

Jersey's Royal Court rules on the extent of its powers to restrict a party that withdraws trust proc

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Jersey's Royal Court has recently ruled on the extent of its powers to restrict a party that withdraws proceedings from starting afresh in a judgment that considers for the first time the implications of a 2014 English Court of Appeal decision on the public interest in there being finality in litigation.

The procedural history is not relevant to this briefing, save that by Representation dated 31 May 2018, A, one of the primary beneficiaries of two Jersey law trusts, applied to the Court to remove the Trustee as the trustee of the Trusts (the "Removal Proceedings"). The Removal Proceedings were opposed by the other primary beneficiary, B (for whom Ogier act).

Prior to trial of the Removal Proceedings, in April 2019, A applied to the Court to withdraw them but on the basis that she anticipated the possibility of starting proceedings afresh in the near future for the removal of the Trustee of the Trusts. B and the Trustee did not oppose the withdrawal but asked the Court to make certain prohibitory orders as follows:

- (a) That there should be a prohibition preventing A from commencing proceedings against the Trustee without first obtaining the leave of the Court; and
- (b) That A should not be able to apply to commence proceedings without first having discharged all costs liabilities due to the parties (including interim payments on account of costs).

A question therefore arose as to the powers of the Royal Court to restrict a party that

withdraws proceedings to start afresh.

A argued that the Court should not impose a condition requiring her to apply to the Court for leave should she wish to start proceedings afresh because to do so would be to infringe her rights as a beneficiary of Jersey trust pursuant to the provisions of Article 51 of the Trusts (Jersey) Law 1984. That Article allows, amongst other things, a beneficiary to invoke the Court's jurisdiction to determine matters concerning the execution and administration of a Jersey trust and/or the trustee of a Jersey trust.

The Royal Court rejected that argument. It found that it clearly had jurisdiction pursuant to Rule 6/31 of the Royal Court Rules, 2004 (as amended) which provides that:

"Except with the consent of the other parties to the action, a party may not discontinue an action or counterclaim, or withdraw any particular claim made by that party therein, or withdraw his or her defence or any part of it, without the leave of the Court, and any such leave may be given on such terms as to costs, the bringing of a subsequent action or otherwise as the justice of the case may require."

The Royal Court also considered for the first time the English Court of Appeal decision of *Hague Plant Limited -v- Hague & Ors* [2014] EWCA Civ 1609 which discussed the public interest in there being finality in litigation. In *Hague*, the Court of Appeal held:

"In my judgment there is indeed an analogy between the re-introduction of a claim previously abandoned in the same proceedings and the making of a fresh claim after discontinuance of a similar claim based on the same or substantially the same facts ... Both types of conduct, unless closely controlled by the court, tend to undermine the public interest in finality in litigation".

Applying RCR 6/31 and *Hague*, the Royal Court held that as part of the condition for withdrawal, A could not commence proceedings against the Trustee seeking its removal as Trustee or the appointment of any additional trustee without first having the leave of the Court to do so. The Court also placed as a condition for any application for leave that all of A's obligations to pay costs must have been discharged in full.

This is an important decision of the Royal Court in maintaining the public interest in the finality of litigation and the efficient administration of justice. In the present case, the Removal Proceedings had been hanging over the Trustee for a year and it was inappropriate for the Trustee to administer the Trusts going forward under the inappropriate threat of litigation by A as to its status.

The case can be found at [2019] JRC 084A.

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