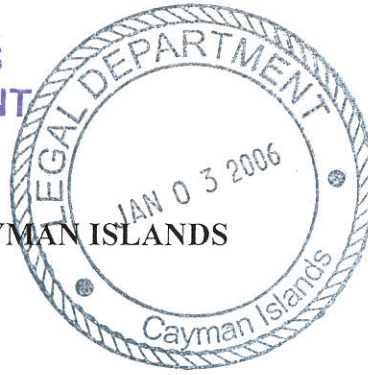


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IN CHAMBERS

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 576 OF 2005

IN THE MATTER OF AN **ENDURING POWER OF ATTORNEY**
DATED 17TH FEBRUARY 2001

AND

IN THE MATTER OF THE GRAND COURT AND MENTAL HEALTH LAWS

CORAM: CHIEF JUSTICE ANTHONY SMELLIE

Appearances:

Ms. Ziva Robertson of Maples & Calder for the three applicants, the donees of the Enduring Power of Attorney.

Ms. Cherry Bridges of Ritch & Conolly on notice on behalf of the three trustees (with her Mr. Healy representing trustee HSBC).

Date: 22nd December 2005

RULING

1. Mrs. L., the settlor of certain Cayman Islands trusts and a lady now of advanced years, is now deemed by her doctors to be mentally incapacitated.
2. On 17th February 2001, in anticipation of this eventuality, she executed an Enduring Power of Attorney ("the EPA") pursuant to the laws of the Bahamas where she is domiciled. According to the expert evidence provided on Bahamian law, the EPA has been triggered by the event of incapacity and is deemed to be fully valid and continuing in effect as a matter of Bahamian law. It also has, as a matter of Bahamian law, worldwide effect over the assets of Mrs. L., including

her beneficial entitlements under trusts, wherever they may be situated. In effect, the EPA enables the donees of the powers which it vests, to deal with Mrs. L's property as she would have been able and more specifically to do so, in keeping with her wishes expressed in it.

3. While her trustees and donees of the powers under the EPA are of the advised view that the EPA is also valid and effective in the Cayman Islands, they wish to proceed with caution. This is advised having regard to the litigious history of at least one of Mrs. L's trusts. Moreover, there is a concern that the trustees' or Mrs. L's bankers in the Cayman Islands will not accept the EPA. The donees therefore apply with the support of the trustees, for an order of this Court in recognition and enforcement of the EPA.
4. It was explained to me that payments from the trusts here are made on a monthly basis by the banks to Mrs. L's accounts and then used for her maintenance and that of her daughters and for the upkeep of her property in the Bahamas. As payments are thus made eventually by standing orders from Mrs. L's personal accounts and because of her incapacity, her bankers also regard her mandates as having ceased to operate. It is said that once her bankers can recognize the EPA, that problem would also be solved.
5. Ms. Robertson for the donees, supported by Ms. Bridges on behalf of the trustees, argued by analogy that, as it is established law that a foreign curator can be recognized, so should the donees of powers such as those vested by the EPA. A curator, they submitted, need not have been appointed by an order of a foreign

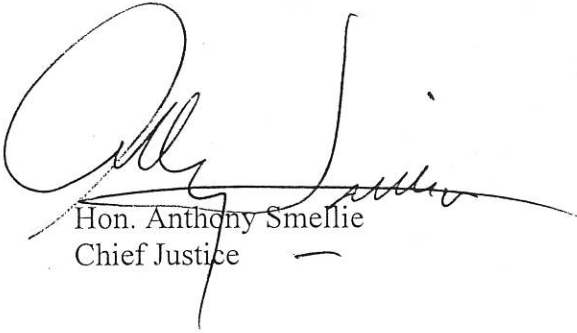
- court, if that foreign jurisdiction has put in place (as in the case of the Bahamas here) another procedure to avoid going before the Court.
6. They both acknowledged however, that this proposition is unsupported by authority in the case law.
 7. The EPA, though a creature of Bahamian law, is not known to Cayman Islands law.
 8. Indeed under Cayman law, to the contrary, an agency created by a power of attorney ceases to exist upon the mental incapacity or death of the donor: *Al-Ibraheim v Bank of Butterfield* 1999 CILR 436 at 457, citing dicta of Brett and Bramwell LJJ from *Drew v Nunn* (1879) 4 Q.B.D. 661.
 9. The EPA by operation of the Bahamian legislation, derives from a purely administrative process and has not, as far as I am informed, been declared by the Bahamian Court as creating any form of curatorship or receivership. For that reason in my judgment therefore, the doctrine of obligations does not arise so as to oblige this Court to recognize it. There is authority for the proposition that this Court will recognize and enforce the appointment by a foreign Court of competent jurisdiction of a curator of a mental patient in that jurisdiction to enable the recovery of the movable assets of the patient within this jurisdiction. See *Gray v RBC* 1999 CILR Note 10 citing *Didisheim's* case [1900] 2 Ch. 15. For the reason that there has been no such appointment by the Bahamian Court, that proposition of law cannot be availed here.
 10. There are however, other recourses available. As a matter of private international law, once a patient has property within the jurisdiction, although not herself

physically present in the jurisdiction, this Court can appoint a curator or guardian over that property: See Dicey & Morris; The Conflict of Laws 13th Edition Chapter 21, Rule 107 citing Re Scott (1874) 22 W.R. 748. Dicey and Morris (ibid) express the Rule in this way: “*Jurisdiction over the person and property of a mentally disordered person may be exercised by the Courts of a country in which he (1) is present or (2) has property*”.

11. That is a proposition which I regard as reflecting the case law of this jurisdiction also. It means that this Court has jurisdiction over Mrs. L and over her property located here, for present purposes.
12. With that in mind and having regard to the express provisions of our statutory domestic law, I am able to invoke the powers of section 14 of the Grand Court Law and section 14 of the Mental Health Law for the appointment of a guardian or guardians and for those purposes, to take notice of the EPA and the opinion on Bahamian law as to its validity under Bahamian law. By that means I am persuaded to consider Mrs. L’s donees of the powers given in the EPA as persons suitable for appointment over her movable assets within this jurisdiction.
13. On that basis, I will appoint the donees of the powers to be her guardians and receivers of her property in this jurisdiction, without the need separately for the institution of suit by them on her behalf as her next friends; and to vest in them the necessary powers. These will be, insofar as the giving of valid receipt to her trustees and bankers are concerned; the similar powers reflecting her wishes as set out in the EPA in respect of her Cayman Islands property.

14. The appointees will, of course, in their capacity as receivers, be required to account to this Court in respect of the receipt and disposition of that property.

15. Orders accordingly.



Hon. Anthony Smellie
Chief Justice

