

Ogier appears on successful petition to remove a Cayman Islands executrix

Cases - 02/06/2020

Ogier appeared in the first successful personal representative removal application in the Cayman Islands. In a highly contested hearing which stretched over four days, and included a last minute attempt to convert the petition proceedings to a writ action, Ogier acted for the residuary beneficiaries in their successful petition for the removal of the executrix under s.8 of the Succession Law (2006 Revision).

In an extempore judgment delivered on 24 April 2020, the Honourable Justice Ramsay-Hale accepted the petitioners position that the test for removal of a personal representative of a Cayman Island estate accords with comparable English Law. Specifically, the Judge was persuaded that the applicable principles summarised in *Harris v Earwicker* [2015] EWHC 1915 (Ch) applied. These included, among other things:

- The guiding principle is whether the administration of the estate is being carried out properly.
- There may be some proper criticism of the personal representative, but it is minor and will not affect the administration of the estate or its assets, it may well not be necessary to exercise the power.
- The wishes of the testator, as reflected in his will, concerning the identity of the personal representative is a factor to take into account.
- While the wishes of the beneficiaries are relevant, they have no right to demand the replacement and the court has to make a balanced judgment taking a broad view about what is in the interests of the beneficiaries as a whole.
- In the absence of wrongdoing, has it become impossible or difficult for the personal representative to complete the administration of the estate. The court must review what has been done to administer the estate and what remains to be done. A breakdown of the relationship between some or all of the beneficiaries and the personal representatives will not without more justify their replacement. If, however, the breakdown of the relations

makes the task of the personal representatives difficult or impossible, replacement may be the only option.

- That the cost of replacing the personal representative where it is proposed to appoint professional persons is a material consideration. The size of estate and the scope and cost of the work which will be needed will have to be considered.

In considering the applicable principles articulated in Harris, Justice Ramsay-Hale considered that as a consequence of the actions of the executrix, there had been a breakdown in the relationship with the beneficiaries which had made it difficult for her to complete the administration of the estate. The Judge reminded the executrix that the estate exists for the benefit of the beneficiaries and that due to her failure to progress the administration or provide information to the beneficiaries, such inaction also amounted to sufficient grounds for her removal. When balancing the wishes of the testator, as reflected in his will, against the wishes of the beneficiaries, despite acknowledging the importance of the testator's wishes and that the beneficiaries had no right to demand the replacement, the Judge determined that in this case the wishes of the beneficiaries deserved more weight. Finally, given the significant size of the estate and the complexities inherent in its administration, the costs of appointing a professional personal representative were considered reasonable and proportionate.

The case involved numerous cross border features including significant assets in other jurisdictions, foreign legal proceedings, issues as to the testator's domicile and the ultimate composition of the beneficial class. This is an important case for the jurisdiction as it has fleshed out the Cayman Islands test for the removal of a personal representative and filled a significant gap in the local jurisprudence. It will no doubt prove helpful for contentious trusts and estates practitioners in this growing sphere of work.

The Ogier team included Partner Jennifer Fox and Counsel Deborah Barker-Roye.

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