

Inter Pleader Proceedings and Constructive Trustee Arguments

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The Manx courts recently had the opportunity to review, with the benefit of relevant UK precedent, the approach to be adopted to an inter pleader application. With the same proceedings, the court also considered what relief may be afforded to a financial institution which may hold funds on a form of constructive trust.

The particular facts of the decision before the court involved potentially competing claims to a bank account held in joint names and involved a potential interest in the funds by an off-island police force and a criminal investigation in another jurisdiction, into allegations of money laundering the proceeds of drug trafficking.

Order 10A of the Rules of the Court of the Isle of Man provides:

"I(1) Where a person is under a liability in respect of a debt or in respect of any money, goods or chattels, and he is, or expects to be, sued for or in respect of that debt or money or those goods or chattels by two or more persons making adverse claims thereto, the person under liability may apply to the court for relief by way of inter pleader."

Deemster Cain cited and followed the UK decision of *Watson v Park Royal Caterers* (1961) 1WLR 727 for the purposes of defining the extent of expectation of 'a rival claim' and the extent of an expectation to be sued, sufficient for these purposes.

The court adopted the English court's approach and also cited, with approval, the summary of the position, under English law, in the English Pre-Court Practice 1999 paragraph 17(1)(7) as the tests to be applied within an inter pleader application.

On the facts of this application, the court declined to grant inter pleader relief.

However, the petitioners also sought direction from the court as to whether they could be treated as a trustee in terms of Section 61 of the Trustee Act 1961 (of Tynwald).

Section 61 provides:

"any trustee shall be at liberty...to apply...for the opinion, advice or direction of the court on any question respecting...the trust property... [T]he trustee, acting upon the direction given by the said judge, shall be deemed, so far as regards his own responsibility, to discharge his duties as such trustee in the subject matter of the application..."

(2) [t]he expression 'trustee' shall be deemed to include a trust... a trustee whose trust arises by construction or on implication on law, as well as an expressed trustee."

The petitioners referred to *Finers v Miro* (1991) 1 ALL ER 182. The deemster also considered the decisions of the English courts in *Bank of Scotland v A Limited* HC (1999 0498, June 23 2000), *Royal Bruni Airlines v Tan* (1995) 2 AC 378 and *Barden v SG Developpement Du Commerce SA* [1992] 4 ALL ER 161.

Considering the facts of the petition and analyzing the authorities, Cain concluded that it is open to a bank to seek directions from a court if it has a reasonable apprehension that it might be held liable as a constructive trustee, and that the court has the power to give directions under Section 61 of the Trustee Act. However the fact that the court has that power "must not be regarded as a substitute for financial institutions taking decisions which would be their commercial responsibility... [T]he court's powers are discretionary and should only be used where there is a real dilemma which requires the court's intervention."

Of particular relevance and potential comfort to all financial institutions were two other indications from the court as follows:

"It is almost inconceivable that a bank which takes the initiative in seeking the court's guidance should subsequently be held to an act of dishonesty, so as to incur accessory liability. Forthly, an honest and reasonable banker may well have doubts but yet, in all the circumstances, be prepared to accept an answer to an enquiry."

While the court noted that the facts of the particular case before it were unusual, it did find that the institution held funds on constructive trust and issued a direction to them as to how to deal with those funds.

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