

Judgments on Jurisdiction – Lessons from the Stingray Trust

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One of the attractive features of trusts law in the Cayman Islands is the jurisdiction's well known, and well used, "firewall" provisions. Up until now, certain of these provisions have been widely interpreted to confer exclusive jurisdiction on the Court when dealing with disputes concerning a Cayman law governed trust. However, the recent and carefully considered judgment of the Honourable Mr. Justice Kawaley in *Geneva Trust Company v IDF and MF (also known as Re Stingray Trust)*¹, has provided a new and careful analysis of these provisions and offers up helpful clarification of how these firewall provisions operate in practice. The judgment also contains a helpful discussion of the common law principles of *forum non conveniens* as they relate to disputes involving Cayman Islands trusts, and the impact of forum of administration clauses which are often found in Cayman trust deeds.

Background

The Stingray Trust (the **Trust**) is a trust governed by Cayman Islands law and subject to a provision in the trust deed that specifies the Cayman Islands as the forum for administration of the Trust. The named settlor of the Stingray Trust (the **Trust**), through her court appointed guardian, had applied to a court in Milan, Italy to set aside the Trust (the **Milan Proceedings**). In doing so, it was the guardian's position that the Trust had been established without the settlor's knowledge or consent and was therefore invalid. The guardian had brought related

proceedings in Switzerland, seeking to freeze the assets held in the Trust. Faced with these foreign proceedings, the trustee of the Trust applied to the Grand Court of the Cayman Islands (the **Grand Court**) for its own directions and declarations as to validity. The trustee also successfully pursued an application for retrospective Beddoe relief, having already taken steps in the foreign proceedings to contest jurisdiction before approaching the Grand Court for sanction to pay its costs of doing so from the trust assets.

As the Milan Proceedings continued, the Milan court found it had jurisdiction over the guardian's claim. The trustee then applied to the Grand Court to amend its originating summons to seek orders restraining the guardian from further pursuing the Milan proceedings. In response, the guardian filed her own summons in the Grand Court seeking to stay the Cayman proceedings on the grounds that the Cayman Islands was not the appropriate forum for the trial of the matter and that Milan, Italy was in fact the more convenient and appropriate forum (in that the majority of the interested parties, witnesses and documents (drafted in Italian) were located in Milan). By the time the guardian's stay application was heard by the Grand Court, the Milan Proceedings had been ongoing for over three years and the Milan court had set the matter down for a final hearing.

Against this factual background, the Grand Court was asked to decide three matters:

1 - Unreported, Kawaley J, 21 December 2020.

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- Whether section 90 of the Trusts Act provides that it is only the Grand Court which can adjudicate questions such as the validity of a Cayman trust
- Whether the Trust contained an exclusive jurisdiction clause which was binding on the guardian and
- Whether the Cayman Islands was the most appropriate forum to adjudicate the dispute in any event.

1. Section 90

Cayman's firewall provisions are found in Part VII of the Trusts Act (formerly the Trusts Law), known as the "Trusts Foreign Element" section. Section 90 provides that: "[a]ll questions arising in regard to a trust which is...governed by the laws of the [Cayman] Islands or in regard to any disposition of property upon the trusts thereof including questions as to... any aspect of the validity of the trust, ...whether the administration be conducted in the Islands or elsewhere... are to be determined according to the laws of the islands, without reference to the laws of any other jurisdiction with which the trust or disposition may be connected."

In considering the guardian's summons, Kawaley J concluded that, on a plain reading, section 90 does not confer exclusive jurisdiction on the Grand Court in relation to questions such as the validity of a Cayman trust. The judge made reference to the prior authorities which appeared to conflict with this view but noted that in those cases, the question had not been fully argued before or considered by the Grand Court. The judge concluded that "Section 90, applying a purposive construction which is entirely consistent with the natural and ordinary meaning of the section in its wider statutory context, does not require all matters which must be determined under Cayman Islands law to be determined exclusively by [the Cayman] Court". Section 90 was found to be a governing law clause which did not address jurisdiction and therefore the usual principles of forum non conveniens will apply in the absence of an exclusive jurisdiction clause in the trust deed.

2. Exclusive jurisdiction

With regard to the question of whether the Trust deed contained an exclusive jurisdiction clause, the judge determined as a matter of construction that it did not. In doing so, the judge relied on the decision of *Crociani v Corciani*² to hold that the nature or legal character of the dispute was relevant to that decision. On this front, the judge noted that the claim pursued by the guardian was not a claim brought by someone claiming under the terms of the Trust, but was instead a challenge to the validity of the Trust itself. Consistent with the general provisions of both trust law and contract law, the judge held that a person claiming an agreement is invalid should not be bound by its terms and, it follows, the jurisdiction clause had no direct significance to the claim by the guardian.

3. Forum

That left for determination the question of whether the Grand Court was the most convenient forum in any event. In finally resolving the question of forum, the judge held that it was obvious that the Milan court was the most appropriate forum in circumstances where, inter alia, there was no identifiable utility in facilitating concurrent proceedings on the same issues before the Grand Court and the Milan court. This was particularly so given the trustee had already submitted to the jurisdiction of the Milan court and the Milan proceedings had been on foot for three years and were set down for a final hearing. The judge also noted the trustee had not been successful in contesting jurisdiction before the Milan court. In this regard the judge noted that "A trustee wishing to have a contentious issue concerning a Cayman Islands trust determined by this Court must ordinarily seek to invoke this Court's jurisdiction as a first rather than a last resort" and that "If the present application was being heard before or shortly after the Milan Proceedings were commenced in 2016, the scales might well have tipped decisively in favour of finding that the Cayman Islands was the most appropriate forum." In order to ensure that Cayman Islands law was properly applied by the Milan court, the stay was granted subject to the condition that Cayman Islands law is applied to the question of whether the Trust is valid at the final hearing.

Summary

The judgment confirms that the Trust Act does not, as many had assumed, automatically confer exclusive jurisdiction on the Grand Court to resolve disputes concerning Cayman Islands trusts. Rather, in certain circumstances, a foreign court can make enforceable orders in respect of a Cayman Islands trust so long as it properly applies Cayman law. The judgment offers many lessons for the prudent trustee: where foreign proceedings are issued or threatened concerning a Cayman trust, it will be crucial for the trustee to act quickly and apply to the Grand Court for protection or sanction in order to avoid a scenario where a foreign court is granted jurisdiction by virtue of delay. Further, the risks of submitting to the jurisdiction of a foreign court too soon, a concern usually front of mind for trustees, should be closely assessed given that it may ultimately have a significant bearing on any subsequent forum dispute. And, importantly, forum for administration clauses will not bind parties to a dispute where that dispute centres on the validity of the trust instrument itself.

Crucially, while providing clarification as to the operation of the firewall provisions as explained above, the judgment does not otherwise disturb the general position that the Cayman Islands firewall provision offer protection against orders of foreign courts that do not recognise Cayman trusts, are not based on Cayman trusts law, or which seek to enforce rights which are inconsistent with Cayman law such as forced

heirship rights. In the face of the important clarification given in the judgment, that robust protection remains.



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