Michaelmas Term
[2014] UKPC 40
Privy Council Appeal No 0061 of 2014

JUDGMENT

Crociani and others (Appellants) *v* Crociani and others (Respondents)

and

Princess Camilla de Bourbon des Deux Siciles (Intervener)

From the Court of Appeal of the Bailiwick of Jersey

before

Lord Neuberger
Lord Mance
Lord Reed
Lord Hughes
Lord Hodge

JUDGMENT DELIVERED BY LORD NEUBERGER

ON

26 November 2014

Heard on 7 and 8 October 2014

Appellants
David Brownbill QC
John Kelleher
Edward Cumming
Daniel Warents
(Instructed by Charles Russell Speechlys LLP)

Respondents
Simon Taube QC
Eason Rajah QC
Anthony Robinson

(Instructed by Harcus Sinclair)

Intervener
Nicholas Le Poidevin QC
Nuno Santos-Costa
(Instructed by Collas Crill)

LORD NEUBERGER:

Background

Introductory

1. The principal issue on this appeal is whether proceedings ("the Proceedings") brought in the Royal Court of Jersey by Cristiana Crociani ("Cristiana") and others ("the respondents") against her mother Edoarda Crociani ("Mme Crociani") and others ("the appellants") should be stayed on the ground that they were brought in breach of an exclusive jurisdiction clause contained in clause 12 of a Trust Deed made on 24 December 1987 ("the 1987 Deed"). The determination of this issue involves resolving the following disputes, namely (i) (a) whether clause 12 of the 1987 Deed ("clause 12") is an exclusive jurisdiction clause, and (b) if so, in the events which have happened, whether it confers exclusive jurisdiction on the courts of Mauritius in respect of the claims made in the Proceedings, and (ii) if so, whether the Proceedings should be stayed. The appellants contend that the answer to these questions is yes, and the respondents argue that it is no.

2. The Royal Court (Commissioner Clyde-Smith, and Jurats Fisher and Blampied) held that (i) clause 12 did not confer exclusive jurisdiction on the Mauritian courts in this case as most of the claims were based on allegations against Jersey trustees and were governed by Jersey law, but that (ii) if the clause conferred exclusive jurisdiction on the Mauritian courts in respect of the claims, the Proceedings should nonetheless be permitted to proceed in Jersey. The Jersey Court of Appeal (the Hon Michael Beloff QC, Sir John Nutting Bt QC, and Mr John Martin QC) (i) considered that clause 12 was not concerned with jurisdiction, but went on to hold (ii) that, even if the clause did accord exclusive jurisdiction to the Mauritian courts, the Royal Court had reached a conclusion which it was entitled to reach, and with which the Court of Appeal should not interfere. Accordingly, they dismissed the appellants' appeal.

3. With the permission of the Court of Appeal, the appellants now appeal to Her Majesty. In order for their appeal to succeed, they have to establish each of the following points. First, on issue (i) that (a) contrary to the view of the Court of Appeal, and to the holding of the Royal Court, clause 12 is an exclusive jurisdiction clause, and (b) it confers exclusive jurisdiction in relation to the Proceedings on the Mauritian courts. Secondly, on issue (ii), (a) that the Royal Court erred in holding that the Proceedings could nonetheless proceed in Jersey,

and therefore the Court of Appeal erred in holding that they could not interfere with that holding, and (b) that Her Majesty ought therefore to reconsider the issue, and should decide that the Proceedings must be stayed.

4. The Proceedings have a fairly long substantive and procedural history, and it is only necessary to set out relatively few facts leading up to this appeal for the purpose of resolving it. This judgment will begin by setting out the strictly relevant background, and will then turn to the two main issues, namely, (i) whether the effect of clause 12 is to bestow exclusive jurisdiction on the courts of Mauritius, and (ii) if so, the appropriateness of permitting the Proceedings to continue in Jersey.

The facts

5. The 1987 Deed was entered into by Mme Crociani (therein described as "the Settlor"), for the purpose of creating a trust ("the Grand Trust"). The Deed began by stating that the Settlor settled a Secured Term Note ("the promissory note") on (i) the Settlor herself (who was then residing in Mexico), (ii) Girolamo Cartia (an Italian resident) and (iii) Bankamerica Trust and Banking Corporation ("Bankamerica", a Bahamas Corporation) as trustees ("the original trustees"). The intended beneficiaries included Mme Crociani's two daughters, Princess Camilla de Bourbon des Deux Siciles ("Camilla") and Cristiana, for whose benefit the promissory note was to be held in two equal shares. Thereafter, various other assets accrued to the Grand Trust.

6. The 1987 Deed conferred various powers on the trustees, including the right to pay income from their respective shares to Camilla and Cristiana, or, in each case, the Camillo Crociani Foundation IBC (Bahamas) Ltd ("the Foundation"), as well as the right to pay capital to Camilla or Cristiana from their respective shares. There were also provisions for each sister's share to pass to their respective issue on their respective deaths. Clause 11 empowered the trustees to pay the whole or any part of the trust funds to another trust.

7. The principally relevant provisions of the 1987 Deed for present purposes were clauses 12 and 15. Clause 15 provided that:

> "Except as herein provided, the validity and construction of this Agreement and each trust thereby created shall be governed by the law of the Commonwealth of The Bahamas which shall be the forum for the administration thereof."

Clause 12 was in these terms (and for convenience it is here divided into numbered sub-clauses, although it is a monolithic provision in the 1987 Deed):

> "(1) Notwithstanding any of the trusts, powers and provisions herein contained the Trustees shall have power at any time or times … at the absolute discretion of the Trustees …
>
> (2) to resign as Trustees and to appoint a new trustee or new trustees outside the jurisdiction at that time applicable to the trusts hereunder as Trustees hereof and
>
> (3) to declare that the trusts hereof shall be read and take effect according to the laws of the country of the residence or incorporation of such new Trustee or Trustees and
>
> (4) upon such appointment being made the then Trustee or Trustees shall immediately stand possessed of the Trust Fund upon trust for the new Trustee or Trustees as soon as possible
>
> (5) so that the Trust Fund shall continue to be held upon the trusts hereof but subject to and governed by the law of the country of residence or incorporation of such new Trustee or Trustees and
>
> (6) thereafter the rights of all persons and the construction and effect of each and every provision hereof shall be subject to the exclusive jurisdiction of and construed only according to the law of the said country which shall become the forum for the administration of the trusts hereunder
>
> (7) (but so that nonetheless the then Trustee or Trustees or the new Trustee or Trustees may by deed declare that the trusts hereof shall continue to be read and take effect according to the laws of the …Bahamas as provided by clause [15] hereof)
>
> (8) and clause [15] hereof shall take effect and be subject to the provisions hereinbefore declared by this Clause."

8. There have been various changes of trustee, but for present purposes it is only necessary to mention that from October 2007, the trustees were Mme Crociani, Paul Foortse and BNP Paribas Jersey Trust Corporation ("BNP") (together, "the

Jersey Trustees"), as a result of which it is common ground that the effect of clause 12 was that the proper law became that of Jersey. Between 2007 and 2011, various distributions were made from the Grand Trust. On 9 February 2010, the Jersey Trustees executed a deed ("the 2010 Deed") appointing all the assets of the Grand Trust (except the promissory note) to another trust, the Fortunate Trust, of which Mme Crociani was both a trustee (together with BNP) and a beneficiary (together with Camilla and Cristiana and their respective children). By clause 8, the parties to the 2010 Deed "irrevocably submit[ted] to the non-exclusive jurisdiction of the courts of [Jersey]".

9. Relations between Mme Crociani and Cristiana deteriorated in early 2011, and Cristiana moved out of her mother's home. In June 2011, Mme Crociani revoked the Fortunate Trust and withdrew all its assets for her benefit. Towards the end of 2011, Cristiana raised allegations that the Jersey Trustees had acted wrongly and threatened to take steps against them. On 10 February 2012, the Jersey Trustees executed a deed ("the 2012 Deed") under which they resigned as trustees, and appointed Appleby Trust (Mauritius) Ltd ("Appleby"), a company incorporated and registered in Mauritius, as sole trustee. Clause 12 of the 2012 Deed was in identical terms to clause 8 of the 2010 Deed. Cristiana's lawyers complained about the appointment of Appleby, following which, on 2 August 2012, the Jersey Trustees and Appleby executed a deed ("the Agate Appointment") appointing the assets the subject of the 2010 appointment into the Agate Trust, a Jersey trust whose terms had been declared the same day by Appleby and Mr Foortse.

10. On 3 July 2011 Cristiana's lawyers wrote a letter before action to the appellants' solicitors, who replied in detail on 17 August 2012, stating that they wished to make it "clear that if litigation cannot be avoided, they are all willing and able to explain themselves to the Royal Court", and warning that they would subpoena Cristiana to give evidence before the Royal Court if she persisted in her claim.

11. These Proceedings were then brought by the respondents, Cristiana and her two children (acting through a guardian ad litem), in the Royal Court on 18 January 2013 against the appellants, the Jersey Trustees and Appleby. In the Proceedings, the respondents allege that (i) certain payments, amounting in total to around €6.6m and $1.2m were wrongly made by the Jersey Trustees Cristiana but redirected to Mme Crociani, and that these monies should be reimbursed to the Grand Trust; (ii) the 2010 Deed was executed in breach of trust and that its effect should be reversed; (iii) the execution of the 2012 Deed was a fraud on the Jersey Trustees' powers, and that its effect should be reversed; and (iv) the Agate Appointment ought to be reversed. Cristiana also seeks various heads of consequential relief including the appointment of fresh trustees. (It is right to add that, although Camilla was not originally a party to the proceedings she has intervened in this appeal to support the appellants' case).

12. There have been several applications before the Royal Court, which have led to judgments considering some procedural issues in detail. The most recent substantial application to be considered was the appellants' application to stay the Proceedings on the ground that the effect of clause 12(6) was to confer exclusive jurisdiction on the courts of Mauritius. Judgment was given by the Commissioner on 2 October 2013 - [2013] JRC 194A - and his decision was upheld by the Court of Appeal on 7 April 2014 - [2014] JCA 089.

Does clause 12(6) confer exclusive jurisdiction on Mauritius courts?

Introductory

13. The appellants contend that the effect of clause 12 is to confer exclusive jurisdiction on the courts of the country in which any trustee, who replaces the original trustees, for the time being is resident or incorporated, and, since the execution of the 2012 Deed, that country has been Mauritius. The centrally relevant words are in clause 12(6), namely "thereafter the rights of all persons and the construction and effect of each and every provision hereof shall be subject to the exclusive jurisdiction of and construed only according to the law of the said country which shall become the forum for the administration of the trusts hereunder".

14. The appellants' first contention is that "the forum for the administration of the trusts" is a reference to the courts which have jurisdiction to decide and order how the trust's affairs are to be conducted - ie the courts which resolve disputes and give directions in relation to the Grand Trust. The respondents say that the words simply refer to the place where the affairs of the trust are run. The appellants' second contention is that the clause should be read as concerned with jurisdiction on the basis that it provides that the Grand Trust's affairs are to be "subject to the exclusive jurisdiction of … the said country". The respondents argue that that is a misreading of the clause, which provides that the affairs of the Grand Trust are to be "subject to the exclusive jurisdiction of … the law of the said country" - ie that it is a proper law provision.

15. There is obvious force and, at least on an initial reading, very considerable attraction, in the notion implicit in the appellants' second argument, that a phrase which states that all rights and issues under a trust "shall be subject to the exclusive jurisdiction" of a particular country is intended to confer exclusive jurisdiction on the courts of the country in question. The attraction of the contention, implicit in the appellants' first argument, that that is also the effect of a stipulation that that country is to be "the forum for the administration of the trust" is perhaps rather less immediate, but the appellants' case is that it is well

established that the "forum for the administration" of a trust is the place whose courts have jurisdiction to entertain proceedings in relation to the trust. It is convenient to consider that argument first.

"The forum of administration"

16. The appellants contend that the stipulation that "the said country … shall become the forum for the administration of the trusts hereunder" ("the forum stipulation") means that the courts of the country in question should have exclusive jurisdiction over claims concerned with the Grand Trust.

17. In the context of a trust, the Board accepts that the expression "forum of administration" can refer to the court which is to enforce the trust. As the appellants contend, that appears to be how the expression was used by Lord Westbury in *Attorney-General v Campbell* (1872) LR 5 HL 524, 530, by Stirling LJ in *Attorney-General v Jewish Colonization Associatio*n [1901] 1 KB 123, 145, and by Viscount Radcliffe (for the Board) in *Commissioner of Stamp Duties (Queensland) v Livingston* [1965] AC 694, 717. However, the Board sees no grounds for holding that the expression has such a well-established technical significance that it cannot have the meaning for which the respondents contend, namely the place where the trust is administered in the sense of its affairs being organised.

18. "Forum" can be a reference to a court, but it can equally well be used to refer to a place for any purpose, and that is how the draftsman of the 1987 Deed could have intended it to be understood. In that connection, the Board was shown a contemporaneous example of a trust precedent where the expression "forum" was used in the sense argued for by the respondents in this case (*Encyclopaedia of Forms and Precedents*, 4th edition, 1971, Vol 20, Form I:H:40). Additionally, it is to be noted that in two passages outside clauses 12 and 15, the draftsman of the 1987 Deed referred to "courts", and nowhere else did he refer to fora. Further, in relation to a trust, while "administration" is used to refer to the function of the court, it is also used to refer to the running of the trust. Thus, in section 52(1) of the Capital Gains Tax Act 1979 (re-enacted as section 69(1) of the Taxation of Chargeable Gains Act 1992), reference was made to the place where "the general administration of the trusts is ordinarily carried on". In any event, there is no reason to think that the draftsman of the 1987 Deed would have had in mind any of the three cases relied on by the appellants, which were concerned with succession duty and not with the interpretation of a trust instrument.

19. In the Board's view, the forum stipulation has the effect for which the respondents contend. First, it is perfectly feasible to think that the draftsman of

the 1987 Deed would consider it appropriate to stipulate where the Grand Trust's affairs were to be organised or run, as it could affect the way in which the trustees are taxed. It would have been appreciated by the draftsman of the 1987 Deed that it could be important in order to avoid tax to be able to show that a trust has no connection with a particular country, and in connection with some taxes the place of administration of the trust is of significance. In this connection, by way of example, reference can be made to section 52(1) of the Capital Gains Tax Act 1979, referred to in the preceding paragraph.

20. Secondly, if the stipulation was intended to indicate the country whose courts were to determine disputes, rather than the country in which the trust was to be managed, one would have expected the draftsman to refer to the courts of the country, as opposed to the country *simpliciter*, as being the forum. Thus, in the cases relied on by the appellants, Stirling LJ in *Jewish Colonization* at p 145 referred to "the English courts", not "England" as being "the proper forum of administration", and even though there was no express reference to the courts in *Livingston* at p 717, the forum was referred to as being "in New South Wales", not "New South Wales".

21. Thirdly, it would seem odd that, if the trustees of the Grand Trust decided to invoke clause 12(7), it would enable Appleby to reinstate Bahamian law as the proper law of the Grand Trust, while clause 12(6) would nonetheless require Mauritian, rather than the Bahamian, courts to have exclusive jurisdiction. Yet that is the effect of the appellants' case. It would be much less surprising if Appleby was forced to maintain Mauritius, its country of incorporation, as the place where the Grand Trust was managed, even if it had elected for Bahamian law to be the proper law of the trust, which would be the effect of the respondents' case.

22. Quite apart from these three points, even if the forum stipulation does mean that the courts of Mauritius have jurisdiction as a result of the 2012 Deed appointing Appleby as trustee of the Grand Trust, the Board doubts whether it is sufficiently clearly expressed to establish that it was intended that those courts should have exclusive jurisdiction. While the courts of Mauritius would have jurisdiction, it must be questionable whether the use of the definite article in the forum stipulation is strong enough on its own to confer exclusive jurisdiction. Particularly given that the word "exclusive" was used in the previous line of clause 12(6), it is very difficult to argue that the stipulation was intended to confer exclusive jurisdiction.

"*Subject to the exclusive jurisdiction*"

23. It is appropriate now to turn to the appellants' contention that the words "shall be subject to the exclusive jurisdiction" ("the exclusive stipulation") in clause 12(6) confer exclusive jurisdiction. As already stated, there is obvious force in the point that, at least when read on its own, the direction that certain issues should be "subject to the exclusive jurisdiction … of the said country" has the effect of conferring exclusive jurisdiction on the courts of that country. However, the respondents contend that, properly construed in its context, the exclusive stipulation has a very different purpose, namely to ensure that all issues concerning the Grand Trust are to be governed by the same law, thereby avoiding the risk of dépeçage - ie that different aspects of the Grand Trust were subject to different proper law. In the Board's view, the respondents' argument is to be preferred.

24. It is argued on behalf of the appellants that the respondents' interpretation of the exclusive stipulation results in it adding little, if anything, to the other provisions of clause 12(6). However, that overlooks the point that the exclusive stipulation with its emphasis on exclusivity would, on the respondents' interpretation, as just mentioned, avoid dépeçage, which the draftsman of the 1987 Deed would have regarded as a real possibility, in the light of article 9 of the Hague Convention on Trusts 1985, as was discussed in the 14th edition of *Underhill on the Law of Trusts and Trustees*, 1987, pp 823-838. Quite apart from this, clauses 12(5) and 12(6) are redolent of surplusage on any view. Particularly in a fairly prolix document, such as the 1987 Deed, which has not been tightly drafted, an argument based on surplusage is not particularly forceful.

25. The first problem with the appellants' construction of the exclusive stipulation arises from clause 15. Given that clause 15 contains no equivalent to the exclusive stipulation in clause 12, the appellants' argument produces the odd result that there is no exclusive jurisdiction clause applicable to the Grand Trust, unless and until not merely "a new trustee" is appointed, but a new trustee … outside the jurisdiction" is appointed. It is hard to see any sense in that. This argument does not apply to the respondents' argument, because there is no reason to think that any law but that of the Bahamas could have applied to every aspect of the Grand Trust when it was first created.

26. Secondly, reflecting the point already made in para 20 above, if the appellants' argument was correct, one would have expected the parties to refer to the courts of "the said country", rather than simply to "the said country". Thirdly, as discussed in para 21 above the effect of clause 12(7) would be odd, if it had the meaning for which the appellants contend.

27. Fourthly, the words "shall be subject to the exclusive jurisdiction of" are located between two provisions of clause 12(6) which are ultimately solely concerned with the law applicable to the Grand Trust, namely "subject to and governed by the law of the country" in question, and "construed only according to the law" of the country in question. It seems unlikely that the draftsman of the 1987 Deed intended to insert a phrase conferring exclusive jurisdiction between two phrases concerning the applicable law for the purpose of construing and enforcing the terms of the Grand Trust.

28. Fifthly, there appears to the Board to be a strong case for contending that, if the exclusive stipulation has the meaning which the appellants suggest, it is the Royal Court which has exclusive jurisdiction pursuant to clause 12(6) in relation to the first three of the four claims summarised in para 11 above. The parties are agreed (rightly in the Board's view) that (other than as regards the fourth allegation in relation to the Agate Appointment) the substantive law by which the breaches and abuses alleged in the Proceedings must be judged is that of Jersey, as the proper law of the Grand Trust under clause 12(6) was Jersey law at the time those breaches and abuses were allegedly committed. In the light of the way in which clause 12(6) is drafted, there are powerful grounds for saying that, at least as matter of language, all aspects referred to in clause 12(6) are to be assessed by reference to the date on which the breach or abuse occurred. If the "rights" of any party and the "construction" of the 1987 Deed are to be fixed by reference to the law applicable at the date the rights in question were allegedly infringed, it seems to accord with the language of the clause that the "exclusive jurisdiction" should also be determined by reference to that date.

29. However, all parties and the courts below have proceeded on the basis that, if the clause confers exclusive jurisdiction on any courts in respect of the first three claims, it would be on the Mauritian courts. It is unnecessary to reach a firm view on the issue. For present purposes, the potential for such confusion would seem to support the respondents' case on the interpretation of the exclusive stipulation, because it demonstrates the lack of clarity in the appellants' interpretation, and if a provision in a document is said to be an exclusive jurisdiction clause, one would expect it to be clear in its effect.

Conclusion on the first issue

30. In the Board's view, (i) the Court of Appeal was right in concluding that no part of clause 12(6) of the 1987 Deed was concerned with identifying which country's courts should have jurisdiction to determine disputes relating to the Grand Trust, but (ii) if that conclusion is wrong, (a) it may well be that the clause would only confer non-exclusive jurisdiction on the courts of the country to which it refers, and (b) there would seem to be a strong case for saying that its

effect was that the Jersey courts had jurisdiction in relation to three out of the four principal claims brought in these proceedings.

31. It is right to mention that counsel referred to a number of cases (including *EMM Capricorn Trustees Ltd v Compass Trustees Limited* [2001] JLR 205, *Green v Jernigan* (2003) 6 ITELR 330, *Koonmen v Bender* (2002) 6 ITELR 568, *Helmsman Ltd v Bank of New York Trust Company (Cayman) Ltd* [2009] CILR 490, *Re Representation of AA* [2010] JRC 164 and *Re A Trust* [2012] Bda LR 79) where different courts have considered provisions in trust deeds which bore significant similarities with clause 12(6) of the 1987 Deed. The decisions are not all mutually consistent, some of them involved concessions and the remainder depended on the arguments advanced, they all inevitably turn on the precise wording of the clause in question, and none of them is binding on the Board. No disrespect is intended to the Judges involved in those decisions by not referring to them further, but they do not cause the Board to change its view. If, by the time the 1987 Deed had been executed, there had been a well-established judicial consensus that either or both expressions relied on by the appellants had the meaning for which they contend, then the Board may well have reached a different conclusion.

32. This conclusion means that it is unnecessary to consider the second issue. However, it was fully argued and it raises a point of some interest. Accordingly, the Board proposes to address it.

If Mauritius courts have exclusive jurisdiction, should the Proceedings continue?

The correct approach to be applied

33. In the context of contractual exclusive jurisdiction clauses, the approach of the court to a claim brought in another jurisdiction was authoritatively described by Lord Bingham of Cornhill in *Donohue v Armco Ltd* [2001] UKHL 64, [2002] 1 All ER 749, para 24 in these terms:

> "If contracting parties agree to give a particular court exclusive jurisdiction to rule on claims between those parties, and a claim falling within the scope of the agreement is made in proceedings in a forum other than that which the parties have agreed, the English court will ordinarily exercise its discretion … to secure compliance with the contractual bargain, unless the party suing in the noncontractual forum (the burden being on him) can show strong reasons for suing in that forum. I use the word 'ordinarily' to recognise that where an exercise of discretion is called for there

> can be no absolute or inflexible rule governing that exercise, and also that a party may lose his claim to equitable relief by dilatoriness or other unconscionable conduct. But the general rule is clear: where parties have bound themselves by an exclusive jurisdiction clause effect should ordinarily be given to that obligation in the absence of strong reasons for departing from it. Whether a party can show strong reasons, sufficient to displace the other party's prima facie entitlement to enforce the contractual bargain, will depend on all the facts and circumstances of the particular case."

34. As Lord Hobhouse of Woodborough explained in para 45 of that case, the defendant to such a claim "has a contractual right to have the contract enforced" and his "right specifically to enforce his contract can only be displaced by strong reasons being shown by the opposite party why an injunction should not be granted". Thus, where a claim has been brought in a court in breach of a contractual exclusive jurisdiction clause, the onus is on the claimant to justify that claim continuing, and to discharge the onus, the claimant must normally establish "strong reasons" for doing so. Counsel referred to other cases where judges have expressed themselves somewhat differently, but the Board considers that the position is accurately stated by Lord Bingham and Lord Hobhouse, and that any statement which is said to involve a different approach should not be followed.

35. The question of principle which arises in this case is whether the same test applies to an exclusive jurisdiction clause in a deed of trust. Contrary to the appellants' argument, the Board is of the opinion that it should be less difficult for a beneficiary to resist the enforcement of an exclusive jurisdiction clause in a trust deed than for a contracting party to resist the enforcement of such a clause in a contract. The Board is of the opinion that in the case of a trust deed, the weight to be given to an exclusive jurisdiction clause is less than the weight to be given to such a clause in a contract. Given that a balancing exercise is involved, this could also be expressed by saying that the strength of the case that needs to be made out to avoid the enforcement of such a clause is less great where the clause is in a trust deed.

36. In the case of a clause in a trust, the court is not faced with the argument that it should hold a contracting party to her contractual bargain. It is, of course, true that a beneficiary, who wishes to take advantage of a trust can be expected to accept that she is bound by the terms of the trust, but it is not a commitment of the same order as a contracting party being bound by the terms of a commercial contract. Where, as here (and as presumably would usually be the case), it is a beneficiary who wishes to avoid the clause and the trustees who wish to enforce it, one would normally expect the trustees to come up with a good reason for

adhering to the clause, albeit that their failure to do so would not prevent them from invoking the presumption that the clause should be enforced. In the case of a trust, unlike a contract, the court has an inherent jurisdiction to supervise the administration of the trust – see eg *Schmidt v Rosewood Trust Ltd* [2003] UKPC 26, [2003] 2 AC 709 para 51, where Lord Walker of Gestingthorpe referred to "the court's inherent jurisdiction to supervise, and if necessary to intervene in, the administration of trusts". This is not to suggest that a court has some freewheeling unfettered discretion to do whatever seems fair when it comes to trusts. However, what is clear is that the court does have a power to supervise the administration of trusts, primarily to protect the interests of beneficiaries, which represents a clear and, for present purposes, significant distinction between trusts and contracts.

37. Accordingly, the Board considers that, while it is right to confirm that a trustee is *prima facie* entitled to insist on and enforce an exclusive jurisdiction clause in a trust deed, the weight to be given to the existence of the clause is less (or the strength of the arguments needed to outweigh the effect of the clause is less) than where one contracting party is seeking to enforce a contractual exclusive jurisdiction clause against another contracting party. It is right to mention that counsel referred to some cases (including some of those identified in para 31 above) in which it seems to have been assumed that the weight was the same, but it does not appear to the Board that the issue was fully discussed or considered in any of those cases, which are in any event not binding on the Board.

Application of the correct approach to the facts of the present case

38. As already explained, in the Royal Court the Commissioner held that, even on the assumption that clause 12 conferred exclusive jurisdiction on the courts of Mauritius, the Proceedings should nonetheless be permitted to continue in the Jersey courts, and the Court of Appeal held that he had not erred in its approach and had reached a defensible conclusion on this issue, and therefore declined to interfere.

39. The Board considers that there is considerable force in the appellants' argument that the Commissioner did not approach this issue correctly. This is partly because he considered the issue on the basis that Jersey was the appropriate forum for the Proceedings "on ordinary principles", and clause 12 was simply one of the factors to take into account, and partly because he gave great weight to the jurisdiction clause in the 2012 Deed. In a trust case, as in a contract case, it is appropriate to start with the exclusive jurisdiction clause and ask whether arguments of the party seeking to avoid it (after taking into account the arguments in support of enforcing it) outweigh the simple point that *prima facie*

effect should be given to such a clause. And the fact that the appellants were prepared to accept the jurisdiction of the Jersey courts in connection with disputes over the 2012 Deed, while not irrelevant, is of limited weight.

40. It is, however, unnecessary to decide whether these two features undermine the Commissioner's judgment (which, in fairness to him, was carefully considered and fully explained). That is because, if one assumes in the appellants' favour that the reasoning of the Commissioner is assailable, that would mean that the Board would have to consider the issue for itself, and the Board has reached the conclusion that the Proceedings should not be stayed. This is for the following reasons.

41. First, it appears that there are a number of trust law issues raised by the Proceedings, and the great majority of those issues will be governed by Jersey law, as the facts relating to three of the four main claims identified in para 11 above occurred between October 2007 and February 2012. Thus, there may well be issues as to charity law, the status of Cristiana's children, the law on fraud on a power, the correctness of *Cloutte v Storey* [1911] 1 Ch 18, and the relevance of a trustee's motives. The Jersey courts have very extensive experience of dealing with trust litigation, and are plainly more familiar with Jersey law than any other court would be. The Board was told that Mauritius had no trust law until 1989, and there appear to be very few cases in the Mauritius courts involving trust law. The fact that Mauritian trust law is based on Channel Islands trust law slightly mitigates the force of this point, but it is clear even from a cursory look that there are significant differences.

42. Secondly, given that the trustee responsible for the administration of the trust was in Jersey at the time of the events which give rise to three of the four main claims, it is a reasonable assumption that the documentation and many of the witnesses will be in Jersey.

43. Thirdly, this is a case where the (assumed) exclusive jurisdiction clause is one which provides for a shifting jurisdiction. While that of itself may not be a relevant factor, the important point is that the purpose of the clause was presumably that proceedings should be brought in the courts of the country where the trustee was based and whose law governed the trusts. This reinforces the preceding two points.

44. Fourthly, the appellants made it clear in correspondence before the Proceedings were issued that they were "willing and able to explain themselves to the Royal Court". While the Board does not consider that this could give rise to an estoppel, it was a clear and unequivocal statement to the respondents that the appellants

were content with, indeed expecting, the respondents' claims to be pursued in Jersey.

45. Fifthly, reinforcing this point, the appellants were plainly content with the Jersey courts as the forum for determining disputes in connection with the Grand Trust, in so far as they arose under the 2012 Deed. As already indicated, this is a relatively small point, but it has some force.

46. Another reason in connection with the 2012 Deed was identified by the respondents. They point out that the only reason that the appellants are able to argue that (if it is an exclusive jurisdiction clause) clause 12 confers exclusive jurisdiction on the Mauritian courts, as opposed to the Jersey courts, is because of the execution of the 2012 Deed, and that one of the respondents' claims involves seeking to reverse the effect of, or to set aside, that Deed, and that, if it were set aside, the Royal Court, rather than the Mauritian courts, would, even on the appellants' case, be the appropriate forum. In the Board's opinion, this argument raises some difficult issues which could have some fairly wide implications, and, as the respondents succeed without the need to rely on the point, it is better to say nothing about it.

47. Sixthly, and negatively, the reasons advanced by the appellants for preferring the courts of Mauritius are unimpressive. Mme Crociani visits Mauritius for holidays (albeit long holidays) and has some other connections there. Camilla supports her mother on this issue, but she was not able to point to any additional reasons favouring Mauritius.

Conclusion on the second issue

48. For these reasons, even if clause 12 conferred exclusive jurisdiction on the courts of Mauritius in relation to the four claims raised by the respondents, the Board considers that no stay should be granted in respect of the Proceedings in the Royal Court.

Conclusion

49. At the beginning of this judgment, reference was made to the fact that the matters so far considered represented the principal issue between the parties. The remaining issue concerns the question whether certain other claims (referred to in these proceedings as the Crica claims) brought by Cristiana in relation to various transfers of shares in a BVI company called Crica Investments Ltd should be heard in the BVI or Jersey. This issue can be disposed of very shortly.

There is no question of an exclusive jurisdiction clause in relation to the Crica claims, they involve some of the same parties as the Proceedings, and there will be overlapping issues, not least because credit and credibility will be in issue. Having decided that the Proceedings could continue in the Royal Court, the Commissioner decided that it was appropriate that the Crica claims could, indeed should, be brought there too. While it is fair to say that there were arguments in favour of the Crica claims proceeding in the BVI, the decision that they could be heard in Jersey with the Proceedings was, as the Court of Appeal held, unimpeachable.

50. In these circumstances, the Board will humbly advise Her Majesty that this appeal should be dismissed.