

JERSEY / JUDGMENT

Crociani -v- Crociani [2017]

JRC 101 (30 June 2017)

[2017] JRC 101

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judgment

the commissioner: 1. On 28 th June, 2017, the Court gave consent to the third defendant ("BNP Jersey") and the fourth defendant ("Appleby Mauritius") to bring proceedings in the Netherlands to secure the value of the promissory note which comprises the sole asset of the Grand Trust. Before setting out our reasons, we will give a brief overview of the background, much of which is contained in previous judgments of the courts. 2. Between 17 th January, and 3 rd April, 2017, the final hearing in these proceedings took place, and the Court reserved its judgment. It anticipates that its judgment will be issued in July 2017. 3. Central to the issues before the Court is the validity of an appointment of substantial assets made on the 9 th February, 2010, by the first defendant, ("Madame Crociani"), the second defendant, and BNP Jersey, (we will refer to them together as the "former trustees"), as trustees of the Grand Trust, to a trust known as the Fortunate Trust, and ultimately, to Madame Crociani. The first plaintiff, Madame Crociani's younger daughter ("Cristiana"), and her two children (together "the plaintiffs") seek to have the trust fund reconstituted by the former trustees and they also challenge inter alia :- (i) the appointment on 10 th February, 2012, by the former trustees of Appleby Mauritius as sole trustee of the Grand Trust and the change of its proper law from that of Jersey to that of Mauritius; and (ii) the appointment on 29 th January, 2016, by Appleby Mauritius of the eighth defendant, another company carrying on a financial services business in Mauritius ("GFin"), as sole trustee of the Grand Trust. 4. The appointments of Appleby Mauritius and GFin both involved the assignment of the promissory note issued by Croci International B. V. ("Croci B. V.") dated th December, 1987, under which some €50,682,495 in capital and interest, as at 1 st December, 2016, is payable by Croci B. V. ("the Promissory Note"). Croci B. V. was originally beneficially owned by Madame Crociani, the settlor of the Grand Trust, but the Court heard evidence that in December 2011, Croci B. V. was acquired by a company thought to be beneficially owned by the fifth defendant, Madame Crociani's elder daughter ("Camilla"), who has aligned herself with her mother in defending the proceedings brought by the plaintiffs. 5. If the appointments of Appleby Mauritius and GFin are set aside, the trusteeship of the Grand Trust will revert to the former trustees, and the proper law to that of Jersey, and in that eventuality the Court is asked by the plaintiffs to appoint a new trustee in the place of the former trustees. 6. Shortly after its appointment as trustee, GFin was made a party to these proceedings, but has refused to submit to

the jurisdiction of this Court. Instead, it has issued rival proceedings in Mauritius and this in defiance of the judgment of the Privy Council (the ultimate Court of Appeal for both Jersey and Mauritius) that Jersey is the appropriate forum for the determination of these issues. In dismissing an application by GFin for an anti-suit injunction against the plaintiffs, the Supreme Court of Mauritius said this in relation to GFin's appointment:- "Fourthly, and above all an injunction including an anti-suit injunction is an equitable remedy and "He who comes to equity must come with clean hands". No justifiable and convincing reason has been advanced for the retirement of Appleby as Trustee and for the appointment of GFin in the middle of the Jersey Proceedings. And there is more, it is not unreasonable to conclude by the manner in which they are drafted that clauses 2(a) and (b), 7 and 8 have been inserted in the 2010 Deed in response to the reasons given by the Judicial Committee of the Privy Council as to why Clause 12 only determines the proper law for the administration of the Trust, is not a jurisdiction clause and does not confer exclusive jurisdiction on the Courts of Mauritius. It is also not unreasonable to conclude that the purpose of the exclusive jurisdiction clause is to circumvent and defeat the effect of the judgment of the Privy Council. In these circumstances an injunction and the more so an anti-suit injunction cannot and will not lie." 7. On 21 st March, 2016, the Court granted the plaintiffs an injunction restraining Appleby Mauritius and/or GFin "from dealing in any manner whatsoever with the Promissory Note (including, for the avoidance of doubt, the assignment of the Promissory Note to GFin) other than to collect in to the Grand Trust any payment due thereon by Croci International B. V., until further order of the Royal Court, such that the Promissory Note shall be held to the order of the Royal Court." 8. Croci B. V. is a holding company beneath which lie a number of subsidiaries owning prestigious real estate and, until 2015, an Italian company, Ciset SRL, which through its subsidiary Vitrociset SPA, operates a successful engineering, technical and logistic services business in Italy, and which has, over the years, provided substantial dividends. Croci B. V. was "de-merged" in 2015, such that its main underlying asset, Ciset SRL, is now held by a new company, Croci International II B. V. ("Croci II"). Current application 9. On 28 th June, 2017, the Court heard an urgent application by BNP Jersey and Appleby Mauritius for consent under the terms of the above injunction for them to issue proceedings in the Netherlands and/or Italy, in order to secure the value of the Promissory Note. That application was supported by an affidavit from Lee Chee Kiong Noel Patrick Lee Mo Lin of Appleby Mauritius. 10. BNP Jersey and Appleby Mauritius have an interest in preserving the value of the Promissory Note, as they may be held liable to provide relief to the Grand Trust in respect of its value following the assignment of the Promissory Note to Appleby Mauritius and in turn to GFin. 11. BNP Jersey and Appleby Mauritius have sought confirmation in correspondence from the professional directors of Croci B. V. and Croci II that no payments would be made under the Promissory Note until the final judgment of this Court had been handed down, and that assets, including any sale proceeds of Ciset SRL (or its subsidiary, Vitrociset SPA) would not be dissipated, such as to make it less likely that the obligations under the Promissory Note could be met. 12. The directors of Croci B. V. said that they would not make any payments under the Promissory Note, but declined to confirm that assets would be held in order to ensure the obligations under the Promissory Note were payable. 13. A newspaper article published on 25 th April, 2017, suggests that a sale of Vitrociset SPA is imminent. Dutch lawyers acting from Appleby

Mauritius wrote to the directors of Croci II on 28 th April, 2017, seeking confirmation that the proceeds of sale would be retained in order to enable payment of the Promissory Note. Dutch lawyers acting for Croci II responded, but declined to give the comfort requested. There has been parallel correspondence between BNP Jersey's Dutch lawyers and the lawyers for Croci II out of which there has been no firm commitment that the proceeds of sale will be kept available to pay the Promissory Note and that there will be no payments made to GFin under the Promissory Note. 14. On 26 th and 27 th June, 2017, BNP Jersey's Dutch lawyers were notified that the board of Croci B. V., Croci II and their holding company were to be replaced with effect from 1 st July, 2017. It is not known who they would be replaced with. 15. The Court has heard evidence in the main proceedings that both Madame Crociani and Camilla are motivated to make the Promissory Note "disappear" or to prejudice the ability of Croci B. V. to discharge its obligations under the Promissory Note, and BNP Jersey and Appleby Mauritius are concerned that they, or those in ultimate control of Croci B. V. and Croci II, are intending to liquidate and transfer assets beneficially owned by those companies in order to prevent those assets from being used to satisfy any claims under the Promissory Note. 16. We were informed that the proceedings in the Netherlands would in substance seek the following relief:- (i) prohibit payments by Croci B. V. under the Promissory Note, or direct Croci B. V. to suspend its payment obligations under the Promissory Note, pending final determination by the Jersey court as to the identity of the lawful owner of the Promissory Note. (ii) order Croci B. V., Croci II, their holding company and the Italian subsidiaries (collectively "the Respondents") to place the proceeds of sale of or dividend distributions from Vitrociset S.p. A. into an escrow account to be designated by the Dutch court. (iii) prohibit the Respondents from structuring or restructuring their assets such that this has a negative effect on the value of the Promissory Note or that it causes them no longer to be able to comply with their payment obligations under the Promissory Note. (iv) order the Respondents to retain any dividend distributions received from Ciset S.r.l. pending a decision of the Jersey court as to the identity of the lawful owner of the Promissory Note. (v) order the Respondents (as applicable) to keep Appleby Mauritius and BNP Jersey informed of developments of material significance in the sale process of Vitrociset S.p. A., any steps to alienate the Promissory Note and any steps to change the boards of the Dutch companies. 17. Whilst the injunction granted by this Court on the 21 st March, 2016, permitted Appleby Mauritius and/or GFin to collect in payments due under the Promissory Note, having had the benefit of the evidence adduced at the main hearing and taking into account the conduct of GFin, it would, in the opinion of this Court, be inappropriate for any payments under the Promissory Note to be made to GFin pending the final determination by this Court as to the identity of the lawful owner of the Promissory Note. 18. In conclusion, we think it right that preservative steps be taken by BNP Jersey and Appleby Mauritius and we therefore gave our consent to them bringing proceedings in the Netherlands and/or Italy in order to secure the value of the Promissory Note and inter alia to prevent payment being made under the Promissory Note to GFin, pending final determination by this Court as to the identity of the lawful owner of the Promissory Note. No Authorities Page Last Updated: 19 Jul 2017 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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