

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION**

Cause No.: FSD 188 of 2017 (RPJ)

**IN THE MATTER OF A DEED OF SETTLEMENT DATED 1 OCTOBER 2003
CONSTITUTING THE T TRUST (THE "TRUST")**

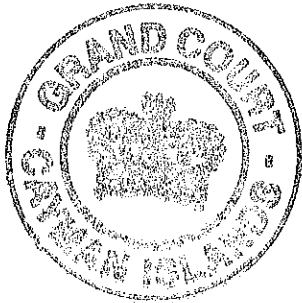
**AND IN THE MATTER OF SECTION 48 OF THE TRUSTS LAW (2017 REVISION)
AND GCR ORDER 85, RULE 2**

BETWEEN

T CO

Plaintiff

AND



**(1) AA
(2) BB
(3) CC
(4) DD
(5) EE (A MINOR)**

Defendants

IN CHAMBERS

Appearances: Shelley White and Lucy Diggle of Walkers for the Plaintiff
Paul Smith and Robert Lindley of Conyers Dill & Pearman for the Defendants

Before: The Hon. Justice Raj Parker

Heard: 23 February 2018

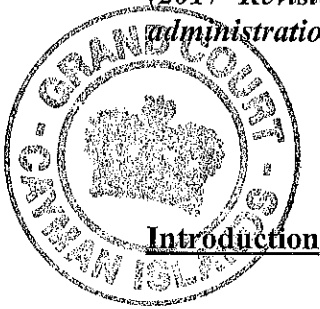
Draft Judgment

Circulated: 07 March 2018

Judgment Delivered: 13 March 2018

HEADNOTE

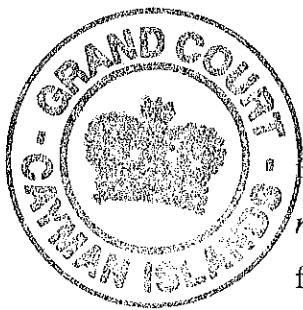
Service of originating summons out of the jurisdiction without leave - Order 11 rr 1(2), 5, 6 and 9 - US defendants - proper forum for determining validity of service - section 48 Trusts Law



JUDGMENT

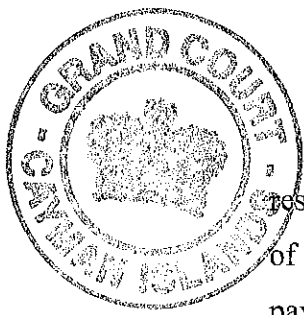
Introduction

1. Pursuant to an order dated 1 December 2017 these proceedings are subject to strict confidentiality orders requiring, among other things, the parties, the protector of the Trust to which these proceedings relate, and any identifiable property to be referred to by alphabetical letters on the face of all court documents.
2. The trustee "**TCo**" is a Cayman Islands licensed trust company and the sole trustee of the T Trust established by way of a deed of settlement dated 1 October 2003 ("**the Settlement**") between AA as settlor and TCo. The Trust is governed by the laws of the Cayman Islands. All the defendants (AA - EE) are beneficiaries of the Trust ("**the defendants**"). BB is AA's husband. CC, DD and EE are respectively AA's children and grandchild (a minor). All the defendants are US citizens.
3. The AA family has brought a claim in the Florida court (the Circuit Court of the 15th Judicial Circuit in and for Palm Beach County) on 11 August 2017 against FL Co. (which is a sister company of TCo and in the same group) and one of its employees (JAE) alleging breach of fiduciary duty and negligent misrepresentation. Damages are sought for alleged losses suffered in connection with the purchase and maintenance of certain life insurance policies that are owned by TCo in its capacity as trustee.
4. In her affidavit of 13 December 2017 Jacqueline Stirling, a director and senior vice president of TCo, states that FL Co. has acted as a "*conduit*" (my emphasis) for requests and information between the AA family and the trustee in Cayman in relation to the Trust. However, it is alleged by paragraphs 30 to 38 of the Complaint in the Florida proceedings that FL Co. was rather more than a "*conduit*" and managed the estate plan and assets for the family and that all of their financial assets including real estate and



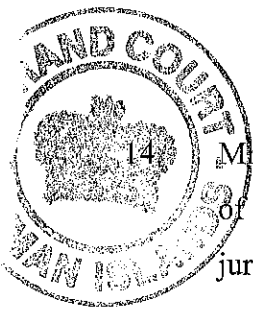
insurance policies were managed by JAE of FL Co. who was the "...axis of the relationship". It is stated by paragraph 1 of the Complaint that it is an action for breach of fiduciary duty and misrepresentation arising out of insurance investment products that the defendants would never have purchased had FL Co. not withheld the true nature and risks of the investments from them.

5. FL Co. has applied to dismiss the claim against it in Florida (which is yet to be heard by the Florida court) on the grounds that: there has been a failure to join indispensable parties to the claim, including the trustee; the correct forum for the resolution of the claim is the Cayman Islands; in the alternative that the claim be stayed pending the determination of this action by this court; and in the further alternative to have the matter referred to arbitration pursuant to the terms of an investment management agreement between the first two defendants (AA and BB) and FL Co.
6. It is important to note that TCo is not a party to the Florida claim. Ms Stirling, by paragraph 13 of her affidavit of 13 December 2017, states that the allegations in the Florida claim go to the heart of the administration of the trust and it is the trustee's position that it must be permitted properly to defend against such allegations in the Cayman Islands being "...the proper law and forum for the administration of the trust".
7. All of the defendants reside in the USA: AA and BB in Florida, CC and EE (a minor) in Massachusetts, and DD in Missouri.
8. On 11 September 2017 TCo issued an originating summons under section 48 of the *Trusts Law (2017 Revision)* as a consequence of the Florida action, seeking advice and directions from this court in respect of the alleged acts and omissions in the Florida claim.
9. The originating summons requests various declarations concerning TCo's conduct relating to life-insurance policies insured on the lives of the beneficiaries, including: the decision to purchase certain life insurance policies; the decision to obtain a loan in



respect of an insurance policy and to lend that sum to a company to assist in the purchase of property in the United States; the decision not to make voluntary annual premium payments to certain insurance companies; the decision to retain certain life insurance policies in the light of immigration and estate tax planning issues; the monitoring of the underlying investments of certain life insurance policies forming part of the Trust fund; the decision to seek specialist advice as to the restructuring of certain life insurance policies and the decision to act upon such advice.

10. There is also a general declaration sought that TCo has complied with all statutory obligations as to the creation and retention of accurate accounts and records as appropriate and with all legal obligations with respect to the disclosure of information concerning the Trust to the beneficiaries. A declaration is also sought that there has been no loss to the Trust fund as a result of any of the acts omissions and decisions concerning the life insurance policies as alleged.
11. The originating summons was served out of the jurisdiction without leave pursuant to *Grand Court Rules* ("GCR") O.11, r.1 (2) on the defendants.
12. Each of the defendants has commenced proceedings in the courts of Massachusetts, Missouri and Florida contesting the validity of service of the originating summons ("**the foreign service applications**"). None have yet been determined.
13. Ms Shelley White appeared for TCo and argued that what is said in the Florida complaint relates to the management and administration of the Trust and so relates to the trustee. The trustee was perfectly entitled to seek the assistance of this court in relation to those matters. She argued that there had been valid service on the defendants and that the proper forum for determining the validity of service was the Cayman court and that the defendants' applications to quash service in each of the relevant states are vexatious and oppressive. Consequently she applies for an order that the defendants should be restrained from continuing in prosecuting the foreign service applications.



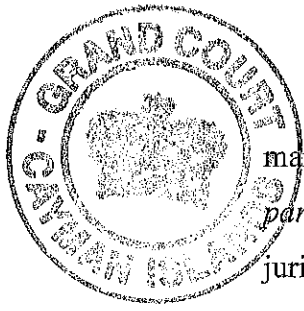
Mr Paul Smith on behalf of the defendants disputes the validity of the service upon each of them and applies, among other things, under *GCR* O.12, r.8 and/or the inherent jurisdiction of the court that service should be set aside and/or for a declaration of non-service in accordance with *GCR* O.11, r. 5 (2) and (3). He also resists the application to injunct the defendants from continuing to prosecute the foreign service applications in the relevant US states. He submits that the trustee's application under section 48 of the *Trusts Law (2017 Revision)* is unnecessary.

15. The questions for consideration and which were argued at the hearing of this matter were consequently: the defendants' application for declaratory relief that they had not been duly served with the originating summons and supporting documentation; and TCo's application for an injunction restraining the defendants from prosecuting the foreign service applications.
16. Mr Smith accepted that (contrary to the position that he took in his written argument), were I to decide that there had not been valid service of the originating summons that the injunction application to enjoin the foreign service applications was nevertheless still open to Ms White to pursue and did not automatically become moot. This may be because the foreign services applications argue that as a result of the lack of any "*sufficient minimum contact*" between BB, CC, DD and EE and the Cayman Islands there should be a declaration in the relevant US courts that service on those individuals violates their due process rights. The effect of this, if correct, is that they cannot be validly served with the originating process and any procedural deficiencies in service cannot therefore be remedied. Ms White relies on this very point to argue that the foreign service applications should be enjoined.

The law and relevant legal principles

Service

17. The general principle is that this court has jurisdiction to entertain a claim *in personam* only if a defendant is served with process in the circumstances authorised by and in the



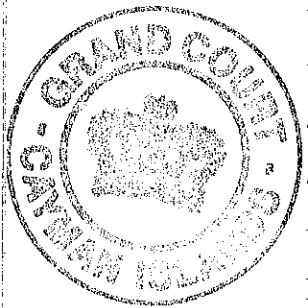
manner prescribed by statute or statutory order - see *Dicey (15th Edition) Rule 29 (1) paragraph 11-0003*. It is not a mere administrative step. It is the foundation of the court's jurisdiction to entertain a claim *in personam*.

18. Pursuant to GCR O.11, r.5 (3) (a) (and r.9 (1)) an originating summons to be served out of the jurisdiction does not have to be served personally on the person required to be served so long as it is served on him in accordance with the law of the country in which service is effected.
19. The Cayman Islands and the USA are both parties to the Hague Convention and service of foreign process must therefore be served in accordance with the procedure set out in GCR Order 11 r 6.
20. By GCR O. 11 r. 6 (3):

"Where in accordance with these Rules a writ is to be served on a defendant in any country which is party to the Hague Convention, the writ may be served:

- a) through the authority designated under the Convention in respect of that country; or*
- b) if the law of that country permits*
 - i. through the judicial authorities of that country.."*

21. The validity of service of the originating summons is a question to be determined by this court in accordance with Order 11. It was common ground that the question for determination pursuant to Cayman Islands law is whether service of the originating summons on AA and BB was valid pursuant to the law of Florida, on CC and EE in accordance with the law of Massachusetts, and on DD in accordance with the laws of Missouri.



22. The court is normally provided with witness evidence from the relevant foreign lawyers in these types of cases. The function of witness evidence on foreign law is among other things to inform the court of the relevant features of the foreign law, identifying statutes or other legislation and explaining when necessary the foreign court's approach to their construction. Whilst evidence is admissible as to the content and general application of the foreign law it is not the function of such evidence to opine on the application of such law to the specific facts of the case as that would intrude into the judicial function as to the 'ultimate issue' - see *Phipson on Evidence* 19th edition 2018 paragraphs 33 to 76.

23. In *Miller* [2007 CILR 18] Smellie CJ observed at paragraph 23:

"It is trite law that a question of foreign law is readily justiciable as an issue of fact. Questions of foreign law are thus amenable to being resolved by way of expert evidence as to their meaning and effect. Depending on what is made of that evidence, this court reaches a conclusion on the factual ramifications of foreign law and the rights which flow from them can be declared and recognised here."

24. In response to Ms White's submissions as to the inadmissibility of certain passages of the evidence filed in support of the defendants, Mr Smith invited me to approach the relevant evidence on the basis that the question of whether service was validly effected pursuant to the laws of the relevant state is a question for this court (not the witness) applying the principles foreign law proven as matters of fact by the witness evidence. I should therefore accord what weight I thought was appropriate if I found that the witness trespassed upon the 'ultimate issue rule', rather than excising whole passages of evidence over which there may be some dispute. I accept that is a sensible way to examine the relevant US law evidence and have done so accordingly.
25. All three of the foreign service applications seek to invalidate service on the defendants due to the lack of sufficient minimum contact with the Cayman Islands ("**the sufficient minimum contacts test**") under the US Constitution. As to this, it is the Cayman court

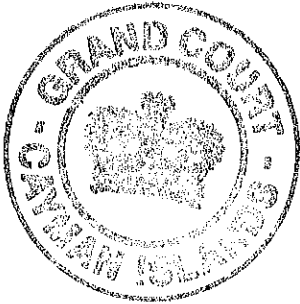


which must determine whether its jurisdiction extends to particular parties and whether they have been properly served in their home states. However it is the case that all the defendants have reserved the right to apply to quash that service under US law. Having reviewed the evidence submitted by the relevant US attorney in this case it shows that the test was developed by the United States Supreme Court to determine when it is appropriate for a court in one state to assert personal jurisdiction over a defendant from another state - see paragraph 13 of Mr Woodward's affidavit of 12 February 2018. It seems to me, through the lens of Cayman Islands law, that the test was intended to apply to lawsuits filed pursuant to the laws of the United States and not lawsuits filed by trustees under the Trusts Law in the Cayman Islands and does not apply to the question of whether the originating summons was validly served - in particular in Missouri (where I have relevant local law evidence) - and perhaps by extension to Florida and Massachusetts. Clearly if the foreign service applications continue it will be for the relevant US states to consider whether or not the test applies as a matter of their own systems of law.

Injunction

26. In *Origami 2012 920 CILR 191* Cresswell J set out the relevant tests concerning anti suit injunctions either in cases with, or without, an exclusive jurisdiction clause. In circumstances where there is no clear jurisdiction clause providing that the Cayman courts shall have exclusive jurisdiction over the subject matter of the disputes, to obtain an injunction it has to be shown that the threatened conduct is "*unconscionable*" which includes conduct which is oppressive or vexatious or which interferes with the due process of the court. It also has to be shown that the Cayman Islands are the natural forum for the resolution of the dispute and, to reflect the interests of comity, that the injunction is necessary to protect (in this case) what would be TCo's legitimate interest in having the s.48 *Trusts Law* questions set out in the originating summons determined in Cayman exclusively.

27. Cresswell J said in relation to comity:

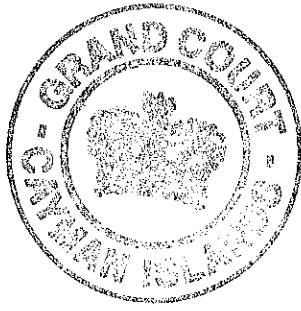


“The principle of comity (where the injunction sought is not founded on a contractual agreement) requires the court to recognise that, in deciding questions of weight to be attached to various factors, different judges operating under different legal systems with different legal policies may legitimately arrive at different answers, without occasioning a breach of customary international law or manifest injustice, and that in such circumstances it is not for the Grand Court to arrogate to itself the decision as to how a foreign court should determine the matter. The stronger the connection of the foreign court with the parties and the subject matter of the dispute, the stronger the argument against intervention”.

28. There needs, of course, to be personal jurisdiction over the defendant as these remedies are exercised *in personam* over people or entities and not over the foreign court. Moreover, as this is a discretionary remedy, the interests of justice must support the injunction for it to be granted to restrain proceedings in a foreign court.
29. Where there is a clear jurisdiction clause which binds the parties to bring the relevant disputes only in Cayman there is no need to show that there is any oppression or vexation - see *Origami* (paragraph 96), and an injunction may be more readily granted.
30. TCo’s application is made under section 48 of the *Trusts Law (2017 Revision)*.
31. That section states in material part that any trustee is at liberty to apply to the court for an opinion, advice or direction *on any question respecting the management or administration* of the trust money or the assets..... And that such application is to be served upon*all persons interested* in such an application (my emphasis).
32. Clearly the defendants as settlor (AA) and beneficiaries of the trust, are persons interested in the trustee’s application.

Analysis

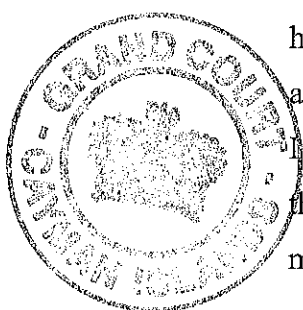
Service



33. TCo instructed a process server in Florida, then instructed further process servers in each of Massachusetts and Missouri, to effect service of the originating summons and other supporting documents. Mr Burke, who has sworn two affidavits dated 31 January 2018, served process in Massachusetts, and Mr Roth served process in Missouri. As of the date of the hearing Mr Roth's evidence was unsworn but has now been updated and sworn.

Florida

34. In his affidavit of 12 February 2018 Mr Raymond Kramer III who is a qualified attorney in the State of Florida identifies a number of defects in the attempt to serve the originating summons on AA and BB at their Florida residence under the Hague Service Convention and Florida law. Mr Kramer confirms that in his opinion the service of the originating summons was invalid under Florida law. That is a matter for this Court to determine based on the evidence.
35. TCo has not served any affidavit evidence in relation to Florida law. The third affidavit of Jacqueline Stirling dated 19 February 2018 states at paragraph 9 that the trustee does not concede that service was ineffective or invalid but in the light of the defendants' continued refusal to instruct attorneys in the Cayman Islands to accept service, the trustee has taken the decision to re-serve the originating summons as soon as possible on AA and BB. As of the date of the hearing of this matter this had not taken place. Since then pursuant to a sixth affidavit from Ms Stirling dated 1 March 2018 evidence of attempts to re-serve AA and BB has been filed, exhibiting portions of the Florida Trust Code. By a letter of 2 March 2018, Walkers stated that service has now been made in Florida although an affidavit of service has not yet been filed. In a letter of the same date Conyers asserted that any attempt to rely on the Florida Code for substituted service is wrong and doomed to failure quoting its own Florida law advice. TCo has not, as I have said, served



any affidavit evidence in relation to Florida law. On the evidence of Mr Kramer, service had not been effected in accordance with the law of the State of Florida. As to further attempts I do not have evidence showing that service was made and on what basis nor do I have any update as to Florida law from either party. Doing the best I can on the state of the evidence I am unable to find that service has been made validly under local law. It may yet be validly effected but has not been on the evidence before me to date.

Massachusetts

36. The first affidavit of Mr Scott Ford, who is a member of the Massachusetts bar, sworn on 12 February 2018, sets out the relevant features of Massachusetts law in relation to service. Mr Ryan McManus who is a qualified attorney in the Commonwealth of Massachusetts in his affidavit of 12 February 2018 identifies a number of defects relating to the process of attempted service on CC and EE. He asserts that the procedures through the US Central Authority for service of process under the Hague Services Convention were not complied with and that personal service did not comply with Massachusetts law because it was not made by a sheriff or other person authorised by Massachusetts law. He states that none of the alternative methods for service under the Hague Service Convention were properly utilised and that no return of services has been filed in the Massachusetts court and /or (as he has been informed by Conyers for the defendants) in the Cayman proceedings. For all those reasons he says that in his opinion the service of process was invalid under Massachusetts law. In his second affidavit of 14 February 2018, Mr McManus exhibits the Complaint for a declaratory judgment that CC and EE bring in Massachusetts to show the arguments that are made that the service was invalid, either for failure to comply with the rules or under the due process allegations set out therein. He states that having reviewed the affidavit of Attorney Scott C Ford filed on behalf of TCo, that Mr Ford does not dispute those matters. He confirms again that service was invalid under Massachusetts law. Again that is a matter for me. Mr Ford, in his affidavit of 12 February 2018, states that the specific requirements for service of process in Massachusetts are set out in the Massachusetts Rules of Civil Procedure 4. The relevant matter in issue is that as he states: "*Generally service of process is made by a*

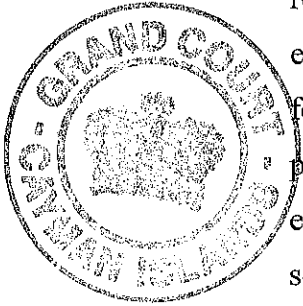


sheriff but any other person duly authorised by law may also effect service and a constable who has filed a bond of not less than US\$5000 may within his town serve process in which the damages involved are less than US\$7000".

37. In his first and second affidavits of 31 January 2018, Mr James Burke deals with service of the originating summons on CC and EE in Massachusetts. Mr Burke is a contractor hired by Legacy Legal Service and is an appointed Constable in good standing in Suffolk County in the State of Massachusetts. He gives evidence as to how he personally served the documents on CC (EE being a minor). Mr Smith submitted that since matters in dispute in the proceedings clearly exceed US\$7000, the process was not validly effected in Massachusetts because a sheriff was not used. Although, as Ms White pointed out the originating summons requests declaratory relief, not in monetary amounts, the subject matter of that relief involves allegations of breach of fiduciary duty and negligence which if proven would result in damages well in excess of US\$7000. What is at stake between the parties clearly exceeds US\$7000. I find that on the evidence submitted process was not validly effected under Massachusetts law.

Missouri

38. By his affidavit of 12 February 2018 Mr Woodward, who is a qualified attorney licenced to practice by the Missouri and Illinois Supreme Courts, sets out the relevant principles of Missouri law. Objection is taken to the validity of service on the basis that the process server failed to file an affidavit identifying the time, place and manner of service and that no return of service had been filed in the trustee's directions application identifying the individual who purported to serve DD. In fact, after the hearing, on 27 February 2018 an affidavit of service by Mr Roth was filed with an exhibit which had not been sworn at the time of the hearing and was filed for the purposes of attempting to cure any technical defects relating to service. The affidavit has now been signed and notarised and so the defects identified by the second affidavit of Ms Washam of 21 February 2018, who is an attorney licensed to practice the law in the state of Missouri, have been cured in that

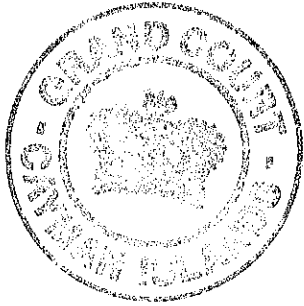


respect. No doubt this will now be filed in the Missouri court. I accept Mr Woodward's evidence as to the requirements under Missouri law and find that there is no requirement for affidavits of service to be filed in the courts of the Cayman Islands within a specified period and in any case, the third affidavit of Ms Stirling dated 19 February 2018, exhibited the unsworn but approved affidavit of Mr Roth. I find on the evidence that service has been validly effected on DD under Missouri law.

Injunction

39. The principle upon which the court acts is not to interfere with any foreign court, but if the circumstances dictate the court may act personally upon a defendant by restraining him from commencing or continuing proceedings in a foreign court where the ends of justice require - see *Stichtung* [2014 UKPC 41].
40. I have found that in respect of Florida and Massachusetts service has not been validly effected (as yet). I proceed in relation to this aspect of the relief sought on the basis that the technical defects that still frustrate service in those two states will be cured and so as against those defendants' jurisdiction for an injunction in relation to the foreign service applications from this court in theory may lie, i.e. it is possible to serve valid process in those states in the near future, as a matter of Cayman law.
41. A key question to a just resolution of this matter is whether these defendants are bound by any agreement in the Settlement dated 1 October 2003 to submit the disputes they have chosen to bring in the Florida court to instead be determined by the Cayman court.
42. First I will deal with exclusivity. I should note in passing that even if I were to be dealing with an exclusive jurisdiction clause, distinctions concerning the applications of those clauses between trusts and contracts are made clear by the decision of the Privy Council in *Crociani* [2014] UKPC 40. Lord Neuberger in that case opined that it should be less difficult for a beneficiary to resist the enforcement of an exclusive jurisdiction in a trust deed than for a contracting party to resist the enforcement of such a clause in a contract. I

bear in mind therefore that the strength of the case that a beneficiary needs to make out to avoid enforcement of such a clause is less great.



“This is not to suggest that a court has some freewheeling unfettered discretion to do what seems fair when it comes to trusts. However, what is clear is that the court does have a power to supervise the administration of trusts, primarily to protect the interests of beneficiaries, which represents a clear and, for present purposes, significant distinction between trusts and contracts”. Per Lord Neuberger at paragraph 36.

43. Clause 2.2 of the Settlement states:

“This Trust is established under and, subject to clause 17, the proper law of the trust shall be the laws of the Cayman Islands, the courts of which shall be the forum for the administration of this Trust”.

44. Clause 17 in summary allows the trustees to have considerable flexibility in relation to where in the world the general administration may be carried out, as to the proper law and which specified courts should have jurisdiction.

45. It seems to me that the clause is intended to be exclusive rather than non-exclusive because of the use of imperative rather than permissive language and the use of the definite rather than indefinite article.

46. Second I deal with what is caught by the clause. It is necessary to give meaning to the phrase “... *the courts of which shall be the forum for the administration of this Trust.*” Does that include any disputes relating to the trust which were commenced by trustees or beneficiaries? It seems to me that the word ‘administration’ is not obviously directed to the resolution of disputes.

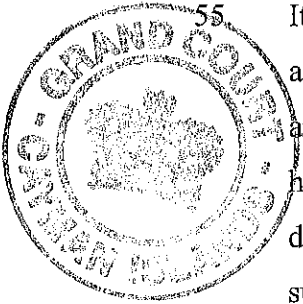


47. In *Helmsman* [2009 CILR 490] Henderson J considered a similar clause but found it unnecessary to decide whether the clause nominating (in that case) England as the forum for the administration of the trust would extend to giving jurisdiction over contentious litigation such as a claim for damages for breach of trust or negligence, since the trustees had the express power to change the forum at any time and had done so before the present action to pre-empt the defendant's application. (Clause 17 above would appear to be a similar clause).
48. He went on however to find, albeit *obiter*, that the 'administration of the trust' would be unlikely to extend to the resolution of disputes including hostile litigation claiming damages for breach of trust.
49. In *Crociani* the Board accepted that the expression 'forum of administration' can refer to the court which is to enforce the trust, but saw no grounds for holding that "*...the expression has such a well-established technical significance that it cannot have the meaning for which the respondents contend namely the place where the trust is administered in the sense of its affairs being organised*" - see paragraph 17.
50. The Board found that "*... if the stipulation was intended to indicate the country whose courts were to determine disputes, rather than the country in which the trust was to be managed, one would have expected the draughtsman to refer to the courts of the country as opposed to the country simpliciter, as being the forum.*" - see paragraph 20.
51. The clause nominating the Cayman Islands as the exclusive forum for the administration of the trust does not seem to me to be apt to catch trust litigation by beneficiaries in another jurisdiction against a sister company also in that jurisdiction. There are many aspects of the administration of a trust to which section 48 of the *Trusts Law* is directed and where the assistance of the Cayman court can be properly sought by the trustee. For example, the true construction of certain powers or obligations in the deed itself, or as to the prudence of distributing assets in circumstances where there are many and different



claims pertaining to those assets. The court is familiar with such applications and to those relating to sanction required to defend legal actions and as to disclosure. They are all aspects of the administration of the trust upon which the court can opine.

52. In this case the originating summons seeks declarations in the form of relief that are to a very large extent the mirror image of the allegations made in the Florida proceedings. Those proceedings are brought against a separate legal entity (albeit one which is in the same group as TCo), for damages relating to alleged breaches fiduciary duty and misrepresentation by that entity and involving an employee of that entity. It is not a claim against the Cayman Islands trustee for matters concerning its fiduciary obligations in Cayman. As an alternative submission TCo argued that the application plainly constituted an administrative action as defined by *GCR* Order 85, r 1(1) and fell within the scope of rule 2 and so was caught by the clause. I do not think this makes any difference to the analysis.
53. It follows that I find that the foreign service applications have not been brought in breach of clause 2.2 in the Settlement because, whilst it nominates Cayman exclusively as the place where the trust affairs should be managed and administered, it is not a jurisdiction clause in the traditional sense. It does not refer to resolution to the courts of Cayman for all disputes relating to the management of the affairs of the trust. On a proper construction it does not catch the disputes which have been commenced in Florida.
54. It is true that the language of section 48 of the *Trusts Law* is broad in that it allows a trustee to request advice or direction on any question relating to the management or administration of the trust, but it does not follow that this court should arrogate to itself exclusive jurisdiction over those matters to restrain the defendants from continuing their foreign service applications in the local state courts with a view to resisting having the substantive matters determined in Cayman, which they had chosen to commence earlier in the Florida Court.



55.

It remains to determine whether as a matter of discretion it is nevertheless appropriate to avoid injustice to grant the relief sought by TCo. In performing the balancing exercise I am of course conscious of the inconvenience, cost and potential delay to the trustee in having to deal with the foreign service applications when this court is able to make determinations as to service, as it has done under GCR Order 11. However, since anti-suit injunctions involve an exercise of discretion and personal jurisdiction over the defendants to be restrained, I need to consider the overall ends of justice as between TCo and the defendants.

56.

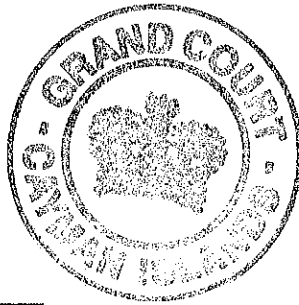
My finding is that the subject matter of the claims sought to be advanced by TCo in Cayman and which are the object of the foreign service applications, are not covered by a jurisdiction agreement to refer them to the Cayman courts. Moreover as things stand, this court has no jurisdiction over the Florida or Massachusetts based defendants upon which to found any *in personam* remedy. Even if in due course valid service was effected in all three states, my conclusions in relation to the ambit of the clause in the settlement would not be affected.

57.

The foreign service applications are not in my view vexatious or oppressive. This is not a case where the evidence shows that simultaneous proceedings have vexatiously been brought abroad where complete justice could be achieved in Cayman in relation to the underlying subject matter which therefore needs to be protected. Indeed there is a strong case for non-intervention in Florida as a matter of comity where the Florida Court is due to resolve the questions which are pleaded in the Complaint and which relate to FL Co. and its employee in Florida. There is no evidence before me to suggest that those proceedings are a sham or have not been properly brought, nor that the foreign service applications are abusive in any way or represent an illegitimate interference with the Cayman court's jurisdiction. The final outcomes from the courts as to service of process may or may not coincide, but that is not a reason for granting an anti-suit injunction which causes the defendants injustice by stopping matters relating to service of process of proceedings being determined by the courts in which they are resident, pursuant to US law.

Result

58. The originating summons has not been duly served on the defendants in Florida or Massachusetts, but has been duly served in Missouri as a matter of Cayman law.
59. The application for an injunction restraining the defendants from continuing or prosecuting or assisting in the foreign service applications fails.



THE HON. JUSTICE RAJ PARKER
JUDGE OF THE GRAND COURT