

5/2/08

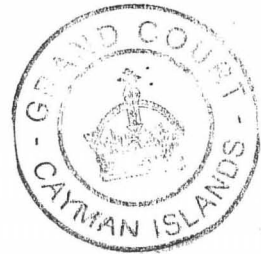
IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 480 OF 2007

BETWEEN: HSBC INTERNATIONAL TRUSTEE LTD. PLAINTIFF

AND: (1) THE REGISTRAR OF TRSTS DEFENDANTS
 (2) THE HONOURABLE WALTER JOHN
 MONTAGU DOUGLAS SCOTT
 (commonly known as the Earl of Dalkeith)
 (3) HER MAJESTY'S ATTORNEY GENERAL
 FOR THE CAYMAN ISLANDS

FOSTER J. IN CHAMBERS



RULING

I accept that it is expedient pursuant to Section 63 (1) of the Trusts Law (2007 Revision) to confer upon the Trustees a power in their absolute discretion under clause 23 of Deed of Trust to appoint a new Trustee or Trustees resident in the United Kingdom for the reasons which have been outlined and are not disputed.

The issue is whether that power should be subject to a proviso, (which I summarise) firstly, that there must always be at least one trustee resident in Cayman and , secondly, that any United Kingdom resident trustee so appointed must sign an undertaking to submit to the jurisdiction of

this Court before taking office. The concern of the Registrar of Trusts is to be able to readily fulfil his obligations under the Law to enforce an exempted trust such as this in a way which would not be less convenient, less certain and probably more expensive (if not to him, then at least to the beneficiaries on whose behalf he would be acting if his costs were to come out of the trust assets).

In my Judgment the proviso proposed by the Registrar is appropriate. The exempted trust regime, to which this trust was intentionally subjected in 1970, requires that such a trust shall be subject to the supervision of and enforcement by the Registrar. He should be confident of being able to do this without undue difficulty, which would be the case if he had to fulfill his obligations in the United Kingdom Courts rather than this Court. It was pointed out with some justification that this trust was originally accepted for registration with the current power of the trustees to appoint new trustees in any other country (other than the United Kingdom). While that may seem inconsistent with the concerns now expressed by the Registrar I do not think it entirely surprising, given that that was about 40 years ago. Nor do I think it significant that the Registrar has apparently not to date taken any action to enforce any exempted trust. It seems to me that if parties choose to take advantage of the exempted trust provisions of the Law they must accept the role of the Registrar and that he may need to take appropriate steps in relation to the trust concerned. It is not desirable that in fulfilling his role he should have to accept the uncertainties arising out of his having to do so in the Courts of the United Kingdom, which would have to

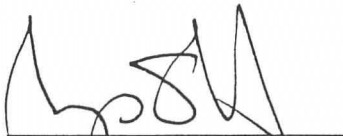


apply Cayman Islands Law and to consider unfamiliar trust litigation, if that can reasonably be avoided.

I therefore order that Clause 23 of the Deed of Trust should be amended on the terms proposed on behalf of the Registrar.

I also order that all parties should have their costs, to include the costs of their London Counsel and Solicitors, out of the trust asset, such costs to be taxed, if not agreed, on the indemnity basis.

Dated: 5th February 2008



Foster

Acting Judge of the Grand Court

