COLLAS CRILL

Proportionate protection for all beneficiaries of an estate

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The Grand Court of the Cayman Islands (the **Court**) has recently held that where a lacuna existed in the applicable law, the Court's broader supervisory jurisdiction over the administration of estates will be applied to fill any statutory gaps, thus ensuring the administration of an estate can be effected as quickly and efficiently as possible.

The facts in *Uzzell v Wong Sam*[1] were quite straightforward. Executors of an estate accused each other of misconduct in relation to the administration of the estate. The Plaintiffs – who were the Testator's sons and included one of the executors – sensibly proposed that both executors should be replaced by an independent professional trustee, because the claims and counterclaims of mismanagement by the executors meant they had not been able to work together to progress the administration of the estate. However, that proposal was only acceptable to the Defendant executor if she could remain as an executor alongside the independent professional trustee. If that was not possible, she required the allegations of misconduct to be determined at a trial.

As a trial would have come at significant expense to the trust estate, it was decided that the Court should first determine whether the Court's broader jurisdiction circumvented the limits imposed by section 8 of the Succession Law (2006 Revision) (the **Law**); that is, whether the Court could overcome the statutory hurdle imposed by section 8 of the Law, which only permitted the removal of an executor who was unwilling to resign on grounds of '*neglect or misconduct*'.

In determining that the Court's jurisdiction was not limited to that conferred by section 8, the Court noted the following:

- The Law makes no provision for the Court to remove executors in the exercise of its discretion;
- Section 42 of the Law (**Section 42**) – which provided that where no provision was made by the Law or any other local law, the law and practice of England applied – was what the Court described as a '*succession equivalent*' to section 11 of the Grand Court Law, which provides, inter alia, that the Court '*shall possess and exercise, subject to this and any other law, the like jurisdiction...vested in or capable of being exercised in England*'; and
- Section 50 of the UK Administration of Justice Act 1985 (**Section 50**) – which gave the Court a discretionary power to remove and appoint a personal representative of an estate – forms part of Cayman Islands law pursuant to Section 42.

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The Court cited with approval the findings of the English High Court in *Schumacher v Clarke et al*[2], which held that the jurisdiction afforded to the Courts by Section 50 was '*intended to be used in a flexible and practical way without the need for costly and time-consuming factual inquiries*.' It also cited with approval the findings in *Schumacher* that '*the core concern of the court is what is in the best interests of the beneficiaries looking at their interests as a whole. The power of the court is not dependent on making adverse findings of fact , and it is not necessary for the plaintiff to prove wrongdoing*.'

Having noted that good relations between executors were '*essential*' for the administration of an estate, the Court considered it '*blindingly obvious*' that the existing executors should be replaced with an independent professional acceptable to both parties. Importantly, it meant that '*the legal rights of all beneficiaries, including the Defendant's, will of course receive proportionately equal protection*.'

While the judgment is consistent with the overriding objective, i.e. the need for the Court to deal with every matter in a just, expeditious and economical way (thereby saving expense), the judgment is nonetheless welcome. It once again demonstrates the Court's desire to ensure the proper administration of estates in a cost-effective manner wherever possible, rather than litigation which has financial and emotional consequences.

[1] Grand Court –Unreported – judgment 7 August 2020

[2] [2019] EWHC 1031 (Ch)

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