

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
HOLDEN AT GEORGE TOWN, GRAND CAYMAN  
CAUSE NO. 320/88

BETWEEN:                   PIETER BASEDOW                   PLAINTIFF  
AND:                        JOHN C. STONE                    DEFENDANT

R U L I N G

This is an application which seeks that the following two issues be tried as preliminary questions of law and set down for early trial -

- (a) Whether the construction of the Nominee Agreement dated 20th July 1984, the subject of these proceedings, fails to be determined by the law of the Cayman Islands or by the law of West Germany.
- (b) Whether the legal effect, if any, of the said Nominee Agreement fails to be determined by the law of the Cayman Islands or by the law of West Germany.

These proceedings were begun by originating summons. The substance of the relief sought is a declaration that the plaintiff is the sole beneficial owner of certain shares in a company incorporated under the laws of the Cayman Islands and that the shares are registered in the name of the first defendant for the benefit of the plaintiff absolutely. The other relief sought flows from determination of that question.

The second defendant sought and was granted leave to intervene. She claims, that in this matter German Civil Law prevails and that in consequence the shares belong to the estate of her late father and not to the plaintiff.

The plaintiff's claim to the shares is based on the terms and legal effect of the nominee agreement. He says that the agreement

law of the Cayman Islands, and that under the law of the Cayman Islands the agreement entitles him to the relief sought.

Order 33, Rule 3 of Rules of the Supreme Court gives me a discretion to -

Order any question or issue arising in a cause or matter, whether of fact or law or partly of fact and partly of law, and whether raised by the pleadings or otherwise, to be tried before, at or after the trial of the cause or matter, and may give directions as to the manner in which the question or issue shall be stated."

In inviting me to exercise the discretion, the plaintiff's attorney sought to persuade me that the question of which law applied, determined in accordance with Cayman Islands conflict rules, would reduce the issue to a relatively straight forward one if the Court determined that Cayman Islands law should apply. But not all matters affecting a contract are necessarily governed by one law. The correct question to ask is not 'What law governs the construction and legal effect of the nominee agreement?' but 'What law governs the particular question raised in the instant proceedings?' - that is to say the beneficial ownership of the shares

Questions of intention arise in determining the proper law of a contract. It was submitted on behalf of the plaintiff that the facts which the Court would require to determine the preliminary question are these which are not in dispute, namely the existence of the agreement, the domicile of Dr. Basedow, his death, his will, and the details relating to the company whose shares are the subject matter of the action.

But other questions of fact - and in particular of the facts relating to intention as to the governing law, to which evidence as to the way Dr Basedow intended his estate as a whole to be disposed of might well be relevant - may need to be addressed. In other words, I have some doubt as to whether even the Cayman conflict of laws principles can be properly determined without some evidence of both

In these circumstances this seems to me to be a case where the caution urged by the House of Lords should apply. See Att - Gen v. Nissan (1970) AC 179 and Tilling v. Whitehead (1980) AC 1. In the later case Lord Wilberforce said this -

'I, with others of your Lordships, have often protested against the practice of allowing preliminary points to be taken since this course frequently adds to the difficulties of Courts of Appeal and tends to increase the cost and time of legal proceedings. If this practice cannot be confined to cases where the facts are complicated and the legal issue short and easily decided, cases outside this guiding principle should at least be exceptional.'

In the same case Lord Scarman described preliminary points of law as being too often treacherous short cuts, the price of which can be delay, anxiety and expense.

I am not persuaded that the legal issue which I am invited to treat as a preliminary one will prove to be either short or easily decided or that it can be more conveniently dealt with in that way. It is not even a matter, as was the case in both Nissan and Tilling, which the parties are able to agree that this should be done. Moreover, dealing with the matter in that way would be likely to increase the difficulties of the Court of Appeal in the event of it coming before them.

In consequence the plaintiff's application is dismissed.

After hearing the submissions of counsel, I award the costs of this application to the second defendant.

