

# Trust removal proceedings - service out of the jurisdiction and the effect of administration clauses

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## Trust removal proceedings - service out of the jurisdiction and the effect of administration clauses: Representation of the Manor House Trust and the Russian Trust

In its decision in *Representation of the Manor House Trust and the Russian Trust*<sup>1</sup> the Jersey Royal Court had cause to revisit the principles it will apply to trust proceedings where service out of the jurisdiction is considered and in construing a governing law/forum for administration clause. The decision marked an early opportunity for the Privy Council's decision in *Crociani v Crociani*<sup>2</sup> to be applied, with the Royal Court confirming that where such a clause refers to the forum for administration being exclusive to a particular jurisdiction, that is a reference to the geographical location where a trust's affairs are organized and to the applicable law, rather than conferring exclusive jurisdiction on the Courts of that jurisdiction in respect of all disputes, including hostile ones.

### Background facts

The proceedings sought orders setting aside deeds of retirement and appointment (DORAs) executed in 2007, by which a corporate Panamanian trustee was appointed trustee of the Manor House and Russian Trusts (the Trusts) and the proper law of the Trusts changed to Panama, and more recent DORAs executed in 2015 by which directors of the Panamanian trustee were purportedly appointed as trustees in place of the Panamanian trustee and the proper law changed again to that of England and Wales. In addition, the removal of the Panamanian trustee was sought, as well as an account of the administration of the Trusts.

Leave to serve the proceedings out of the jurisdiction on the respondent Panamanian trustee and the individual directors was originally granted on an ex parte basis by the Royal Court. The respondents applied for those service orders to be set aside on the basis that the Royal Court had no jurisdiction to hear the case, or alternatively, that Jersey was not an appropriate forum. Allegations of non-disclosure in the context of the application for leave were also made but rejected.

## Key points

The key points from the Court's decision are as follows.

The Court reconfirmed the three limb test for seeking to serve foreign parties with Jersey trust proceedings: the proceedings need to fall within the Jersey Service of Process Rules, there has to be a serious issue to be tried and Jersey has to clearly be the appropriate forum. As regards jurisdiction, the Jersey Service of Process Rules cross refer to Article 5 of the Trusts (Jersey) Law 1984 which provides that where a trust is a Jersey law trust or is administered in Jersey or there are trust assets in Jersey, the Royal Court will have jurisdiction. As there were assets of the Trusts in Jersey, this test was met. The Court considered that, on the facts, there was a serious issue to be tried, not least because of the challenge to the status of the Panamanian trustee and the seeking of its removal in circumstances where its licence from the Panamanian regulator had been cancelled and the purported attempt to transfer the trusteeship to the directors was against the express wishes of the settlor.

The issue of whether Jersey was clearly the appropriate forum involved consideration of change of administration and proper law clauses of the Trusts. As noted above, the Court followed (as it is bound to do) the Privy Council's analysis from *Crociani* and concluded that the effect of the proper law clauses, which referred to *the law of the jurisdiction of which the rights of the parties and the construction and effect of...provisions of this Settlement be subject* (and specifically in the case of the Manor House Trust where the word 'exclusive' was included) was to provide clarity as to the law to govern the Trusts and issues concerning them. Further, the drafting of clauses giving the trustees power to change the proper law and providing that the courts of such jurisdiction be the forum for administration, did not confer on those courts exclusive jurisdiction to determine all disputes.

Accordingly, the argument by the respondents that the purported transfer to Panama by way of the DORAs executed in 2007 (which on their terms only granted non-exclusive jurisdiction to the Panamanian courts but which were themselves Jersey law documents) when read with the Trusts' provisions on proper law had created an exclusive jurisdiction clause in favour of the Panamanian courts, was firmly rejected.

Issues which called into question the effect of the 2007 and 2015 DORAs as a matter of Panamanian law (on which foreign law evidence was provided) and the findings of the Panama regulator leading

to the cancellation of the Panamanian trustee's licence, also militated against Panama being a more appropriate forum than Jersey.

Ultimately the confusion surrounding events from 2007 onwards, prior to which there was no question that the Trusts were entirely Jersey centric and the ability of the Jersey Court to be able to put a new trustee in possession of the trust assets in Jersey, led to a rejection of the challenge against the service orders and confirmation that Jersey was clearly the most appropriate forum.

The Court was also very much mindful of the need for urgent action to ensure the good administration of the trusts for the benefit of the beneficiaries in circumstances where there was an apparent conflict of interest on the part of the Panamanian trustee and directors in view of other litigation involving the settlor's family in the US and obvious open hostility between the Panamanian trustee and directors on the one hand and the beneficiaries on the other. Accordingly the Court ordered a speedy hearing of the removal applications which were subsequently granted<sup>3</sup>.

## Comment

Whilst this case involved some fairly exceptional factual circumstances, the Royal Court continues to adopt a clear analytical approach to issues surrounding where trust disputes should be heard. The Jersey test for the grant of permission to serve out of the jurisdiction is clearly established but it is quite apparent that the question of Jersey being clearly the appropriate forum is the one that will require careful consideration by parties seeking to litigate trust disputes against overseas parties. The application of the *Crociani* decision of the Privy Council comes as no surprise, albeit in respect of differently worded clauses - again, parties will need to be mindful of the true construction of those clauses if seeking to rely upon them when matters become contentious<sup>4</sup>.

<sup>1</sup>[\[2015\] JRC208](#)

<sup>2</sup>[\[2014\] UKPC 40](#)

<sup>3</sup>[Stock v Pantrust International and Others](#)

<sup>4</sup>[briefing dated November 2014 on the \*Crociani\* decisions for further discussion](#)

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