter of the Grand Trust

Representation of Alan John Roberts and James Robert Toynton (acting as Court-
Appointed Receivers)

First Representors

And

Estera Trust (Mauritius) Limited (formerly Appleby Trust (Mauritius) Limited)
Second Representor

Advocate S. A. Hurry for the First Representor.

Advocate S. J. Williams the Second Representor.

Authorities

Crociani v Crociani [\[2017\] JRC 146](#).

Crociani v Crociani [\[2017\] JRC 145A](#).

Re IMK Family Trust [\[2008\] JLR 250](#).

Trust — appointment and subsequent discharge of receivers

THE COMMISSIONER:

- 1 On 3rd December 2020, the Court discharged the First Representors (“the Receivers”) from their position as receivers of certain assets, to which they had been appointed by this Court on 15th September 2017. The discharge followed satisfactory completion of the responsibilities conferred upon them.
- 2 We propose to give a short judgment explaining the background to their appointment in case it is of assistance on future occasions.

Background to the appointment

- 3 The appointment of the Receivers arose out of the long-running litigation concerning the Grand Trust established by Madame Crociani. The full story is to be found in the judgment of the Royal Court dated 11th September 2017 *Crociani v Crociani* [\[2017\] JRC 146](#) (“the main judgment”) and in a supplementary judgment of the same date, *Crociani v Crociani* [\[2017\] JRC 145A](#) (“the supplementary judgment”). For the purposes of our judgment, it is only necessary to touch upon a small part of the story.
- 4 At the material time considered by the Royal Court in the main judgment, the trustees of the Grand Trust were Madame Crociani, BNP Paribas Jersey Trust Corporation Limited

("BNP") and a Mr Foortse (together "the Former Trustees"). One of the assets of the Grand Trust consisted of a promissory note ("the Promissory Note") executed by a company called Croci International BV as debtor in favour of Madame Crociani, which she had subsequently assigned to the trustees of the Grand Trust. In 2012, the Former Trustees purported to appoint the Second Representor (under its then name of Appleby Trust (Mauritius) Limited and to which we shall refer as "Appleby Mauritius") as trustee of the Grand Trust in place of the Former Trustees and to assign the benefit of the Promissory Note to Appleby Mauritius in its capacity as the new trustee. Appleby Mauritius then agreed certain amendments to the Promissory Note which were favourable to the debtor.

- 5 Subsequently, in 2016, Appleby Mauritius purported to retire as trustee of the Grand Trust and to appoint GFIN Corporate Services Limited ("GFIN") in its place. It also purported to assign the benefit of the Promissory Note to GFIN.
- 6 In the main judgment, the Court set aside the appointments of Appleby Mauritius and GFIN as trustees on the basis that the appointments were in breach of trust. The Court subsequently ordered that Appleby Mauritius pay the face value of the Promissory Note into court as security pending assessment of the loss caused by its actions in relation to the Promissory Note. In the light of the payment into court, the Court ordered that the benefit of the Promissory Note be assigned to Appleby Mauritius. By its Act of 15th September 2017, the Court further appointed the Receivers as receivers of the Promissory Note, the proceeds thereof and any power or right in respect thereof or arising thereunder ("the Assets"). The Assets were to be held to the order of the Court and the Receivers were appointed as officers of the Court. We annex a copy of the relevant part of the Act appointing the Receivers to this judgment but, for convenience, would summarise the main provisions as follows:
 - (i) The Receivers were given the exclusive power, and were authorised and directed, to demand and receive all amounts due to the creditor of the Promissory Note with a direction to preserve, secure, gather in, collect and realise the Assets, and in particular the sums due and payable under the Promissory Note.
 - (ii) The Receivers were given the power and authority to bring, defend, continue or compromise proceedings or actions in any jurisdiction and against any person or entity as the Receivers thought fit in order to achieve the purposes of the receivership (namely to recover the sums due under the Promissory Note).
 - (iii) The Receivers were directed to take steps to enforce and/or render executory injunctions and orders made by the Royal Court against GFIN.
 - (iv) The Assets, and any proceeds of the Promissory Note collected or recovered by the Receivers, were to be held to the order of the Court.
 - (v) Appleby Mauritius was ordered to fully indemnify the costs and expenses of the Receivers until further order, without prejudice to its right to apply to the Court for reimbursement out of the Assets.

(vi) A liberty to apply provision was included to cater for, amongst other things, the future possibility that the new trustee of the Grand Trust (appointed by the Court) or the beneficiaries of the Grand Trust might wish to procure the assignment of the Assets back to the Grand Trust.

- 7 The Court did not give any judgment at the time it appointed the Receivers although, at paragraph 15 of the supplementary judgment, it held that it had power to appoint receivers, referring in passing to *Re IMK Family Trust* [2008] JLR 250, where the Court had held that it had power to appoint receivers of a trust as part of its general supervisory jurisdiction in respect of trusts.
- 8 The appointment in this case was not technically in respect of a trust. Although the Promissory Note was an asset of the Grand Trust, Appleby Mauritius had been ordered to pay the face value of the Promissory Note into court as security for any equitable compensation that it might be ordered to pay in respect of its breach of trust, and the Promissory Note had been assigned to Appleby Trust. Accordingly, the appointment of Receivers was more in the nature of enforcement and execution of a court order. However, we respectfully agree with the Court in relation to its Act of 15th September 2017, namely that the Court has inherent jurisdiction to appoint receivers as part of its armoury in relation to ensuring, so far as possible, that its judgments are enforced and executed.

The current application

- 9 Following their appointment, the Receivers took various steps to enforce and collect the sums due and payable under the Promissory Note. This included the institution of proceedings in the Netherlands, Luxembourg, Mauritius and Italy. In due course, a settlement was reached between all of the relevant parties and this Court subsequently approved the terms of that settlement.
- 10 It follows that the role of the Receivers has now come to an end, the purpose for which they were appointed having been achieved.
- 11 In those circumstances, the Court granted their application that they be discharged as receivers.

ANNEX – Extract of Act dated 15th September 2017

“4. Pursuant to its inherent jurisdiction, the Court hereby appoints Mr Alan John Roberts and Mr James Robert Toynton as receivers (“the Receivers”) of the Assets and any power or right in respect thereof. The Assets are to be held to the Order of the Court. The Receivers shall be officers of the Court and at all times act with the authority and powers conferred upon them by the Court. All

powers and rights conferred upon the Receivers herein may be exercised on a joint and several basis such that both may act together or one may act without the other (and by doing so will bind the other).

5. The Receivers shall have the power and are authorised and directed with immediate effect:

(a) to receive all amounts due to the creditor of the Promissory Note including, for the avoidance of doubt, the Eighth Defendant from Croci International BV and/or Croci International II BV;

(b) to demand payment to the Receivers of the unpaid, accrued interest due from Croci International BV and/or Croci International II BV by immediately notifying Croci International BV and/or Croci International II BV of the same in writing (the "Demand Notice") and to receive the same;

(c) in the event that Croci International BV defaults on its obligation to pay the unpaid, accrued interest within 30 days of the date on which the Demand Notice is sent, to exercise all rights and remedies of the creditor under the Promissory Note as may be available, including demanding payment (from Croci International BV and/or Croci International II BV) to the Receivers of the entire amount of principal and interest due and payable under the Promissory Note and to receive the same;

(d) to bring, defend, continue or compromise any proceedings or any other action in any jurisdiction and against any person or entity as the Receivers may think fit, in order to achieve the purposes of the receivership, whether using their own name and/or the name of the Fourth Defendant and/or the Eighth Defendant, and in particular to (i) preserve; (ii) secure; (iii) gather in; (iv) collect; and (v) realise the Assets and in particular sums due and payable under the Promissory Note;

(e) without prejudice to the foregoing, to take all such steps as they shall consider necessary or advantageous to: (i) preserve; (ii) secure; (iii) gather in; (iv) collect; and (v) realise the Assets and in particular sums due and payable under the Promissory Note;

(f) without prejudice to the foregoing, to take steps to enforce and/or render executory the injunctions and orders made against the Eighth Defendant pursuant to paragraph 30 of the Act of Court dated the 11th September, 2017, the benefit of which for the avoidance of doubt is extended to the Receivers;

(g) to the extent any sums have been paid under the Promissory Note to the Eighth Defendant or third parties since the 29th January,

2016, to take steps to trace and recover those sums or their proceeds or assets representing the same wherever reasonably practicable to do so; and

(h) to do all things as may be necessary for the preservation and maintenance of the Assets.

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7. The Receivers are authorised to use and disclose for the purposes of their appointment copies of any documents disclosed either voluntarily or pursuant to an order of this Court in these proceedings, and for the avoidance of doubt may use such documents in any other legal proceedings to which they are a party.

8. The costs and expenses of the Receivers shall be fully indemnified by the Fourth Defendant until further order, without prejudice to the right of the Fourth Defendant to apply to the Court for reimbursement out of the Assets.

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11. Except as provided in paragraph 12 below, the terms of this Order do not affect or concern anyone outside the jurisdiction of this Court.

12. The terms of this Order will affect the following persons in a country or state outside the jurisdiction of this Court:

(a) the Eighth Defendant or its officer or agent appointed by power of attorney;

(b) any person who—

(i) is subject to the jurisdiction of this Court;

(ii) has been given written notice of this Order at his residence or place of business within the jurisdiction of this Court; and

(iii) is able to prevent acts or omissions outside the jurisdiction of this Court which constitute or assist in a breach of the terms of this Order; and

(c) any other person, only to the extent that this order is declared enforceable by or is enforced by a Court in that country or state.

13. Nothing in this Order shall, in respect of assets located outside Jersey, prevent any third party from complying with:

(1) what it reasonably believes to be its obligations, contractual or otherwise, under the laws and obligations of the country or state in which those assets are situated or under the proper law of any

contract between itself and the Eighth Defendant; and

(2) any orders of the courts of that country or state, provided that reasonable notice of any application for such an order is given to the Receivers' lawyers.

14. Nothing in this Order shall, in respect of assets located outside Jersey, require the Eighth Defendant and/or its directors to disobey the order of any court of competent jurisdiction in relation to such assets."