

JERSEY / JUDGMENT

AG -v- Tantular [2014] JRC 251A (17 December 2014)

[2014] JRC 251A

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judgment

the bailiff: 1. The matter before me today relates to costs. This is an unusual case. Just to remind ourselves of the background, the Attorney obtained a saisie in August 2013 based on the 1631 proceedings in Indonesia. He based the saisie, which related to the trust, on two grounds. First, he argued that because Mr Tantular was a discretionary beneficiary, he was beneficially entitled to all the trust assets, so that entitled the saisie to be granted over the whole trust. Secondly, he said if that was not right there had, nevertheless, been gifts after the date of the criminal conduct relied upon in the 1631 proceedings. The beneficiaries challenged the saisie in the sense of applying to vary it; they argued that the first ground of the Attorney was ill-founded in that merely being a discretionary beneficiary did not mean you were beneficially entitled to all the trust assets; secondly they said that only assets gifted after the date of the criminal conduct were caught. 2. We had the hearing in January at which the first point was argued and the court found in favour of the beneficiaries, Tantular-v-AG

[2014] JRC 128 . They therefore won that argument. The court then gave various directions in order to obtain evidence about the gifts. It has to be said that the date of the commencement of the alleged criminal conduct in the 1631 proceedings kept varying. Finally, a matter of only a day or two before the hearing on 21 st August, the date of the 1 st November, 2007, was accepted by the Attorney on behalf of the Indonesian authorities. At the hearing on 21 st August that reduced the transactions which had to be looked at to only six, and the court found that two of them were not gifts but four of them were, Tantular-v-AG

[2014] JRC 243 . All the other alleged gifts had taken place before 1 st November, 2007. 3. It transpires that as well as the 1631 proceedings there are proceedings in Indonesia against Mr Tantular called the 210 proceedings and that the alleged criminal conduct there began in 2003. That is before the establishment of the trust. There has therefore been a more recent hearing where the beneficiaries sought to strike out the second saisie, which I granted in reliance on the 210 proceedings, on the basis of an abuse of process. On that occasion I held against the beneficiaries, AG-v-Tantular

[2014] JRC 251 and refused to strike out the second saisie . 4. What the beneficiaries say is that it has been perfectly apparent throughout that their strategy has been to try and preserve the family home which is one of the trust assets. I accept that has been their strategy; Advocate Hanson has made that clear from the very start of these proceedings. It appeared after the hearing of 21 st August that they had succeeded because the court limited the saisie to \$1.7 million, the balance being freed and that, possibly with a modest contribution of the beneficiaries - possibly not, it seems rather unclear - would have been sufficient to release the matrimonial home. 5. The evidence produced to the court is that Mr Muhzar, the relevant official on behalf of the Indonesian Authorities, only became aware of the 210 proceedings in December 2013. Even accepting that that is the case, in my judgment, the responsibility for the costs thereafter rests with the Attorney on behalf of the Indonesian Authorities. Had it been made clear at that stage to everyone that there were these other proceedings which were going to be relied upon for a saisie where the criminal conduct began in 2003, I am satisfied that none of these proceedings would have taken place. There would have been no point in taking the beneficial entitlement point because everything in the trust would have been caught because the trust was created in 2004, which was after the date of the commencement of the criminal conduct alleged in the 210 proceedings. I accept that, had the position been made clear, the beneficiaries would probably have drawn stumps and given up because there would have been little point in continuing. 6. I also take the view that it was incumbent upon the Indonesian Authorities not to incur unnecessary proceedings here when there was a simple answer to everything, namely to rely upon the 210 proceedings. 7. I hold, therefore, that the Attorney General should be responsible for the costs of the proceedings up until the conclusion of the hearing on 21 st August. I am going to make the order to cover the period even before December 2013 because, whilst accepting Mr Muhzar's evidence that he personally did not know of the 210 proceedings before then, these are clearly high-profile proceedings; the letter of request comes from the Law Minister to the Attorney General, and I think that it would be wrong for the beneficiaries to bear the costs or bear responsibility for any lack of communication within the Indonesian prosecuting authorities. 8. However, I do not propose to do so on the indemnity basis. The standard for that is that there must be something out of the ordinary so that justice requires an indemnity award. I do not consider that the circumstances in this case go quite that far. 9. Therefore I am going to make the order on the standard basis. I am also going to order that the trustee's costs are payable by the Attorney General because, in my judgment, they have only been incurred because everyone was arguing about the dates of the gifts. This would not have been necessary had the 210 proceedings been relied upon. 10. Now I have confined my order to the position up to the end of the 21 st August hearing. After that the Attorney obtained a second saisie and that is the subject of the judgment which I have formally issued this morning AG-v-Tantular

[2014] JRC 251 . The beneficiaries applied to strike out the second saisie on the basis that it was an abuse of process. On that, I found for them very much on the law but against them on the facts and have not struck out the saisie . 11. Advocate Belhomme argues that therefore the Attorney should be entitled to costs on that because he has won. That is true, he did maintain the saisie . However, the application was only necessary because of the failure to rely upon the 210 proceedings earlier and I think that the just outcome in relation to the hearing on the second saisie is that there should be no order as to costs. 12. I should perhaps deal specifically with a point which I have considered but have not articulated, namely Advocate Belhomme's point that it was the beneficiaries' choice to follow a strategy which relied upon the Attorney only ever relying upon the 1631 proceedings. They, through Mr Tantular, no doubt knew of the existence of the other proceedings. I am not impressed with that point. I consider that the beneficiaries were entitled to contest this case on the basis put forward by the Attorney, which was reliance upon the 1631 proceedings. On that basis they concluded, as it turned out correctly, that there was enough which should be freed of the saisie for them to keep their family home and they were entitled to contest the case on that basis. 13. There is no order as to the costs of the Viscount. Leave to appeal the costs order is refused. Authorities Tantular-v-AG

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