

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



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7 IN THE MATTER OF THE JOSEPH S. STAUFFER FOUNDATION
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9 AND IN THE MATTER OF THE TRUSTS LAW (2001 REVISION)

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12 BETWEEN:

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14 (1) BANK OF AMERICA TRUST AND BANKING
15 CORPORATION (BAHAMAS) LIMITED
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17 (2) BANK OF AMERICA TRUST AND BANKING
18 CORPORATION (CAYMAN) LIMITED
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20 Plaintiffs

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22 AND

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25 (1) THE ATTORNEY GENERAL
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27 (2) THE PERSONAL REPRESENTATIVE OF
28 MR JOSEPH S. STAUFFER DECEASED
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30 Defendants

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32 **Appearances:** Ms. Ziva Robertson of Maples and Calder for the Plaintiffs
33 Mr. Douglas Schofield for the Attorney General, the Defendant
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35 **Before:** Hon. Justice Henderson
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37 **Heard:** June 4, 2007
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40 **JUDGMENT**
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43 The originating summons requests a declaration as to the validity of the Joseph S.

44 Stauffer Foundation as a charitable trust. The plaintiffs and the Attorney General, the

1 only parties before me today, have joined in requesting an order that “notice of these
2 proceedings be served on the Canadian Revenue Authorities pursuant to *Grand Court*
3 *Rules* Order 15, Rule 13A.” I regret that I must refuse this request. These are my reasons
4 for doing so.

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6 Order 15, Rule 13A of the *Grand Court Rules* permits the court to direct that notice of the
7 action be served on any person who is not a party but “who will or may be affected by
8 any judgment given therein.” The person served may acknowledge service of the
9 originating summons and become a party to the action. The plaintiffs and the Attorney
10 General wish to provide this opportunity to the Canada Customs and Revenue Agency
11 (“CCRA”), which is charged with collecting income tax from Canadian residents, so that
12 it will be bound by the result. They say it is important to the trust and its beneficiaries
13 that the judgment of this court on the validity of the charitable trust be accepted by the
14 CCRA. If the CCRA is a party to the action, it will necessarily be bound by the result; if
15 not, the CCRA is unlikely to accept a ruling of this court as determinative of the trust’s
16 validity in Canada for income tax purposes.

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18 In effect, the plaintiffs and the Attorney General have requested that I permit a foreign
19 revenue authority to argue against the validity of a charitable trust established in the
20 Cayman Islands for the purpose of assisting the tax gathering efforts of that authority.
21 The indirect purpose of any such participation would be the enforcement of a foreign tax
22 claim. The CCRA could not sue on such a claim in this court. Moreover, if an action is
23 in substance an indirect attempt to collect tax by or on behalf of a foreign revenue

1 authority like the CCRA, the court will not permit it to proceed. My recent judgment in
2 *Wahr-Hansen and others v. Compass Trust Co. Limited and others* (unreported) Cause
3 350/04, January 8, 2007, reviews the authorities on this question.

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5 Permitting the CCRA to oppose the validity of the charitable trust would, in substance, be
6 to allow the CCRA to attempt to influence the judgment of the court for the purpose of,
7 ultimately, collecting income tax in Canada. For that reason, the application must be
8 refused.

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10 Dated this 4th day of June, 2007

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Henderson, J.

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Henderson, J.

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Judge of the Grand Court

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