

ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



Representation of Equiom Trust (CI) Limited re Estate of the late Constantin Mattas [2024] JRC 068

Royal Court of Jersey, Sir Michael Birt, Commissioner, 1 March 2024

Whether the rule against perpetuities applied to a trust in Jersey.

Key words: Will, Jersey, Trust, Rule Against Perpetuities, Invalidity, Charitable Trust, Charitable Purposes

1. The testator, Constantin Mattas, died on 30 November 1979, domiciled and resident in Jersey. He was unmarried and had no children.
2. Probate of his will with two codicils was granted on 16 January 1980 to the Representor (then Lloyds Bank Trust Company (Channel Islands) Limited) as executor and trustee.
3. The trustee at the time of this case was the Greek government.
4. The key provisions of the will were those contained in clause 11(vi) and (vii), referred to by the Court as "the Bequest":

(vi) and upon the death of the survivor of my two nephews Jean-Pierre Mattas and Philippe Mattas to hold the capital and income of both parcels augmented as aforesaid to pay the same to the Greek Government in Athens...and this for the purpose of creating a 'Prêt d'Honneur Trust' to be known as 'The Dr. Constantin Mattas Scholarship Fund' to employ the income arising from the same in such manner as the Greek Government shall see fit to provide further university education in England, France, Germany, Italy and the USSR (subject to the proviso hereinafter contained with regard to the children and grandchildren of the said Jean-Pierre Mattas and Philippe Mattas) for intelligent and promising young men of Orthodox Greek Church religious belief born in Greece of Greek Nationals also of Orthodox Church religious persuasion who shall first have undertaken to practise their profession in Greece for ten years first after qualifying and second after termination of their studies to repay without interest the said 'Prêt d'Honneur Trust' the monies expended on the said further education in ten annual payments subject to this period of repayment being extended at the option of the Greek Government to twelve years should it think fit

(vii) provided always that the children and grandchildren whether male or female of my two nephews the said Jean-Pierre Mattas and Philippe Mattas wherever born and whatever their religious belief and whatever the religious beliefs and nationality of their parents shall be entitled to and have priority to further education in the manner aforesaid from the 'Prêt d'Honneur Trust' to be created by the Greek Government from the Trust Fund without being bound either to practice their profession in Greece at all or to refund to the 'Prêt d'Honneur Trust' the monies expended on their further education...." [Emphasis added]

5. The following key issues arose for consideration by the Court:

- (i) Did clause 11(vi) and (vii) create a trust?
- (ii) If so, was the trust (assuming for these purposes it is not a charitable trust) invalid because of (a) lack of certainty of beneficiaries, or (b) its indefinite duration?
- (iii) If otherwise invalid, was it nevertheless a valid charitable trust?
- (iv) If it was not a valid charitable trust, can the charitable aspects be saved or severed?

Was the Bequest a trust?

6. The Court found that the wording of the Bequest, when read in the context of the will as a whole, was intended to create a trust. The intention of the Testator as derived from the wording of the Bequest was to establish a trust for the benefit of those described in the Bequest.
7. The Greek government had submitted that the Bequest constituted a gift to it with merely an expression of wishes, or a gift to it subject to a condition subsequent, but this was rejected by the Court.

Was the Trust valid (assuming it not to be charitable)?

8. It was argued by the testator's nephews that the trust was invalid on four grounds: (a) that there was a lack of certainty as to the class of beneficiaries; (b) it was of indefinite duration; (c) it was administratively unworkable; and (d) it was invalid because the trustee was a sovereign state which had sovereign immunity.

Certainty as to the class of beneficiaries

9. As to certainty as to the class of beneficiaries, a non-charitable trust must have certainty of objects.
10. The class of beneficiaries in the Bequest was expressed to be 'intelligent and promising young men of Orthodox Greek Church religious belief born in Greece of Greek nationals also of Orthodox Church religious persuasion'. On this point the court said (at [40]):

There is clearly no conceptual difficulty in deciding whether an individual is a man or was born in Greece of Greek nationals. I also consider that the category of being of Orthodox Greek religious belief (or persuasion) is sufficiently certain...I consider that there is no conceptual difficulty in ascertaining whether any given individual is or is not of Orthodox Greek religious belief (or persuasion).

11. The Court said that all the characteristics listed on the Bequest were of equal weight i.e. 'intelligent', 'promising' and 'young' were not mere criteria for being selected from within the class to benefit from the Trust rather than qualifications for membership of the class.
12. The Court concluded that the trust was invalid because all three of 'intelligent', 'promising' and 'young' were too uncertain.
13. Despite finding that the Trust (if not charitable) was invalid, the Court went on to consider the other grounds for invalidity raised.

Indefinite duration

14. The Trust contained no provision for the vesting of the capital in any of the eligible beneficiaries. The income from the capital was to be used for an indefinite period to provide the stipulated benefits.
15. The Trust would therefore be void under English law unless charitable because its indefinite duration breached the rule against perpetuities.
16. However, the Trust was governed by Jersey law, having been created in the will of a person who died domiciled in Jersey. The question therefore arose as to whether the indefinite duration of the Trust meant that it was also void under Jersey law.
17. Trust law in Jersey is governed by the [Trusts \(Jersey\) Law 1984](#). Article 15 of the Trusts Law expressly provides that a Jersey trust may continue in existence for any period, and no rule against perpetuities or excessive accumulations shall apply to a Jersey trust.
18. Despite the [Trusts \(Jersey\) Law 1984](#) (the Law) expressly providing against the rule against perpetuities, the Court found that the English rule formed part of the Jersey law of trusts as it existed before 1984 (at [94]).
19. It followed that, unless the Trust was a valid charitable trust, not only was it void for uncertainty of objects, but it was also void as being in breach of the rule prohibiting trusts of indefinite duration. This finding applied not only to the Trust as a whole, but also to the trust for the children and grandchildren if considered separately.

Administrative unworkability

20. The Court found that if the Trust was a valid trust, it was not unworkable for the Greek government to administer.

Sovereign immunity

21. On this point, the argument put forward on behalf of the nephews was that, although the Greek Government had submitted to the present proceedings, it had not submitted to any future proceedings in relation to the Trust. It would therefore be able to claim state immunity in respect of, for example, any future claim against it for breach of trust. In those circumstances, the Trust would be unenforceable against its trustee.
22. The Court was not persuaded that the mere fact that the trustee was a sovereign state was sufficient to invalidate the Trust (at [108]):

If it did not claim immunity, the Trust could be enforced in the usual way and there would be no difficulty. I do not consider that the mere possibility that the Greek Government might claim sovereign immunity in future is sufficient grounds to declare the Trust invalid...I do not consider it right to declare the whole Trust invalid simply because there may be circumstances in future where, if it remains as trustee, the Greek Government may claim state immunity. Even if such a situation were to arise, the beneficiaries would still have the rights conferred by the law of trusts and the Greek Government would be subject to the duties imposed by such law even if they could not be enforced.

23. Therefore, the Court found the Trust invalid in relation to certainty of objects and indefinite duration, but not as to unworkability and sovereign immunity.

If otherwise invalid, was the Trust nevertheless charitable?

24. The Court found the (non-charitable) Trust invalid, but was it instead charitable? There is no requirement for certainty of objects in relation to a charitable trust, and such trusts can also last indefinitely.
25. In order to be a valid charitable trust under customary law, a trust must be for exclusively charitable purposes and for the public benefit, which means that it must benefit the community or a section of the community.
26. It was common ground between the parties that the Trust was for the advancement of education and that this was a charitable purpose.
27. However, clause 11(vi) of the will was made subject to the proviso in clause 11(vii), which provided that, in the provision of further education, the children and grandchildren of the nephews would be entitled to priority. It is well-established that, to be a section of the community for charitable purposes, the class of beneficiaries must not be dependent upon their relationship to a particular individual.
28. After a consideration of the relevant cases, the Court found that (at [142]):

...the cases therefore differed from the present case where the children and grandchildren of the Nephews are not a sub-set of the primary class and have no connection with the primary class in that they do not have to fulfil any of the criteria which define the primary class. Accordingly, even if the above...cases are accepted as being correctly decided, I do not consider that they assist the argument of the Greek Government in this case.

29. Therefore, the Greek government was unsuccessful in its claim that the Trust was charitable, because the Trust was not for exclusively charitable purposes.

If not a charitable trust, could the charitable aspects be saved?

30. The Attorney General of Jersey and the Greek Government submitted that it was not inevitable that the Trust could not be seen as valid just because invalid non-charitable purposes were mixed up with charitable purposes.
31. The trust in relation to the children and grandchildren of the nephews was a trust of indefinite duration as it was not limited to lives in being plus 21 years. Not being charitable, it was therefore void.
32. On the other hand, the trust for young Greek men was, when viewed on its own, a valid charitable trust, and could survive. The Attorney General and the Greek Government submitted that in this situation the Court may in some circumstances uphold a trust to the extent that it was for charitable purposes. The Court agreed.
33. The Court accepted that the validity of the charitable part of the Trust had to be considered as at 1979, when the will took effect upon the death of the Testator. In that case (at [232]):

Any court is disposed to uphold a charitable trust to the extent that it properly can. However, I have reluctantly come to the conclusion that, judged as at 1979, it cannot be ascertained with any certainty what sum would be required for the invalid family trust and therefore what sum would be subject to the trust for young Greek men.

34. There would be too many uncertainties involved for the charitable aspects of the Trust to be saved in that case (at [233]).

Conclusions

- (i) The Bequest constituted a trust.
- (ii) If not charitable, the Trust was invalid (a) for want of certainty of objects and (b) because it was of indefinite duration. If the family trust was considered on its own, it had sufficiently certain objects but was void as being a trust of indefinite duration because it was not limited to lives in being plus 21 years.
- (iii) The Trust as a whole was not a valid charitable trust because of the inclusion of the family trust.
- (iv) In view of the invalidity of the family trust, on the death of the last surviving nephew, all the assets of the residuary estate would be held on the charitable trust for young Greek men in accordance with clause 11(vi) of the Will, but without being subject to the proviso contained at clause 11(vii).
- (v) If the conclusion at (iv) was wrong, it is not possible to quantify how much was required for the family trust and accordingly the Trust as a whole was invalid and the whole fund passed on intestacy.

COMMENT



This was the first time the issue of the application of the rule against perpetuities had arisen in Jersey.

The rule against perpetuities in English law has three sub-rules:

- (i) The rule against remoteness of vesting applies where there is a trust for beneficiaries or a class of beneficiaries. This requires that the trust property must vest in a person within the "perpetuity period". Historically, this perpetuity period developed as a time period equal to a life in being at the creation of the trust (or death of a testator) plus 21 years.
- (ii) The rule against non-alienation applies where there is a non-charitable purpose trust. It requires that the trust property must be capable of alienation from the trust within the perpetuity period.
- (iii) The rule against excessive accumulation requires that either trust, whether for a class or beneficiaries, or for a purpose, must not permit the accumulation of income for longer than the perpetuity period.

In two recent cases the Privy Council has held that the Jersey law of trusts is assumed to be the same as the English law of trusts, except to the extent that any given English trusts rule is inconsistent with the Trusts Law, or any rule of customary law developed in Jersey case law.

However, as the Court found in this case, there is nothing in Jersey customary law inconsistent with the English rule against perpetuities. Therefore, the Court accepted that the rule against perpetuities must be held to apply as part of Jersey's customary law.

The case was thus significant for confirming that, but for Art 15 of the Trusts Law, the rule against perpetuities is part of Jersey law and would apply. The Trusts (Jersey) Law 1984, and the express provision it makes for Jersey trusts to operate free from some of the historical complexities of English or other trust laws, is therefore of legal importance.

VIEW THE CASE



This case may be viewed at:

[https://www.bailii.org/cgi-bin/format.cgi?doc=/je/cases/UR/2024/2024_068.html&query=\(.2024.JRC068\)](https://www.bailii.org/cgi-bin/format.cgi?doc=/je/cases/UR/2024/2024_068.html&query=(.2024.JRC068))

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