

**Judgment 15/2011**

**Rothschild Trust Guernsey Limited and  
Adamantios (Diamantis) Pateras and Katigko-  
Kalliopi – (Civil Action File 1536) – Royal Court  
- 3<sup>rd</sup> May, 2011**

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**Trusts (Guernsey) Law 2007 – application to confirm that a trust had been validly constituted  
and that the trustee was validly appointed.**

**IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY**

The 3<sup>rd</sup> day of May, 2011 before Richard John Collas Esquire, Deputy Bailiff

**ROTHSCHILD TRUST GUERNSEY  
LIMITED**

**Plaintiff**

**-and-**

**ADAMANTIOS (DIAMANTIS) PATERAS**

**First Defendant**

**KATIGKO-KALLIOPI**

**Second Defendant**

UPON HEARING Advocate Alison Ozanne for the Plaintiff and the Defendants having been served with notice of the hearing in accordance with the Act of the Royal Court dated 4<sup>th</sup> April 2011 neither appearing in person or by counsel

AND UPON READING the affidavit of Aikaterini Kourti sworn 14 September 2010, the affidavit of Georgios Risvas dated 8 October 2010, the affidavit of Aikaterini Kourti dated 8 October 2010, the first affidavit of Christopher Paul Ward sworn 25 March 2011, the third affidavit of Anne Le Cheminant sworn 24 March 2011, the second affidavit of Callum James Keith Mc Neil affirmed 24 March 2011, the third affidavit of Callum James Keith Mc Neil affirmed on 12 April 2011, the third affidavit of Georgios Risvas sworn 14 April 2011, the affidavit of Kelly Jane Dennis sworn on 21 April 2011, the affidavit of Caroline Marie Baudains sworn 28 April 2011, the fourth affidavit of Anne Elizabeth Le Cheminant sworn 27 April 2011.

AND PURSUANT to sections 69 and 79 of The Trusts (Guernsey) Law 2007 (as amended) and the general jurisdiction of the Court under its inherent powers

THE COURT ORDERED:-

- (i) That the discretionary trust settled by Mr Nicholas Diamantis Pateras by settlement deed dated 13 July 1995 (“the 1995 Trust”) is validly constituted according to the laws of Guernsey;
- (ii) That the Plaintiff is the validly appointed trustee of the 1995 Trust;

- (iii) That the 100% shareholding in the Compania Naviera Del Caribe SA (“the Company”) represented by 100 bearer shares of US\$10 and contained within one share certificate were validly held trust property from 13 July 1995 until dissolution of the Company;
- (iv) That the Plaintiff validly exercised its powers to authorise the Directors of the Company to sell the Evgenikon Estate and that the Directors of the Company acted validly in exercise of their powers in selling the Evgenikon Estate;
- (v) That the Plaintiffs costs of these proceedings be paid out of the assets of the 1995 Trust on the full indemnity basis;

D KNIGHT  
Her Majesty’s Deputy Greffier

**IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY**  
**ORDINARY DIVISION**

**Between:**

**ROTHSCHILD TRUST GUERNSEY LIMITED**

**Plaintiff**

**ADAMANTIOS (DIAMANTIS) PATERAS**

**Defendant**

**and**

**KATIGKO-KALLIOPI**

**Second Defendant**

**Hearing date: 3<sup>rd</sup> May 2011**

**Judgment handed down: 11<sup>th</sup> May 2011**

**Before: Richard John Collas Esq., Deputy Bailiff**

**Advocate for Plaintiff: Advocate A M Ozanne**

**The Defendants did not appear and were not represented**

**Cases, texts & legislation referred to:**

The Royal Court Civil Rules, 2007, Rule 8

The Civil Procedure Rules 1988, Rule 40.20.

Guaranty Trust Co of New York v Hannay [1915] 2 K.B. 536

Financial Services Authority v Rourke [2002] C.P.Rep 14

In re Westbury Property Fund Ltd (Judgment 37/2005, 4 July 2005)

In the Matter of the Reform (Guernsey) Law 1948 (Judgment 16/2008, 17 April 2008)

Fidelity Management Ltd v Royal Bank of Canada (Channel Islands) Ltd (Judgment 29/2007, 20 September 2007)

Public Trustee v Cooper [2001] W.T.L.R. 901

Lewin on Trusts, 18<sup>th</sup> edition (paragraphs 29-292 and 29-300)

The Trusts (Guernsey) Law, 2007

The Royal Court (Reform) (Guernsey) Law, 2008, Section 13

The Trusts (Guernsey) Law, 1989 as amended

**Introduction**

1. I set out in this judgment my reasons for granting the relief sought by Rothschild Trustee Guernsey Limited (“the Trustee”) against Adamantios (Diamantis) Pateras and his sister Katigko-Kalliopi Pateras (“the Defendants”) in an application (“the Application”) dated 22<sup>nd</sup> September 2010. The substantive hearing before me was held on 3<sup>rd</sup> May 2011 in the absence of the two Defendants who failed to appear and who were unrepresented.

## Service

2. I was however satisfied that the Defendants had been properly served with notice of the hearing. On 27<sup>th</sup> August 2010, I granted leave, pursuant to Rule 8 of the Royal Court Civil Rules, 2007, for notice of the Application to be served out of the jurisdiction on the Defendants who are both resident in Greece. The difficulties in effecting service on the Defendants are explained in the numerous Affidavits that have been produced by the Trustee in relation to service (the Affidavits are listed in paragraph 8 of the Trustee's Skeleton Argument dated 27<sup>th</sup> April 2011) including, in particular, the Second Affidavit of Callum McNeil affirmed on 24<sup>th</sup> March 2011.
3. On the 4<sup>th</sup> April 2011, I ordered that notification of the hearing date be served on the Defendants, together with certain documents:
  - 1) By personal service by the Bailiff service procedure in Greece and otherwise in accordance with Greek laws and Procedures; and
  - 2) By email to the Greek lawyer instructed by the Defendants in certain Greek proceedings to which I refer below.
4. The second part of that Order was carried out by Kelly Jane Dennis, a secretary employed by the Trustee's Guernsey Advocates, as confirmed by her in an affidavit sworn on 21<sup>st</sup> April 2011 and service in accordance with the first part of the Order was effected by Gorgios Risvas, a lawyer in the offices of the Trustee's lawyers in Athens.
5. In his Third Affidavit, sworn on 14<sup>th</sup> April 2011, Mr Risvas testified that he was unable to deliver the service documents into the hands of the Defendants. Instead, he followed the procedures laid down by the Greek Code of Civil Procedure to be followed in circumstances where the addressee is not in residence or refuses to receive the documents. The steps taken by Mr Risvas are detailed in his Third Affidavit, he confirmed they were in accordance with the Greek procedural rules and I was satisfied that they were in accordance with the requirements of those rules, as explained in a letter dated 1<sup>st</sup> April 2011 from Eleni Papaconstantinou of the Law Offices Papaconstantinou, a copy of which was exhibited to the Affidavit.
6. Accordingly, I was satisfied that the Trustee had complied with the requirements of the Act of Court of 4<sup>th</sup> April 2011 as to service. Furthermore, the events described in the various Affidavits in relation to service indicate that notice of the Application has come to the attention of the Defendants and their Greek lawyer. It was therefore appropriate for me to proceed to hear the Application in the absence of the Defendants.

## The Court's Jurisdiction

7. The relief sought by the Trustee in the Application consists of a number of declarations in support of which the Trustee, in paragraphs 58 to 66 of its Skeleton Argument, relied upon the Court's general discretionary power to grant discretionary relief, which it submitted are similar to the powers of the English Courts under Rule 40.20 of the Civil Procedure Rules 1988. Advocate Ozanne relied upon Guaranty Trust Co of New York v Hannay [1915] 2 K.B. 536 and Financial Services Authority v Rourke [2002] C.P.Rep 14 as well as three local decisions in which the Royal Court reviewed its discretionary powers to grant declaratory relief: In re Westbury Property Fund Ltd (Judgment 37/2005, 4 July 2005); In the Matter of the Reform (Guernsey) Law 1948 (Judgment 16/2008, 17 April 2008) and Fidelity Management Ltd v Royal Bank of Canada (Channel Islands) Ltd (Judgment 29/2007, 20 September 2007).
8. Having reviewed the Skeleton Argument I formed the view, and Advocate Ozanne accepted on behalf of the Trustee, that the basis for the Court's jurisdiction in this matter was broader than she had submitted. Article 69 (1) (b) of The Trusts (Guernsey) Law, 2007 empowers the Royal Court, on the application of a trustee to "*make a declaration as to the validity or*

*enforceability of a trust*”. That section does not encompass the entirety of the declarations sought but the remainder of the Trustee’s Application falls within the fourth category of cases identified by Robert Walker J in Public Trustee v Cooper [2001] W.T.L.R. 901 where the Court may be asked to adjudicate upon a course of action proposed or actually taken by trustees. A trustee may apply to the court for a decision as to the validity of an exercise of one of its powers, once a doubt has arisen (see paragraphs 29-292 and 29-300 of Lewin on Trusts, 18<sup>th</sup> edition).

9. The Royal Court has jurisdiction in respect of the trust to which the Application relates by virtue of sections 3 and 4 of The Trusts (Guernsey) Law, 2007 on a number of grounds: the proper law of the trust is expressed to be Guernsey Law; the Trustee is a Guernsey company resident in Guernsey and administering the trust in Guernsey; and the trust assets are situate in Guernsey.
10. I sat alone without Jurats because there were no disputed issues of fact to be resolved; if the Defendants had appeared and indicated that they sought to dispute any of the factual statements put forward by the Trustee, the Court would have adjourned to a date when Jurats would be available. If there is any doubt as to whether the exercise of the Court’s discretion involved any matters of fact that might be considered to be issues for the Jurats to decide, I am empowered to sit alone to hear the Application by virtue of section 79 of The Trusts (Guernsey) Law, 2007 and section 13 of The Royal Court (Reform) (Guernsey) Law, 2008.

### **Factual Background**

11. The evidence presented to the Court in support of the Application was contained in the Affidavits listed in paragraph 7 of the Skeleton Argument. The affidavits were sworn by Anne Elizabeth Le Cheminant, an Assistant Director of the Trustee, and Christopher Paul Ward, a former Director and former Managing Director of the Trustee.
12. The trust to which the Application relates (which I will call the “1995 Trust”) was established by declaration of trust dated 13<sup>th</sup> July 1995 between the Trustee of the one part and Mr Nicholas Diamantis Pateras, the father of the Defendants, of the other part (“Mr Pateras senior”). Mr Pateras senior was the only non-charitable beneficiary of the 1995 Trust until his death on 6<sup>th</sup> October 2000 whereupon the Defendants were added by the Trustee as additional beneficiaries, in accordance with the wishes of Mr Pateras senior.
13. The sole, or principal, asset of the 1995 Trust included, from the date of settlement, 100 bearer shares in a Panamanian company called Compania Naviera Del Caribe SA (“the Company”). The company owned land in the Republic of Greece on the Island of Evia on which were various residential properties and other buildings where Mr Pateras senior lived until his death. The property is known as the Evgenikion Estate. It was his wish that the estate be sold after his death. In due course, it was marketed for sale but the sale process became long and protracted. The estate was eventually sold on 28 December 2006 for €3,650,000.00. The evidence of Ms Le Cheminant and Mr Ward together with items of correspondence and file notes exhibited to their affidavits show that the Defendants were aware that the Trustee was marketing the estate for sale and that the Defendants did not, at that time, challenge the rights of the Trustee and the Company to sell the estate. Following the sale of the estate, the Company has been wound up, dissolved and removed from the register of companies in Panama. The balance of the net proceeds of sale remains in the 1995 Trust.
14. Following the sale of the estate, the Defendants issued proceedings in the Full Member Court of Athens challenging the validity of the sale and *inter alia* seeking a declaration that they, the Defendants, are the sole beneficial owners of the Company and hence of the estate. Despite the fact that the Greek proceedings are a challenge to the validity of the 1995 Trust, the Trustee was not named as a defendant although four of the named defendants in the Greek proceedings are former directors or employees of the Trustee, three of whom were also former directors of the Company.

15. The Trustee has filed a supporting intervention in the Greek proceedings, supporting the position of its former directors and employees. The return date of the intervention is 30 October 2013, substantially later than the hearing of the proceedings which is due to commence on 12<sup>th</sup> May 2011. I was told that it is not certain whether it will be possible to hear the two together.
16. The Trustee therefore considered it appropriate to seek declaratory relief in the Royal Court which is the proper forum for resolving disputes in relation to the 1995 Trust and it did so in the hope that the decision of the Royal Court would be of assistance in the Greek proceedings. It is unfortunate that the Defendants have chosen not to participate in the present Application but their absence should not, in my view, deny the Trustee the right and the opportunity to have its Application heard in this Court.
17. In the Greek proceedings, the Defendants claim that during their father's lifetime the shares in the Company belonged to him and that following his death ownership passed to the Defendants as his intestate heirs. They also claim that a meeting of the shareholders of the Company convened to authorise the sale of the estate was not valid because it was not attended by the Defendants who, they claim, were the legitimate shareholders, not the Trustee. They challenge the validity of decisions taken at the meeting, including the validity of a Power of Attorney appointing Mr Ward and a Mr Page as the attorneys of the company to complete the sale of the estate.
18. I was informed by Advocate Ozanne that the Greek proceedings have not yet progressed to the stage when witness statements or skeleton arguments are required to be filed so her instructions are that the Trustee does not yet know what evidence, if any, the Defendants will adduce in support of their contentions in the Greek proceedings.

### **The Application for Declarations**

19. Next, I will deal in turn with each of the declarations sought by the Trustee in its Application.

*“A declaration that the 1995 Trust is validly constituted according to the laws of Guernsey”.*

20. The requirements for a trust to be recognised under Guernsey law are set out in section 1 of The Trusts (Guernsey) Law, 2007, the terms of which are identical to The Trusts (Guernsey) Law, 1989 as amended, which was the relevant statute at the time of creation of the 1995 Trust. Section 1 provides that

*“A trust exists if a person (a “trustee”) holds or has vested in him, or is deemed to hold or have vested in him, property which does not form, or which has ceased to form, part of his own estate –*

*(a) For the benefit of another person (a “beneficiary”), whether or not yet ascertained or in existence;*

*(b) For any purpose which is not for the benefit only of the trustee.”*

21. By virtue of section 6, a trust may be declared in a number of ways including by an instrument in writing. In fact, the 1995 Trust was created by a written instrument dated 13 July 1995 executed by the Trustee and by Mr Pateras senior as settlor.
22. The beneficiaries must be identifiable by name or by reference to a class and a settlor may be a trustee (section 8). At the date of settlement, Mr Pateras senior was a named beneficiary together with any English or Welsh charity. Subsequent to Mr Pateras' death, his children were added as beneficiaries (as I have said).
23. By virtue of section 11 of each Law, there are circumstances in which a trust may be declared invalid or unenforceable. Section 11 of the 1989 Law is as follows:

- “11. (1) *Subject to subsections (2) and (3), a trust is valid and enforceable in accordance with its terms.*
- (2) *A trust is invalid and unenforceable to the extent that –*
- (a) *it purports to do anything contrary to the law of Guernsey;*
  - (b) *it confers or imposes any right or function the exercise or discharge of which would be contrary to the law of Guernsey;*
  - (c) *it has no beneficiary identifiable or ascertainable under section 8(1), unless it is created for a charitable purpose; or*
  - (d) *the court declares that –*
    - (i) *it was established by duress, fraud, mistake, undue influence or misrepresentation;*
    - (ii) *it is immoral or contrary to public policy;*
    - (iii) *its terms are so uncertain that its performance is rendered impossible; or*
    - (iv) *the settlor was, at the time of its creation, incapable of creating such a trust.*
- (3) *Where some of the terms of a trust are invalid but others are not –*
- (a) *if the terms cannot be separated, the trust is invalid;*
  - (b) *if the terms can be separated, the court may declare that the trust is valid as to the terms which are valid.*
- (4) *Where a trust is partially invalid, the court may declare what property is and what property is not to be held subject to the trust.*
- (5) *Property as to which a trust is invalid shall, subject to any order of the court, be held by the trustees in trust for the settlor absolutely or, if he is dead, for his personal representative.*
- (6) *An application to the court under this section may be made by any person mentioned in section 63(2).”*

24. None of those circumstances apply to the 1995 Trust.

25. It is not known whether the Defendants are seeking to assert a rule of forced heirship under Greek Law but even if they are, the 1995 Trust would be regarded as valid under Guernsey law by virtue of section 11A of the 1989 Law as amended. Section 14 of the 2007 Law provides that all questions of validity are to be determined in accordance with Guernsey law.

26. Accordingly, I am satisfied on the evidence before me that the 1995 Trust is validly constituted according to the laws of Guernsey.

*“A declaration that the [Trustee] is the validly appointed trustee of the 1995 Trust.”*

27. The Trustee was appointed as trustee of the 1995 in the instrument dated 13<sup>th</sup> July 1995 whereby the trust was created. A corporate trustee resident in Guernsey may act as a sole trustee (section 13 of the 1989 Law and section 17 of the 2007 Law).

28. Section 26 of the Trust instrument contains provisions relating to the appointment of additional trustees and retirement or removal of trustees but no such steps were ever taken so the Trustee has always been, and still remains, the sole trustee of the 1995 Trust.

*“A declaration that the shares in the Company were validly held trust property from 13 July 1995 until dissolution of the Company.”*

29. The shares were settled into the 1995 Trust as part of the initial trust fund specified in the Trust Deed of 13<sup>th</sup> July 1995. They were in the form of bearer shares and the share certificate relating to them was handed to the Trustee and remains in the possession of the Trustee.

*“A declaration that the [Trustee] validly exercised its powers to authorise the Directors of the Company to sell the Evgenikon Estate and that the Directors of the Company acted validly in exercise of their powers in selling the Evgenikon Estate.”*

30. Under the terms of the Trust instrument, the Trustee has wide powers in addition to its statutory powers contained in the Trusts Law. Section 26 of the 1989 Law gives a trustee in relation to the trust property, all the powers of a beneficial owner, subject only to the terms of the trust. Section 14 of the Trust instrument confirms that the Trustee of the 1995 Trust has all the powers of investment management and sale of an absolute beneficial owner of the trust fund. The trust instrument contains further powers in wide terms usually seen in trust instruments of this nature including: section 15, Powers of Investment; section 16, the Power to Form Companies; section 17, the Power to Employ Agents and to Delegate; and section 21, Powers as to Land.
31. In seeking to sell the Evgenikon Estate, the Trustee was acting in accordance with the wishes of Mr Pateras as expressed by him during his lifetime. The sale process was protracted, taking more than 6 years. There was correspondence with the Defendants showing that they were aware the estate was being sold. There were hopes that the property was worth more than the price eventually achieved. In the end, after the protracted marketing period, the Trustee and the directors of the Company were satisfied that the offer they accepted was reasonable.
32. The process adopted to approve the sale involved a decision by the Trustee as trustee of the 1995 Trust to authorise the directors of the Company to complete the sale. The sale was also approved by the shareholders of the Company at a shareholders' meeting. The Directors of the Company resolved to appoint Mr Ward, a director, and Mr Page, an employee of the Trustee, as its attorneys to complete the sale, which they duly did. Subsequently, the sale was approved and ratified by the shareholders of the Company in a further meeting.
33. The Trustee has received legal advice from a Panamanian lawyer, being the jurisdiction of incorporation of the Company. The advice is contained in a letter dated 16 February 2011 prepared in connection with the Trustee's Application. It was written by Joel R Medina of Icaza, Gonzalez-Ruiz & Aleman, lawyers in Panama. In his opinion, all the steps taken by the Company in relation to the sale were valid under Panamanian law.

## **Conclusion**

34. In conclusion, the evidence presented before me, parts of which I have briefly summarised in this decision, is sufficient to persuade me that, in the exercise of my discretion, it is appropriate to grant all the declarations sought by the Trustee.

## **Costs**

35. As for costs, if the Defendants had actively participated in the Application, these would have been treated as hostile proceedings and the Trustee might have sought an order for costs against the Defendants. In fact, the Trustee is seeking an order that its costs be paid from the trust funds and I so order.