

Continental v Deery 4 Jan 2010

This case concerned an application to give effect to a Letter of Request from the Family Division of the English High Court seeking the assistance of the Royal Court in obtaining certain affidavits from the trustee of a Jersey trust in which the applicant's husband was interested.

Facts

Mrs Deery was seeking ancillary relief from her husband before the Family Division of the High Court in England. A memorandum of understanding was reached between Mrs Deery and her husband. Mr Deery was interested under two Jersey trusts, of which Continental Trust Company Limited ("Continental") was the trustee. Separately, Continental had made an application to the Royal Court for directions under Article 51 of the Trusts (Jersey) Law 1984 (the "TJL") (the "Article 51 Proceedings"). The application for directions was heard in October and at the time the present application was heard in January, an appeal in relation to the Article 51 Proceedings was pending and the Royal Court's decision had not been made public.

Continental (or someone on its behalf) had sworn two affidavits as part of the Article 51 Proceedings. The Family Division of the High Court issued a Letter of Request seeking the assistance of the Royal Court in obtaining these affidavits from Continental. Mrs Deery applied to the Royal Court for this assistance to be granted.

Decision

The Royal Court held that the starting point when faced with a Letter of Request is that the Royal Court should, where possible, give assistance under Letters of Request duly received, but that the Royal Court should have regard to the laws of Jersey in order to decide whether to give effect to a Letter of Request.

The Royal Court held that it was not proper in this instance to give effect to the Letter of Request, the sole reason being that trustees in Jersey should be able to make an application for directions under Article 51 of the TJL without fear that the material disclosed in such an application might be provided to hostile third parties; to allow otherwise would mean that trustees would be less likely to be candid in their application which would frustrate the whole purpose underlying Article 51 proceedings.

The Royal Court also noted that the affidavits contained exhibits containing legally privileged and confidential material. The Royal Court did not think it was appropriate to apply what is known as the blue pencil test (which would have the effect of some but not all of the contents

of the affidavits and exhibits from being disclosed) in this instance.

The Court also noted that there were a number of errors in the Letter of Request. It further noted that the Letter of Request did not contain the usual courtesies that one would expect from a requesting court, although the Royal Court made clear that this was not a basis for not giving assistance in the present scenario. The Royal Court also noted that the procedural requirements of the Service of Process Rules 1994 had not been complied with in terms of the service of the process or citation in the matter which contains the Letter of Request. The Royal Court made general observations as to the desirability of updating the Service of Process Rules and the desirability of an explanation being given to the Royal Court as to why the rules have not been complied with if in fact they are not complied with.

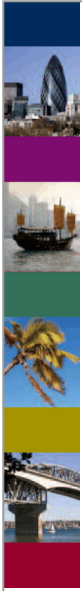
Comment

This case is helpful as the Royal Court made it clear that the reason for its decision to refuse assistance to the Family Division of the High Court was because a trustee should be able to make an application for directions under Article 51 of the TJL without the fear that the documents will be disclosed to hostile third parties. To allow otherwise would risk a trustee being less candid in an Article 51 application, which would frustrate the purpose underlying such procedure.

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Contact details

Jersey

Legal:

Steven Meiklejohn

+44 (0) 1534 504463

steven.meiklejohn@ogier.com

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