

29/2/08

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

CAUSE NO. 416 OF 2006

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

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

APPLICANTS

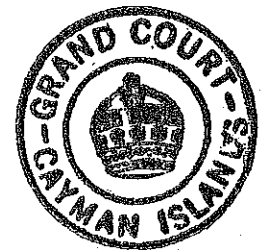
**AND: EVA ROTMISTROVSKY
 (A/K/A EVA ROTH)**

RESPONDENT

**Appearances: Mr. Diarmad Murray of Walkers for the Applicants
 Mr. Kyle Broadhurst of Broadhurst Barristers
 for the Respondent
 Mr. Douglas Schofield of the Legal Department for
 the Solicitor General**

Before: Hon. Justice Henderson

Heard: February 28, 2008



JUDGMENT

In February, 2007 I confirmed the right of the applicants, who are co-guardians in New Jersey of the property of a patient (Mr. Robert L. Goldemberg) there who is mentally unfit to manage his affairs, to deal with his personal property in the Cayman Islands. In the same judgment (handed down June 11, 2007), I refuse to recognize the right of the applicants to deal with the immovable property of the patient in this jurisdiction.

My decision rested upon a single decision: *Grimwood v. Bartels* (1877) 46 L.J. Ch 788.

I noted that the decision in *Grimwood* is not binding upon me and has never been judicially noticed in England and Wales or in the Cayman Islands. I accepted the argument of the applicants that my jurisdiction to grant recognition to the applicants with respect to the patient's immovables in the Cayman Islands is not precluded by any statutory provision here. I made brief reference to the argument of the applicants that recognition would reduce the inefficiency of the administration and the expense resulting from the creation of multiple guardianships, and to their contention that the principle of comity should result in recognition. I noted some weak support for the *Grimwood* decision found in *Cheshire and North* and in *Dicey and Morris* and then concluded:

“In these circumstances, I see no justification for departing from the long-established rule.

The co-guardian applicants are not without a remedy. Order 80, Rule 18 of the *Grand Court Rules* empowers the court to direct that an application for the appointment of a receiver be initiated by the Solicitor General. That is the traditional way in which this court comes to the aid of a foreign court in relation to a patient's interest in immovables. I make that direction now. The Solicitor General may, if she is so advised, choose to nominate one of the present applicants as a joint receiver.

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

The circumstances have now changed. The Solicitor General, who was not a party to the earlier application and did not appear, has now considered the matter and declined to accept the direction quoted above. She says that her department is without the necessary resources to pursue applications of the sort I had in mind. She has never done so in the past and does not, as a matter of policy, wish to undertake this mandate now. In addition,

she argues that Order 80, Rule 18 of the *Grand Court Rules* does not, when read properly, empower this court to direct that an application for the appointment of a receiver be initiated by the Solicitor General.

The applicants have chosen not to meet this contention head on and have requested a reconsideration of my adoption of the decision in *Grimwood*. They remind me that it is not binding upon this court. They point to the obvious injustice which would result if, as appears to be the case at present, they are left without a remedy.

I am persuaded that the applicants are correct. The procedure contemplated in Order 80, Rule 18 is not in fact available. For reasons given in my earlier judgment, the applicants could never be appointed guardians of the patient under the law of the Cayman Islands. Recognition of the applicants is not precluded by any statutory provision in the Cayman Islands or previous decision of this or a higher court. In these changed circumstances, I conclude that the applicants are entitled to a declaration recognizing them as the co-guardians of the real property of Mr. Robert L. Goldemberg situate in the Cayman Islands. I make that order now.

Costs

The applicants are entitled to their costs of this and the previous application on an indemnity basis, to be paid from the estate after taxation.

The Respondent, Eva Rotmistrovsky, is a co-owner of some of the real and personal property in question. However, her participation in this litigation, particularly at an earlier stage, exceeded the scope of what was necessary to protect her own interests. I am satisfied that she should be awarded only fifty percent of her costs on an indemnity basis, to be paid by the estate after taxation.

Dated this 29th day of February, 2008

Henderson, J.

Henderson, J.
Judge of the Grand Court

