

**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
HOLDEN AT GEORGE TOWN GRAND CAYMAN**

16-5-96

**CAUSE NO. 153/95**

**IN THE MATTER OF THE COTORRO TRUST, originally constituted by a Trust Agreement dated the 1st June, 1979 between Maria Ernestina Bacardi y Gaillard as Grantor and Coutts & Co. (Cayman) Limited (then known as RoyWest Trust Corporation (Cayman) Limited, now named Coutts & Co. (Cayman) Limited).**

AND

**IN THE MATTER OF THE TRUST LAW (Revised)**

BETWEEN:	COUTTS & CO. (CAYMAN) LIMITED	PLAINTIFF
AND:	(1) JERRY M. LINDZON	FIRST DEFENDANT
	(2) ELENA GOMEZ EL CAMPO DE LINDZON	SECOND DEFENDANT
	(3) ELENA LAURA PESSINO DE LINDZON	THIRD DEFENDANT
	(4) CESAR JAIME DE BALMASEDA	FOURTH DEFENDANT

**APPEARANCES:**

Mr. Graham Ritchie of Charles Adams, Ritchie & Duckworth for the Plaintiff.  
Mr. Neil Timms of Maples & Calder for the 1st & 2nd Defendants.  
Mr. Huw Moses of Hunter & Hunter for the 3rd Defendant.  
Mr. George Giglioli of Giglioli & Co. (as Ad Litem) for the 4th Defendant.  
Mr. William Helfretch of Ian Boxall & Co. for Santiago and Gonzales Casas (adult beneficiaries).

**R U L I N G A S T O T H E F O R M O F D E E D O F A C K N O W L E D G E M E N T**  
**T O B E E X E C U T E D B Y M R . & M R S . D E B A L M A S E D A**

The Court must continue to be mindful of the real purpose and intention behind the Deed of Acknowledgement required of the third defendant, Mrs. De Balmaseda and her husband Mr. De Balmaseda. It is to ensure that before they are provided with trust documentation and any evidence filed in these proceedings, they would acknowledge to the Trustee their acceptance of the original validity of the Trust and of the settlement upon it or upon underlying companies of trust assets.

The Court was persuaded, as reflected in the order of the 29 June 1995, of the appropriateness of such an acknowledge before Mrs. De Balmaseda was to be provided with copies of Trust documentation ( or inspection of originals) notwithstanding her basic equitable entitlement in that regard as a contingent beneficiary.

By the legal instrumentality of the Acknowledgement it was intended to bolster the assurances contained in the personal undertakings given by Mrs. De Balmaseda's attorneys and by Mr. De Balmaseda.

Thus, the purport of those aspects of the order was to address the potential mischief of abuse of trust documentation or other confidential information belonging to the Trust for the purpose of challenging its validity.

On those proceedings in June 1995, which were essentially ex parte in nature, the Court was not addressed on and could not properly have decided upon the complex matters of conflict of laws inherent in the issues of forced heirship and the rights which an heir under Spanish law may have to claw back assets settled upon a Trust domiciled in the Cayman Islands.

Yet those and other issues involving the conflict of laws are anticipated in the schedule to the draft Deed prepared by the Trustee. While those issues certainly could impact upon any question of the validity of the Cotorro Trust as a matter of Spanish law, they do not and were not contemplated by the court in June 1995, as having such impact as a matter of Cayman Islands law.

The issues then of concern to the Court were those adumbrated about incapacity, undue influence, duress and fraud.

To the extent that those or other challenges (including those based on conflict of laws) could be raised abroad, the concern was to ensure that Trust documents were not being sought to enable any beneficiary or any third party to do so.

As I have already noted, the undertakings and the Deed of Acknowledgement of the validity of the Cotorro Trust and of the settlement of the assets upon it, were intended to

address that particular mischief. They were not intended to purport to preclude any party from relying upon any entitlement he or she may have strictly as a matter of foreign law.

I also note the explicit intention expressed in her attorney's correspondence that Mrs. De Balmaseda has no intention of seeking to defeat the original validity of the Trust. It is said she would have nothing to gain by so doing and an extremely valuable contingent beneficial interest to lose if she were to do so.

On that, I can make no finding one way or the other at this stage, for the same reasons already expressed. But if, at some time in the future, such a challenge were to be taken by her in Spain or elsewhere, there will be recourses open to the Trustee and the other beneficiaries as a matter of Cayman Islands law. (See for example Lemos v Coutts & Co. 1992-93CILR). I also note my agreement with Mr. Moses that it would be wrong to require his clients to give acknowledgements of matters which are strictly matters of foreign law without the court having any basis for concluding that they should be able to do so.

For present purposes, I direct that the form of deed of acknowledgement proffered on behalf of Mr. & Mrs. De Balmaseda by their attorneys is the basic form in which the Deed of Acknowledgement is to be executed subject to the inclusion of the provision at the end of paragraph 7 of that propounded by the Trustee's attorneys with the addition of

the words "in respect of any action arising out of or in respect of the enforcement of the provisions of this Deed".

[Other provisions in the Trustee's form were discussed at this stage and directed as proper for inclusion insofar as they do not seek to determine any rights which may exist as a matter of Spanish Law].

Final form of the Deed to be approved by the Court.

A. Smellie Q.C.

Judge of the Grand Court

16th May 1996