Jersey court considers interpretation of trust in foreign language (Titris SA v A)

May 2018

First published on Lexis®PSL Private Client on 17 April 2018.

This article explores the case of Titris SA v A, a Jersey case which dealt with issues of interpretation of a trust where the legal meaning of a phrase is potentially ambiguous due to it having been drafted in a foreign language.

Titris SA and another v A and others [2018] JRC059

What are the practical implications of this case for practitioners when advising their clients?

This case illustrates the dangers of Jersey law-governed trusts being established in other languages. An expression which has a perfectly natural meaning to overseas advisers and their clients may be ambiguous when translated into English and, further, not a recognised term under Jersey law.

Non-Jersey law qualified practitioners advising on the establishment of Jersey law-governed trusts should be advising their clients to instruct a Jersey qualified lawyer to review any trust before it is executed. The instructing practitioner or client can specifically request that the Jersey lawyer confirm that all terms used are recognisable under Jersey law and, to the extent that they may not be, have been sufficiently defined to avoid there being any uncertainty.

Likewise, if a Jersey law qualified practitioner is advising a foreign client and they wish to include specific reference to any foreign terminology or law or tax provision, then the Jersey lawyer should be ascertaining the true meaning of any particular non-Jersey concept or law etc, and ensure that any such concept is accurately defined in the trust instrument so there can be no uncertainty as to its meaning.

If a definition is linked to a piece of legislation in any way, then consideration ought to also be given to whether it is intended that it be the legislation in force at the date of establishment of the trust or as amended from time to time.

It is not uncommon to see ‘my heirs at law’ included within a beneficial class or a default clause, but it is for the practitioner to ascertain whether a client intends that to be the heirs at law of the jurisdiction in which they are in at the time of establishing the trust or, perhaps, the law of the country in which the client is domiciled at the date of establishment.

If linking any phrase to domicile then the practitioner ought to also ensure that the domicile of the client is clear and not in any doubt.

What was the background to this case?

This case involves a dispute between the widow of X and their two younger children on the one hand, and their eldest child (D) on the other, in connection with a Jersey law governed trust written in Italian.

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The dispute is in relation to whom the trustee should distribute the entirety of the trust fund now that the trust has terminated. Originally, the trust fund was stated to be held for the benefit of the legitimate heirs ('eredi legittimi') of X and his brothers, Y and Z.

However, in 2009 an application was made to the Royal Court of Jersey requesting the court's approval on behalf of minor and unborn beneficiaries to an amendment to the beneficial class of the trust.

That application was approved meaning that the trust fund was then held by the trustee for the legitimate heirs of X only. Following the termination of the trust on 30 September 2014, the trustee applied to the court for directions as to the distribution of the trust fund. As a result of that application, the widow and her three children were convened.

D claims to be the sole legitimate heir of X and therefore entitled to the entirety of the trust fund, but there is some contention as to what was meant by the phrase 'eredi legittimi'.

D claims to be the sole heir on the basis that he was appointed the sole heir of X's estate under X's 2012 will. However, the other respondents claim that 'eredi legittimi' is a term of art used in the Italian Civil Code to describe those persons entitled on the death of a deceased natural person who left no will, and therefore the will would be irrelevant so as far as the trust is concerned.

This particular judgment of the Master of the Royal Court of Jersey provided case management directions.

What did the court decide?

The principal issue before the court was the above mentioned dispute as to entitlement to the trust fund, which involved consideration of the phrase 'eredi legittimi'.

The starting point for the Master when considering this issue was Article 9 of the Trusts (Jersey) Law 1984. The relevance of Article 9 is that, generally, any question of interpretation of a Jersey law governed trust, including any question concerning any beneficial rights, is a matter for the law of Jersey only and no rule of foreign law will be applied to such a question. If applied strictly, this would have the effect of disregarding the construction of 'eredi legittimi' under Italian law, even though the trust instrument was written in Italian, and, further, no expert evidence of any foreign law would be permitted.

However, because the term 'eredi legittimi' was considered to be ambiguous under Jersey law, the Master held that the intention of the makers of the trust in 2002, including the background to the surrounding circumstances and the intent of those who agreed to the amendment to the trust instrument in 2009, was indeed relevant and needed to be ascertained. The Master stressed that his orders were not to be interpreted as him having applied a foreign law to determine the meaning of a Jersey law trust instrument.

He confirmed that this is prohibited by Article 9, but that he was allowing evidence of foreign law because without it 'eredi legittimi' could not be understood. He went on to confirm further that, had the phrase not been ambiguous and there had not been any intention to refer to Italian law, then Italian law would have been irrelevant.

Consequently, the Master made orders for discovery, for the exchange of witness statements and the exchange of the Italian law experts in order to determine what was intended by the phrase.

Which version of the trust was determinative — the Italian original or the English translation?

The English translation assisted both the court and the lawyers representing the parties to the dispute, but ultimately the approach of the court was to look to the original Italian text and indeed orders were made in order to ascertain the intent of the parties with regard to the Italian phrase 'eredi legittimi'.

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What are the private international law aspects of the case?

This is a case which is Italian through and through, other than the governing law and exclusive jurisdiction clauses in the trust deed. The decisions for the trust to be governed by Jersey law, and for any disputes to be dealt with exclusively by the Jersey courts, were decisions that the settlor was free to make when establishing the trust.

In doing so, as referred to above, Jersey law would be the starting point for the determination of the issues before the court and would have been the only applicable law had there been no ambiguity in the trust deed as to the meaning of 'eredi legittimi'. However, due to the said ambiguity, the court permitted and ordered Italian law expert evidence on the meaning of the phrase.

If 'eredi legittimi' was intended to have the meaning under the Italian Civil Code (as argued by the widow and her youngest two children), and the expert evidence and the witness statements ordered by the court point to that, then the court will take into account the provisions of that code in making its final decision.

On the other hand, if such evidence suggests that 'eredi legittimi' was intended to be determined by the will, then the court will need to wait for proceedings in Italy challenging the validity of the will (brought by the widow) to be determined before it can make its final order on the distribution.

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