IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

FSD 270 OF 2023 (IKJ)

IN THE MATTER OF THE G TRUST

AND IN THE MATTER OF SECTION 48 OF THE TRUSTS ACT (2021 REVISION)

AND

ORDER 85 OF THE GRAND COURT RULES (2023 REVISION)

Before: The Hon. Justice Kawaley

Appearances:

Ms Rachael Reynolds KC, Ms Deborah Barker Roye and

Mr Chris Vincent of Ogier for the Trustee and ICTI (the "Applicants")

Mr Robert Lindley and Mr Wesley O'Brien of Conyers, for the Enforcer

Ms Bernadette Carey and Ms Katie Turney of Carey Olsen for the A Beneficiaries

Mr Nicholas Fox and Ms Laura Stone of Mourant Ozannes (Cayman) LLP for the B Beneficiaries

Heard: 17 January 2024

Draft Judgment Circulated: 31 January 2024

Judgment Delivered: 9 February 2024

HEADNOTE

Beddoe application-whether Court should direct Trustee to apply for anti-suit injunction and to oppose foreign receivership proceedings if necessary-Trustee Act (2021 Revision) section 90 (c)

RULING

Introductory

1. These are the reasons for my decision on 17 January 2024 to direct that the Applicants could (1) apply to restrain the B Beneficiaries from pursuing an application in Hong Kong to appoint receivers over the shares of the Claimed Companies and (2) if so advised, actively oppose, the receivership application if necessary.

2. At the heart of the present proceedings is a dispute relating to the validity of the purported transfer of the shares of the Claimed Companies to the Trust. The substantive legal controversy will be determined in the Hong Kong Trust Proceedings. Following a hearing on 28 November 2023, by an Order dated 11 December 2023 the Trustee obtained *Beddoe* relief directing that it could participate in the Hong Kong Trustee Proceedings subject to adopting a position of neutrality. On the same date, disposing of the Trustee's Rectification *Beddoe* Summons, directions were given for the Applicants to issue a Rectification Summons in this Court seeking to clarify the identity of the beneficiaries of the Trust.

3. Both of these applications proceeded on the explicit understanding that the Applicants would be continuing to administer the disputed assets, through their control of the shares of the Claimed Companies. Were that not to be the case, the Beddoe applications would have made little sense. Because the Court was invited to not simply approve the litigation steps contemplated by the

Beddoe Summons and the Rectification Beddoe Summons, but also to approve the payment of costs out of the disputed assets.

4. The most explicit reference to continued administration of the disputed assets appeared in the following recital to the *Beddoe* Order:

> "***AND UPON*** *the Trustee and ICTI undertaking that, subject to further order of the Court, they shall not, without first giving the Respondents' Cayman attorneys 28 days' notice in writing,*
>
> > *(a) sell, transfer, dispose of, charge, otherwise encumber, or deal with the shares in the Claimed Companies (including but not limited to by way of distribution to any beneficiary); and / or*
> >
> > *(b) pass or vote any resolution as shareholder of shares in the Claimed Companies or otherwise take any steps as a shareholder of the Claimed Companies save for the receipt of any dividend which shall not be dealt with in any way other than to pay the costs and expenses permitted by paragraphs 3, 5 and/or 6 below, or as authorised and/or directed by the Court;*
>
> *provided that nothing in this undertaking shall affect paragraphs 3–6 of the order below or any order of this court permitting the Trustee and ICTI to have recourse to funds derived from the Claimed Companies in respect of entitlements to costs, expenses and/or remuneration…*"

5. These undertakings were given in response to concerns raised by the B Beneficiaries. The following substantive paragraph in the *Beddoe* Order, read in the wider context of the Order as a whole, also explicitly contemplated that the Applicants would retain control of the Claimed Companies:

> "*Until further order, the Applicants may continue to pay or reimburse themselves as to remuneration, costs and expenses, including those of the Enforcer, associated with the administration and safeguarding of the Trust fund including the Claimed Companies from the funds held by them on trust which shall include funds derived from the Claimed Companies.*"

6. The costs of the Applicants and the Respondents (including the B Beneficiaries) in relation to the *Beddoe* Summons were ordered to be paid out of the same assets as well. It was against this seemingly settled background that that the need for further Beddoe relief arose when further Hong Kong proceedings relating to the same disputed assets were commenced.

The 14 December 2023 Anti-Suit Injunction Order ("A-S Order 1")

7. On 12 December 2024, the day after the Beddoe Order was perfected, the B Beneficiaries applied to the Hong Kong Court for (1) an injunction restraining the Applicants from disposing of any of the assets of the Claimed Companies and (2) the appointment of a receiver of the shares of the Claimed Companies. After urgently hearing the Applicants' 14 December 2024 Anti-Suit Summons, I accepted the oral submissions of Ms Barker Roye that the 12 December 2023 Application, *inter alia*:

(a) amounted to a collateral attack on the *Beddoe Order;* and had

(b) involved a breach of the confidentiality provisions in paragraph 4 of the *Beddoe* Order.

8. I granted the A-S Order 1 in the following pertinent terms:

"*1. The Respondents shall take no further steps to prosecute the Hong Kong Summons until further order.*

2. The Respondents do take all possible steps to procure that the Second Plaintiff takes no further steps to prosecute the Hong Kong Summons from the Hong Kong Court of First Instance, including by instructing the Second Plaintiff to do so, until further order.

3. The Respondents do have leave to apply to this Court for an order varying the confidentiality provisions in paragraph 4 of the order made by this Court in these proceedings dated 13 September 2023, to the extent necessary to enable the Respondents to pursue such relief as they are advised to pursue in Hong Kong. Such application must be on notice to the Trustee, ICTI and the Enforcer…."

9. The B Beneficiaries withdrew their 12 December 2023 application in Hong Kong. Peace had, it appeared been restored.

The 22 December 2023 Hong Kong Summons (the "HK Receivership Application")

10. Appearances, of course, can be deceiving. Only 7 days after withdrawing one set of Hong Kong Proceedings which the Court had restrained the B Beneficiaries from continuing, they filed the HK Receivership Application. This appeared at first blush to be designed to undermine the *Beddoe* Order in an even more explicit way. Ms Reynolds KC frankly admitted that the Applicants and their legal team had not adverted to the possibility of the further application, which I observed called to mind the popular tautology, "*deja vue, all over again*". Had such an improbable course of litigation conduct been contemplated, the A-S Order 1 would have been drafted in terms which explicitly prohibited the commencement of any further similar proceedings.

11. However, at the heart of the application which the Applicants made in response to the HK Receivership Application was the proposition that, in effect, the common law is cleverer than that. The fluid and nimble abuse of process principle prevents mischievous litigants from using the infelicities of drafting, or other technicalities, to undermine the efficacies of the Orders of this Court by which such litigants are undisputedly bound.

The Applicants' 22 December 2023 Directions Summons

12. On 22 December 2023, the Applicants applied for further directions with a view to responding to the HK Receivership Application. This application was heard on 17 January 2024. In the Applicants' Submissions, the conundrum raised by the HK Receivership Application and their proposed response was summarised in the following way:

> "*27. The merits of the HK Receivership Application will be addressed in separate confidential evidence to be filed shortly. However, if granted, it will render nugatory the relief granted on the Beddoe and Rectification Beddoe Summonses. That is because the Applicants will no longer control the Claimed Companies and will be unable to rely upon funds derived from the Claimed Companies to fund (i) their neutral (but not passive) defence in the HK Trustee Proceedings, (ii) the ongoing administration of the Trust, (iii) historic Trust administration costs (to the extent these have not already been met), (iv) all parties' costs of the Beddoe and Rectification Beddoe Summons (including PAA's costs, but also those of the Applicants, Enforcer, Compass Trustee and other beneficiaries), or (v) the costs of the Construction and Rectification Summons.*

28. This places the Applicants in a dilemma. They wish to adopt a neutral stance in the HK Trustee Proceedings. Yet if they do not actively oppose the HK Receivership Application and that application is granted, the Beddoe and Rectification Beddoe Summonses may as well never have been issued. The relief will be deprived of all effect and the Trustees will not be able to participate in Hong Kong, albeit adopting a neutral stance, because they will have no funds to do so. The Applicants therefore seek directions that it may:

28.1 Amend the Anti-Suit Summons (or issue a further summons) to seek an order that the Applicants take no further steps to prosecute the HK Receivership Application until further order. The Applicants are aware in this regard that it is incumbent upon a party seeking an anti-suit injunction to do so promptly and before the proceedings are too far advanced (Rec Wafer Norway AS v Moser Baer Photo Voltaic Ltd [2010] EWHC 2581 (Comm)) [AB/8/99], which is why they raise the issue now; alternatively

28.2 Actively oppose the HK Receivership Application.

29. It is respectfully submitted that the first option is the appropriate one..."

13. It is only necessary to refer to one authority relied upon by Ms Reynolds KC to illustrate why I found the proposition that the B Beneficiaries' conduct was abusive uncomplicated on the facts of the present case. In *Star Reefers Pool Inc v JCF Group Co Ltd* [2012] EWCA Civ 4, Rix LJ stated:

"*30. ...it has been recognised that the unconscionability of the foreign claimant is often to be found, mainly or substantially, in the very reason that he has first submitted to English jurisdiction as the forum where the parties' dispute will be resolved and then sought vexatiously to extricate himself from the consequences of that submission, or oppressively to prolong or multiply the litigation by commencing further proceedings abroad. Examples of that recognition can be founded in cases such as Glencore v. Exter Shipping itself (at [67]), CAN Insurance Co v. OD Inc [2005] EWHC 456 (Comm) at [27] (cited in Dicey, Morris and Collins on The Conflict of Laws, 14th ed, 2006, at para 12-078, footnote 48), Tonicstar Ltd v. American Home Assurance Co [2005] 1 Ll Rep I R 32 at [13] (where Morison J spoke of the attempt 'to hijack the decision which is presently before this court'), and Trafigura Beheer BV v. Kookmin Bank Co [2007] 1 Lloyd's Rep 669 at [48]-[51] (Field J).*

14. Ms Reynolds KC also addressed the public policy concerns flowing from an attack on the proposition that Cayman Islands trustees ought to be able to administer disputed trust assets even though the status of the assets would ultimately be determined overseas. Section 90 (c) of the Trusts

Act requires trust administration matters to be governed by Cayman Islands Law. The STAR Trust regime was designed to minimize wasteful beneficiary-driven litigious disputes. The Enforcer was by law vested with legal authority to vindicate beneficiary interests and the A and B Beneficiaries were only informally participating in the present proceedings, effectively as a courtesy.

15. It followed that the Applicants ought properly to be permitted to seek further anti-suit relief. Abject demonstrations of penitence apart, it was difficult to see what reasonable stance the B Beneficiaries, with newly minted counsel in the harness, might adopt in response to the Applicants' proposed directions. If improbable litigation stances are viewed as a form of entertainment, the stance which was adopted did not disappoint. An adjournment was sought on grounds which could only, in the circumstances, be refused. The grounds advanced were:

(a) late notice of the specific directions the Applicants were seeking (only revealed on 12 January 2024);

(b) new counsel;

(c) no urgency (the HK Receivership Application was not due to be heard until 12 March 2024).

16. These points appeared to me designed to, magician-like, distract the Court into focussing on the trick rather than the realities of the case. The B Beneficiaries had already been restrained once from seeking to undermine the 11 December 2023 *Beddoe* Order. There could not possibly be any mystery as to what relief the Applicants would seek on the second, more egregious occasion. In these circumstances, the fact that new counsel had been retained was virtually irrelevant. Mr Fox made more of the urgency point than might have been expected. However, I ultimately accepted that:

(a) it was *prima facie* an abuse of the process of the Court for the Applicants to be confronted with the spectre of the HK Receivership Application at all;

(b) the concerns which appeared to form the basis of that application appear to have been matters which were or could have been raised in the *Beddoe* proceedings;

(c) the B Beneficiaries had declined to suspend the evidence timetable in Hong Kong, altogether. So every day that passed the Applicants were at risk of having less time than desirable to intervene in the HK Proceedings if restraining the B Beneficiaries from pursuing them was postponed; and

(d) it was impossible to discern any arguable grounds, complete capitulation apart, upon which the directions the Applicants sought could viably be opposed.

17. Accordingly, I directed that the Applicants were at liberty to (a) apply for a further anti-suit injunction and (b) if so advised, actively oppose the HK Receivership Application, if necessary.

Costs

18. The Applicants were awarded their costs out of the disputed assets. I reserved all other costs because I felt it more prudent to await the outcome of the anti-suit injunction application to deal with costs. That should not obscure the fact that based on the material presently before the Court, it is difficult to see why the B Beneficiaries should not pay the costs thrown away by their improper conduct, on the indemnity basis.

The ex parte 17 January 2024 Anti-Suit Injunction ("A-S Order 2")

19. Mr Fox beat a tactical retreat while the A-S Order 2 was applied for and granted on terms which were not settled until 29 January 2024 by which time Ms Elspeth Talbot Rice KC had been instructed to appear for the B Beneficiaries. An *inter partes* application to set aside the A-S Order 2 is likely to take place on 26 and 27 March 2024.

Conclusion

20. For the above reasons, on 17 January 2024 the Applicants were authorised to apply for anti-suit injunctive relief to restrain the further pursuit of the HK Receivership Proceedings and to oppose those proceedings if necessary.

THE HONOURABLE MR JUSTICE IAN RC KAWALEY
JUDGE OF THE GRAND COURT