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PRESS SUMMARY

Crociani and others (Appellants) v Crociani and others (Respondents) and Princess Camilla de Bourbon des deux Sicilies (Interested Party) [2014] UKPC 40
On appeal from the Court of Appeal of Bailiwick of Jersey

JUSTICES: Lord Neuberger, Lord Mance, Lord Reed, Lord Hughes, Lord Hodge

BACKGROUND TO THE APPEAL

In 1987, Mme Crociani created a trust (“the Grand Trust”) by deed (“the 1987 Deed”). Among the beneficiaries of the Grand Trust were Mme Crociani’s daughters Camilla de Bourbon des Deux Sicilies and Cristiana Crociani (“Cristiana”). Under Clause 15 of the 1987 Deed, the Grand Trust was to be governed by the law of the Commonwealth of the Bahamas “which shall be the forum for the administration thereof”. Clause 12 of the 1987 Deed provided the trustees with a power to resign and to appoint new trustees outside the jurisdiction and, when exercising that power, to declare the governing law of the trust to be the law of the country of residence or incorporation of the new trustees. Clause 12 went on to provide, at clause 12(6), that:

“thereafter the rights of all persons and the construction and effect of each and every provision hereof shall be subject to the exclusive jurisdiction of and construed only according to the law of the said country which shall become the forum for the administration of the trusts hereunder”

From October 2007, the trustees were Mme Crociani, Paul Foortse, and a Jersey trust corporation (together “the Jersey Trustees”) and the effect of clause 12 was that Jersey law was the governing law of the trust. In February 2012 the Jersey Trustees executed a deed resigning as trustees and appointing a company incorporated and registered in Mauritius, “Appleby”, as sole trustee.

Cristiana and other claimants (“the Respondents”) brought proceedings in the Jersey Royal Court against the Jersey Trustees and Appleby (“the Appellants”) in January 2013 challenging, among other things, an appointment out of the Grand Trust made in 2010, the appointment of Appleby in 2012, and certain payments made by the Jersey Trustees to Mme Crociani. The Appellants made an application to stay the proceedings in Jersey on the basis that the effect of clause 12 is to confer exclusive jurisdiction upon the Mauritius courts. The application was rejected by the Royal Court, whose decision was upheld on appeal, and the Appellants now appeal to Her Majesty. Two issues fall to be decided in this appeal: (1) whether clause 12(6) confers exclusive jurisdiction upon the Mauritius courts and (2) if so, whether the proceedings in Jersey should be stayed.

JUDGMENT

The Judicial Committee of the Privy Council will humbly advise Her Majesty that the appeal should be dismissed. Lord Neuberger gives the advice of the Board.

REASONS FOR THE JUDGMENT

In the Board’s view, no part of clause 12(6) of the 1987 Deed was concerned with identifying which country’s courts should have jurisdiction to determine disputes relating to the Grand Trust. Two phrases are principally relied upon by the Appellants to support their contention that clause 12(6) confers exclusive jurisdiction upon the Mauritius courts. First, they argue that “the forum for the administration of the trusts” is a reference to the courts which resolve disputes and give directions in relation to the Grand Trust. While the Board accepts that the expression could have this meaning, in context these words indicate the place where the trust is administered in the sense of its affairs being organised [17].

It is perfectly feasible for the draftsman to stipulate where the Grand Trust's affairs would be organised, and this might be relevant to the tax treatment of the trust [19]. A provision identifying the country whose courts were to determine disputes would be expected to refer to the courts of a country rather than simply the country as being the "forum" [20]. Clause 12 contains a further provision enabling trustees to declare that the trusts shall continue to be governed by the laws of the Bahamas; it would be odd if the words "forum of administration" nevertheless required the Mauritius courts to have exclusive jurisdiction. It would make more sense if these words forced the new trustee to maintain its country as the place where the Grand Trust was managed [21]. Even if these words do mean that the courts of Mauritius have jurisdiction, it is doubtful whether, on the basis of the use of the definite article, it was intended that those courts should have *exclusive* jurisdiction [22].

Secondly, the Appellants argue that the words "shall be subject to the exclusive jurisdiction" confer exclusive jurisdiction upon the Mauritius courts. The Board rejects this interpretation, and considers that, properly construed in context, these words have the effect of ensuring that all issues concerning the Grand Trust are to be governed by the same law. This emphasis on exclusivity in relation to the governing law of the trust avoids the risk that different aspects of the Grand Trust were subject to different proper law [23-24]. Clause 15 of the 1987 Deed, which deals with initial governing law of the trust, contains no equivalent words; it is hard to see any sense in providing for exclusive jurisdiction only after a new trustee outside the jurisdiction is appointed [25]. The words in question are located between two provisions of clause 12 which are concerned with the law applicable to the Grand Trust, and it would be odd for the draftsman to insert a phrase conferring exclusive jurisdiction between two phrases concerning governing law [27]. Even if the words did have the effect contended for by the Appellant, there are strong grounds for saying that the Jersey court has exclusive jurisdiction in relation to several of the claims, as the language of the provision suggests that the question is to be assessed by reference to the date on which the breach or abuse occurred [28].

If the Mauritius courts have exclusive jurisdiction, should the proceedings in Jersey continue

Given the Board's conclusion on the meaning of clause 12(6) it is unnecessary to decide this point. However, it was fully argued and it raises a point of some interest, namely whether the approach taken to exclusive jurisdiction clauses in contract cases applies to such a clause in a deed of trust. Where a claim has been brought in breach of a contractual exclusive jurisdiction clause, the burden is on the claimant to justify the claim continuing, and to discharge the burden, the claimant must normally establish "strong reasons" for doing so [34]. The Board is of the opinion that in the case of a trust deed, the weight to be given to an exclusive jurisdiction clause is less than the weight to be given to such a clause in a contract [35]. The court does not face the argument that it should hold a contracting party to his or her contractual bargain. Furthermore, the court has an inherent jurisdiction to supervise the administration of trusts, which exists primarily to protect the interests of beneficiaries, and it will usually be a trustee who seeks to rely upon such a clause [36]. Therefore, while a trustee is *prima facie* entitled to enforce an exclusive jurisdiction clause in a trust deed, the weight to be given to the existence of the clause is less than if it was contained in a contract [37].

Applying this approach, the Board considers that even if clause 12 *had* conferred exclusive jurisdiction on the courts of Mauritius, no stay would have been granted in respect of the proceedings in Jersey [40]. There are a number of trust law issues raised by the proceedings, and the great majority of those issues will be governed by Jersey law. The Jersey courts have very extensive experience of dealing with trust litigation, and are plainly more familiar with Jersey law than any other court would be [41]. The documentation and many of the witnesses are likely to be in Jersey [42]. The purpose of the clause was presumably that proceedings should be brought in the courts of the country where the trustee was based and whose law governed the trusts [43]. Correspondence before the proceedings were issued made clear that the Appellants were content with the claims being pursued in Jersey [44-45]. Finally, the reasons put forward by the Appellants for preferring the courts of Mauritius are unimpressive [47].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Committee's decision. It does not form part of the reasons for that decision. The full opinion of the Committee is the only authoritative document. Judgments are public documents and are available at: www.jcpc.uk/decided-cases/index.html.