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

ON 16 DECEMBER 1991

BEFORE THE HON THE CHIEF JUSTICE

CAUSE 487/91

IN THE MATTER OF A TRUST SETTLEMENT  
DATED 5TH JANUARY 1984 AND MADE  
BETWEEN CAPT. PANDELIS CHRISTOS **LEMO**  
AS SETTLOR AND COUTTS & CO (CAYMAN)  
LTD AND OTHERS AS TRUSTEES

AND

IN THE MATTER OF THE TRUSTS LAW  
(REVISED)

Mr. Jones for the Trustees

Mr. Mowbray Q.C. Mr. Foster and Mr. Stephens for  
Capt. Pandelis Christos Lemos and family

Mr. Duckworth for three other beneficiaries

MALONE C.J.

RULING

The plaintiffs have commenced actions in Greece and the Cayman Islands that concern the settlement of which the defendants are the trustees under the law of these Islands.

The trustees are parties to the Cayman action but presently are not parties to the Greek action. Under the Cayman action two summonses were taken out on the 21st and 22nd November 1991 by the plaintiffs for a comprehensive accounting and for a mandatory injunction inter alia requiring the trustees to allow the plaintiffs to inspect and take copies of various classes of accounting documents. The trustees having elected not to produce the accounts. By this application, the trustees seek a Beddoe order in respect of the two summonses and a direction that it is appropriate for the trustees at the expense of the trust fund to seek advice in connection with the Greek actions.

Mr. Mowbray's argument for the refusal of a pre-emptive order in relation to the Greek actions was, I think, summed up by him when he said:

"The Greek actions involve claims to set aside the foundation as a fictitious or illusory gift ..... (They) involve a claim to set aside the foundation altogether. There are other claims to set aside a part and to give effect to the forced heirship positions and there are damages claims as well. But the Greek actions raise the issue whether there is a trust at all. If the plaintiffs are successful there may not even have been any trust property to dip into."

The thrust of Mr. Mowbray's argument, as I understand it, is that a pre-emptive order should not be made where there is a real possibility that the order will occasion injustice to the successful party. In aid of his argument Mr. Mowbray cited the following passage from the judgment of Mummery J at pp 5 and 6 in *National Anti-Vivisection Society Ltd. v Doddington and others* (1989) the "Times" 23rd November 1989 (Cater-Walsh Transcript):

"A pre-emptive order should not be made if there is a real possibility of it operating unjustly. It may be unjust in a particular case for the claimant to the property in dispute to be placed in a position where, if he wins, the property held to be his is burdened with the payment of the costs of the unsuccessful party."

The passage cited appears in that part of Mummery J's judgment where the learned Judge lists:

"factors (that) have featured in the decided cases as relative to the court's jurisdiction to make pre-emptive costs orders."

In this case the applicants for the pre-emptive order, are trustees sued as such by the plaintiffs of the Greek actions. As trustees, the applicants are under a duty to protect the trust and have a right to indemnity out of the trust fund if they act properly for the benefit of the fund in the pursuit or the defence of proceedings. To my mind the trustees in seeking to obtain legal advice in connection with the Greek actions are, prima facie, acting properly since the objective of the Greek actions is to set aside the trust. An objective which, if pursued here, would be unlikely to succeed because of the provisions of the Trust ((Foreign Element) Law. Accordingly this is not a case to which the factor relied on by Mr. Mowbray is relevant to the exercise of my discretion in determining the Court's jurisdiction as win or lose the trustees will be entitled to their costs out of the trust fund.

Mr. Mowbray's description of the Cayman action is that it is hostile litigation as the two summonses he said:

"assert the claims of beneficiaries against the trustees for their refusal to give an account and allow inspection of documents."

Those claims, he contended, are unanswerable as the trustees have a fundamental duty to account. Consequently to use his words it is:

"utterly wrong that they should get their costs out of the fund"

Further, he said that the trustees were not defending the trust estate but taking the side of the distaff side of the family and defending themselves from a summons that tries to make them do their duty. He advised that the trustees should not defend at all. Trustees, undoubtedly have a duty to account and I accept the principle stated by the Master of the Rolls in *Morrice v The Bishop of Durham* (1804) Ch 399 where at pp 404 - 405 he said:

"There can be no Trust, over the exercise of which this Court will not assume a control for an uncontrollable power of disposition

would be Ownership, and not Trust".

In these proceedings much time was devoted by counsel as to whether clause 10 (ii) of the trust was valid or not and to circumscribing its ambit. At this stage of the proceedings it is not for me to conduct a mini trial on those issues nor do I think it necessary to consider the submissions made on that clause notwithstanding that the trustees' duty to account and the principle stated by the Master of the Rolls in *Morrice v the Bishop of Durham* (ibid) bear on those issues. More to the point in this case, I think, is the "reality" as Mr. Duckworth described it, of the plaintiff's objectives. Before I turn to that aspect of the case I must make the following observation. A beneficiary's entitlement to an accounting by a trustee is not, I think, an absolute one. Prima facie a beneficiary has a right to inspect trust documents but as North J said *In re Cowin* (1886) 33 Ch D 179 at p 186:

"..... there might be circumstances which would justify the trustees in withholding them (i.e. documents) from him (i.e. the beneficiary).".

In that case North J made his position even clearer when he said at p 187:

"I do not say that he is entitled as of right, but only that he is entitled under the circumstances, because there might be a state of circumstances under which the right of production would not exist.".

That case concerned deeds and other documents. In *re Londonderry's Settlement* (1965) 1 Ch 918 the Court of Appeal, without defining "trust documents", clearly refuted the proposition that the expression meant everything in the hands of the trustees. At p 935 Danckwerts L.J made that plain when he said:

"It was suggested that trust documents should include everything in the trustees' hands as such ..... That does not solve our problem in the least.".

Then at p 936 Danckwerts L.J said:

"Of course if a case is made of lack of bona fides, that is an entirely different matter. In that case I agree it becomes necessary to examine exactly what has happened because that is in an action and not in a theoretical application for direction, as the present case appears to me to be. It appears to me that the documents are confidential and that the trustees' duty would become impossible and the execution of the trust would become impossible if the trustees were bound to disclose to any beneficiary any information or other matters in regard to beneficiaries that they had received.

For these reasons, therefore, it seems to me that there must be a very restricted application of the observation that beneficiaries are entitled to all trust documents. That matter must be one which is subject to special circumstances and the right to disclosure cannot apply to all trust documents."

In re Londonderry (ibid) is not concerned with the disclosure of trust accounts. Nevertheless, it seems to me that it provides guidelines which may be followed in a case of accounts which is not a case of lack of bona fides.

The reality Mr. Duckworth said is that:

"this appears to be a case of the plaintiffs preferring first to enforce rights they claim as beneficiaries before going on to attack the existence of the trust. So when the Court is exercising its discretion to give a Beddoe order it should with reference to both the Greek and Cayman actions have regard to the reality of the plaintiffs' position."

The reality of the plaintiffs' objective in the Greek actions is not in question. It is clear from the documents they have filed and from Mr. Mowbray's summing up of his argument in relation to those actions that they seek to set aside the foundation. As regards the reality of the Cayman action I am satisfied that the trustees have reasonable cause to think that the plaintiff's objective is to obtain information that may be of advantage to them in achieving their objective in the Greek actions. An objective which is not shared by all the beneficiaries and which if pursued here is unlikely to succeed. Accordingly, I share Mr. Duckworth's view that to the trustees:

"The plaintiffs are not beneficiaries who come to court to say we are unhappy about the administration of our trust. Nor are they beneficiaries, asking the court to redress their grievances and appoint new trustees".

That is only how they appear to be. To the trustees the plaintiffs seek to take advantage of their position as beneficiaries. If they achieve their announced objective there will be no trust. A state of affairs which would not accord with the wishes of all the beneficiaries and which would lead to the anomalous result that, if as requested, new trustees were appointed in place of the existing trustees, they would be short-lived. To my mind those are circumstances which go to show that this is not a case of the trustee acting without bona fides. Their purpose in not disclosing the accounts is to avoid imperilling the foundation and causing trouble in the family. In seeking directions in the Cayman action, the trustees are not doing so as trustees protecting themselves in hostile litigation but as trustees performing their duty of protecting the trust. As circumstances are disclosed that suggest the trustees may successfully justify their withholding of the accounts from these plaintiffs, the trustees, win or lose, will be entitled to their costs out of the trust fund.

For the foregoing reasons I reject Mr. Mowbray's

submissions and I find that this is an appropriate case for the trustees at the expense of the trust fund to obtain directions pursuant to paragraphs 1, 2 and 3 of the summons filed the 28th November, 1991. I so order and further order that the costs of this application be paid by the plaintiffs.

Sir Denis Malone

22nd January, 1992.