

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

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4 **CAUSE NO. 416 of 2006**

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7 **IN THE MATTER OF: THE PROPERTY OF ROBERT L.**  
8 **GOLDEMBERG AN ALLEGED MENTALLY**  
9 **INCAPACITATED PERSON**

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12 **BETWEEN: (1) DAVID GOLDEMBERG**  
13 **(2) JAMES TASSOFF**

14  
15 **APPLICANTS**

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17  
18 **AND: EVA ROTMISTROVSKY**  
19 **(A/K/A EVA ROTH)**

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21 **RESPONDENT**

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23 **Appearances: Mr. Duncan Henderson of Walkers for the Applicants**  
24 **Mr. Kyle Broadhurst of Broadhurst Barristers for the**  
25 **Respondent**

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28 **Before: Hon. Justice Henderson**

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31 **Heard: February 14, 2007**



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34 **JUDGMENT**

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37 The applicants, David Goldemberg and James Tassoff, have been appointed  
38 co-guardians of the property of Robert L. Goldemberg by order of the Superior  
39 Court of New Jersey (Chancery Division: Bergen County, Probate Part) on

1 February 22<sup>nd</sup> 2006 (“the New Jersey Order”). The order was made on the  
2 ground that Robert Goldemberg is an incapacitated person, unfit and unable to  
3 govern himself and manage his affairs including financial affairs. Mr.  
4 Goldemberg is eighty-one years of age and in declining health; he suffers from  
5 dementia and has deficits in memory, judgment and abstract thinking.

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7 David Goldemberg is a son of Robert Goldemberg and James Tassoff is a close  
8 personal friend. The Respondent, Eva Rotmistrovsky, is Robert Goldemberg’s  
9 long time companion.

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11 Mr. Goldemberg and Ms. Rotmistrovsky have spent considerable time together  
12 in the Cayman Islands. Mr. Goldemberg owns both movable property –  
13 interests in certain annuity accounts and bank accounts – and real property – a  
14 condominium at Ocean Club, another at Coral Bay Village and vacant land at  
15 Patricks Island – in the Cayman Islands.

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17 The originating summons seeks a declaration of this court recognizing that the  
18 applicants are, by virtue of the New Jersey Order, co-guardians “of the property  
19 and/or estate of the said Robert L. Goldemberg situated in the Cayman Islands.”

20 No distinction is made between personalty and realty.

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1 The entitlement of the co-guardians to deal with Robert Goldemberg's personal  
2 property in the Cayman Islands, and to sue for it if necessary, is not dependant  
3 upon the obtaining of a recognition order: *Didisheim v London and*  
4 *Westminster Bank* [1900] 15 (CA); *Gray v Royal Bank of Canada*, Cause  
5 109/97, March 26, 1997 (Grand Court). This court is obliged to recognize their  
6 appointment as long as there appears to be no reason to doubt the jurisdiction of  
7 the New Jersey Court to make it. The position with respect to real property is  
8 another question entirely, to which I will return below.

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10 The co-guardians ask for more than simple recognition: they request an order  
11 declaring that they are "authorized and/or empowered by virtue of the New  
12 Jersey Order to recover the property and/or estate of the said Robert L.  
13 Goldemberg situated in the Cayman Islands and to receive disclosure of all  
14 information concerning such property and/or estate." The affidavit evidence  
15 suggests that they have encountered some difficulty in obtaining full  
16 information about Mr. Goldemberg's assets here. Ms. Rotmistrovsky says that  
17 she has no objection to the recognition of the co-guardians in this jurisdiction  
18 but questions why they need (or even want) an order permitting them to  
19 "recover" property, some of which is owned jointly by Robert Goldemberg and  
20 herself.

21

1 The originating summons makes two further requests: for an order declaring  
2 that, in the event of any disagreement between the co-guardians, the decision of  
3 Mr. Tassoff will prevail; and a declaration that a certain health care proxy and a  
4 certain medical power of attorney are null and void. These provisions appear in  
5 the New Jersey Order and are governed by New Jersey law. This court has no  
6 jurisdiction to deal with either question. Those requests are denied.

7  
8 Robert Goldemberg owns, jointly with Ms. Rotmistrovsky, an interest in three  
9 pieces of real property in the Cayman Islands. The guardian of a mentally  
10 disordered person in a foreign country, appointed by the courts of that country,  
11 is not entitled to bring proceedings for the recovery of immovables. To obtain  
12 such authority in England, proceedings would have to be taken in the English  
13 Court of Protection: *Dicey and Morris, The Conflict of Laws*, 13<sup>th</sup> edition,  
14 paragraph 21-012; *Cheshire and North, Private International Law*, 12th edition,  
15 page 774.

16  
17 Each of these highly authoritative texts cites a single decision as authority for  
18 the proposition: *Grimwood v. Bartels* (1877) 46 L.J. Ch. 788. That decision is  
19 not binding upon me. It has never been judicially noticed in England and  
20 Wales or in the Cayman Islands. *Grimwood*, Hall, V.C., refused to recognize  
21 the right of a curator *ad bona* of an insane person (who had never been found to

1 be a lunatic in England) to deal with an interest in land. Without citing any  
2 authorities, the Vice Chancellor held:

3 "It is clear that before the sale under the Partition Act,  
4 the curator could not have come to this court and asked  
5 that the share of the lunatic should be conveyed to him,  
6 because, although he was entitled according to Chilean  
7 law to have complete control over the property of the  
8 lunatic, yet that power is necessarily controlled, as  
9 regards real estate in this country, by the laws of this  
10 country."  
11

12 The applicants invite me to conclude that *Grimwood* is not good law in the  
13 Cayman Islands. They argue that the power over immovables granted to the co-  
14 guardians by the New Jersey Order is identical to the power which Robert  
15 Goldemberg could exercise here if he was not under a disability (except that the  
16 co-guardians have no power to make a will and may only alienate, transfer or  
17 encumber Mr. Goldemberg's real property with the approval of the New Jersey  
18 court). That appears to be correct. They also say, correctly, that they could  
19 never be appointed guardians of Robert Goldemberg under the laws of this  
20 country. David Goldemberg is not resident in the Cayman Islands and, as a  
21 consequence, does not fall within the definition of "nearest relative" in section  
22 2 of the *Mental Health Law* (1997 Revision). Robert Goldemberg is not a  
23 "patient" within the meaning of that word as defined in the same section.  
24 Neither David Goldemberg nor James Tassoff may apply for appointment as a  
25 guardian under section 14 of the *Grand Court Law* (2006 Revision) because

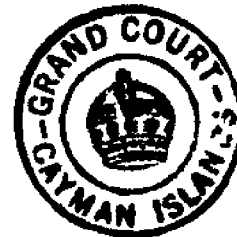
1 neither stands in a relationship to Robert Goldemberg of the sort specified in  
2 Order 80 of the *Grand Court Rules* (see especially rules 17 and 28). The  
3 applicants say, again correctly, that the jurisdiction of this court to grant  
4 recognition to them is not precluded by any statutory provision in the Cayman  
5 Islands. Finally, they argue that recognition would reduce the inefficiency of  
6 the administration and the expense resulting from the creation of multiple  
7 guardianships. The principle of comity should result in recognition of the  
8 foreign appointment.

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10 There is some merit in these arguments, but it must be recognized that  
11 *Grimwood v. Bartels* has not been judicially noticed since its decision in 1877  
12 because the proposition for which it stands is not controversial. Neither of the  
13 leading texts suggests that it is. *Cheshire and North* remark (op. cit., at page  
14 775) that the usefulness of the principle established by *Didisheim* is “limited”  
15 because it has no application to immovable property. *Dicey and Morris*  
16 comment elsewhere (op. cit., at page 511) that the rule that a court of a foreign  
17 country has no jurisdiction to adjudicate upon the title to, or the right to  
18 possession of, an immovable situate outside that country “rests on a very  
19 slender basis of precedent, and its exact scope is a matter of some doubt.”  
20 Neither text, however, contains a suggestion that the order of a foreign court  
21 appointing a guardian over immovables in England would or should be

1 recognized in that country. In these circumstances, I see no justification for  
2 departing from the long-established rule.  
3  
4 The co-guardian applicants are not without a remedy. Order 80, Rule 18 of the  
5 *Grand Court Rules* empowers the court to direct that an application for the  
6 appointment of a receiver be initiated by the Attorney General. That is the  
7 traditional way in which this court comes to the aid of a foreign court in relation  
8 to a patient's interest in immovables. I make that direction now. The Solicitor  
9 General may, if she is so advised, choose to nominate one of the present  
10 applicants as a joint receiver.

11  
12 Having given this direction, I grant recognition to the co-guardians with respect  
13 to the movable property of Robert Goldemberg in the Cayman Islands but not  
14 with respect to immovables.

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16 Dated this 11<sup>th</sup> day of June, 2007



17  
18 Henderson, J.

19 Henderson, J.  
20 Judge of the Grand Court

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