In the Royal Court of the Island of Guernsey

The 19th day of November, 2001 before de Vic Graham Carey, Esquire, Bailiff; sitting alone.

IN THE MATTER OF

GABRIELLE EIDEM HAUG
(Supporting guardian of Per Reidar Haug)

The Applicant

-V-

ROYAL BANK OF CANADA INVESTMENT MANAGEMENT (GUERNSEY) LIMITED

The Respondent

WHEREAS on the 3rd day of October, 2001, the Bailiff considered an application, in the terms attached hereto, for a declaration that the Applicant's appointment as supporting Guardian of Per Reidar Haug be recognised and heard thereon Advocate J.E. Roland and WHEREAS on the 5th day of October, 2001, the Bailiff handed down judgment also in the terms attached hereto, THE BAILIFF this day, having been satisfied that the Applicant's supporting documentation, had been properly legalised, GRANTED the said application and made the orders requested by the Applicant as sought.

Her Majesty's Deputy Greffier.

14.9.01
Ozannes
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IN THE ROYAL COURT OF GUERNSEY
ORDINARY COURT

Between **GABRIELLE EIDEM HAUG** **The Applicant**

and

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10.9.01.

ROYAL BANK OF CANADA INVESTMENT MANAGEMENT (GUERNSEY) LIMITED **The Respondent**

GABRIELLE EIDUM HAUG of Furulundtoppen 19 0282 Oslo Norway whose address for service in Guernsey is 1 Le Marchant Street in the Parish of St Peter Port (hereinafter called 'the Applicant') who brings these proceedings as the Supporting Guardian of PER REIDAR HAUG of Furulundtoppen 19 aforesaid, having been so appointed on the 28th May 2001 by the Oslo Public Guardians Office.

APPLIES TO THE COURT

for the following Orders namely:-

(1) For a Declaration that the Appointment of Supporting Guardian made on 28th May 2001 by the Oslo Public Guardians Office and confirming the powers upon the Applicant set by the Guardianship Act of Norway in relation to the property and affairs of Per Reidar Haug and subject to restrictions therein shall be recognised within the jurisdiction of this Court; and

(2) That within seven days the Respondent shall provide to the Applicant's Advocates Messrs Ozannes of 1 Le Marchant Street, St Peter Port Guernsey full written details of the identity of any account or accounts in which there is currently held a sum or sums held by the Respondent

(or any entity or entities associating with or acting on behalf of the Respondent) whether donor is sole or joint signatory or in which the donor has any interest whatsoever.

(3) That the Court shall grant such further Order or Orders as the Court may think just.

This 7th day of September 2001

Advocate for the Applicant

IN THE ROYAL COURT OF GUERNSEY
ORDINARY COURT

Between

GABRIELLE EIDEM HAUG
(Supporting guardian of Per Reidar Haug) **The Applicant**

and

ROYAL BANK OF CANADA INVESTMENT MANAGEMENT (GUERNSEY) LIMITED **The Respondent**

JUDGMENT OF THE BAILIFF ON THE APPLICATION FOR A DECLARATION THAT THE APPLICANT'S APPOINTMENT AS SUPPORTING GUARDIAN OF PER REIDAR HAUG BE RECOGNISED.

Advocate for the Applicant: J. E. Roland
The Respondent did not appear

Date of Hearing: 3rd October, 2001
Date Judgment handed down: 5th October 2001

Mr Per Reidar Haug ("the Patient") is an elderly Norwegian gentleman who appears to have lived outside Norway for some years. However, he has now returned to live in Norway with his wife, the Applicant. Sadly he is no longer able to manage his affairs and the Applicant has been appointed supporting guardian by the Oslo Public Guardian's Office in accordance with the law of Norway. I have an affidavit from a Mr. Fredrik Bugge Siverts who is, I am told, a Norwegian solicitor. although his affidavit needs clarification on this point. He explains that in each town in Norway there is an established public guardian's office which supervises supporting guardians. There is, however, a provision that spouses do not have to undergo the same degree of supervision and administration as guardians who are not so related to their ward. Neither do they have to provide accounts. The Applicant has deposed to the fact that she is married to the patient and has produced a copy of her marriage certificate.

The Patient, has a portfolio of securities, including a substantial holding in a Norwegian company, managed by the Respondent. The Respondent has indicated that it does not wish to make any representations in connection with this Application or be heard, a course of action which is clearly appropriate in the circumstances. If I allow the Application it is right that my order should give directions to the Respondent to enable it to comply with the wishes of the Applicant.

According to Mr Siverts, now that Mr. and Mrs. Haug are resident in Norway there are positive disadvantages in keeping this portfolio of investments with the Respondents in Guernsey. It will be more tax efficient to transfer management of the portfolio to a bank in Norway. I am told that there are no other assets within the jurisdiction of this Court and that there is no reason why a guardian should be appointed for the Patient in this jurisdiction. The Applicant wishes to have her appointment as guardian recognised so that she may give directions to the Respondent to transfer the assets to the new managers in Norway.

Miss Roland brings this application following an earlier successful application she made in the matter of the estate of one Evelyn Barbara Ward, Greenwood v. NatWest Offshore Ltd. (25th February, 2000). There this Court agreed to recognise an enduring power of attorney which had been granted under English law.

I reviewed the relevant provisions of Dicey and Morris, Conflict of Laws 13th Edition in connection with foreign guardianships. As will be clear Greenwood involved an English guardianship situation. As I said in my judgment then, it appears to have been the practice of this Court not to recognise foreign guardianships but facilitate recovery by guardians and curators from outside the jurisdiction by agreeing to special guardians being appointed to recover funds of non-domiciled patients and give such special guardians authority to pay the funds over to the guardian appointed under the foreign jurisdiction. Miss Roland is asking me to extend the principles of the decision I made in that case to one involving a Norwegian

guardian. She has also drawn my attention to the decision of Mrs. Justice Hale in Re S (hospital patient: foreign curator) 1995 4 All ER 30. By coincidence that case also involved a Norwegian national. S had settled in England with an English lady where he had become incapacitated after a stroke. She successfully obtained an injunction against the wife and son of S preventing them taking him back to Norway. The case developed further in that the Norwegian guardian of S then brought an application to remove S to Norway. So far as the removal application was concerned the Judge decided that she had jurisdiction, which was not displaced by the appointment of a guardian in Norway, but that it was open to her to decide that it was in S's best interest to allow his guardian to take decisions for him in future. After considering the matter of his best interests the Judge decided that he should be returned to Norway. In the course of her judgment (at p. 35 of the report) the Judge had occasion to consider the powers of a foreign curator in relation to moveable property. She quoted from Didisheim v London and Westminster Bank [1900] 2 Ch 15. That case I referred to in my decision in Greenwood . The Judge went on to say this:-

> "In Heywood and Massey *Court of Protection Practice* (12th edn, 1991) pp 33-34 the proposition is summed up thus: if the property in England and Wales is moveable, there are no proceedings or proposed proceedings in the Court of Protection, the title of the patient to the property is clear, and a curator has been appointed abroad and such curator has full title and authority, according to the law of the foreign state, to sue for and get in moveable property in this country, his authority will be recognised as of right.
>
> This clearly preserves the right of the courts in this country to intervene notwithstanding the appointment of a foreign curator. It leaves unclear the basis upon which we will accept that the foreign courts had power to appoint such a curator. It may be that, because of our own expansive jurisdiction, we will accept that others may for similar reasons adopt the same approach. But we will reserve the right to invoke our own jurisdiction if called upon to do so in an appropriate case."

It is quite clear that the Court has a discretion in a case such as this. Should I therefore exercise my discretion in favour of the recognition of Mrs. Haug as supporting guardian of her husband without further formality in Guernsey or should I be requiring her to arrange for

a guardian to be appointed here to deal with her husband's estate? I remind myself of what I said in Greenwood:-

> "It is well known that there are substantial amounts of money held in banks in Guernsey by persons who are not resident or domiciled in this Island. I can see no need for this Court generally to involve itself with overseeing the administration of the estates of non-resident persons of unsound mind."

Since delivering that judgment one further point has occurred to me. In Guernsey there has as yet been no call for this Court to police the activities of guardians. No accounts have to be produced and there is no requirement for the Court to approve any arrangements relating to the sale or disposal of moveable property (as opposed to immoveable property where Court permission for the encumbering and disposal of realty is required). The only advantage of having a local guardian would be that one would have a clearly identified person empowered to collect in the assets of the patient and repatriate them to his country of domicile.

In Greenwood I indicated that the jurisdiction to make an order of the kind sought, should only be exercised where there was no intention to appoint a guardian in Guernsey where the patient is resident and domiciled in the foreign country concerned and where the estate is such that there is no local problem which would require that a guardian should be appointed here.

None of those considerations apply and I am, therefore, prepared to grant Mrs. Haug's application once I am satisfied that the documentation in support of it has been properly legalised. As I have just said the advantage of a local guardian been sworn by the Court is that we have before us a person identified and accountable for the proper collection of the patient's estate and therefore if Mrs. Haug is to be empowered to do that, this Court must take care to make sure that all the documentation in support of her application is properly authenticated. Once I have received back the affidavit I will issue an order which will be

sufficient instruction to the Respondent to remit the assets of the Patient to Norway in accordance with whatever instructions the Applicant gives to it.