

Jersey Court saves charitable trust through severance

Briefing Summary: *'A win for promising, intelligent, young Greek men: Jersey Court saves charitable trust through severance'* In the Matter of the Estate of the Late Constantin Mattas [2024] JRC 068, the Royal Court of Jersey was asked to consider the construction and validity of a 1970s Jersey law will trust established by a doctor who had lived in Jersey for a number of years, but was originally of Greek origin.

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Content Authors: Eleanor Davies , Olivia Hunt

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What were the facts

Dr Constantin Mattas ("**Dr Mattas**") passed away on 30 November 1979, domiciled and resident in Jersey. Dr Mattas died without a spouse or children, but he left an elaborate will directing how he wished his movable assets to be dealt with (the "**Will**").

Key Contacts



Eleanor Davies
SENIOR ASSOCIATE,
JERSEY
+44(0)1534 822310

[EMAIL ELEANOR](#)



Olivia Hunt
ASSOCIATE, LONDON
+44 (0)20 8106 6751

[EMAIL OLIVIA](#)

OFFSHORE LAW SPECIALISTS

BERMUDA BRITISH VIRGIN ISLANDS CAYMAN ISLANDS GUERNSEY JERSEY

CAPE TOWN HONG KONG SAR LONDON SINGAPORE

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Dr Mattas was survived by his two nephews, Philippe and Jean-Pierre Mattas (the "**Nephews**"). Under his Will a number of specific legacies were made, with the residue to be used to establish a trust (the "**Trust**"). The terms of the Trust directed the trustee to accumulate the Trust income for 20 years, following which the Trustee was to pay the income generated by the Trust investments to the Nephews for the remainder of their lifetimes. On the death of the first Nephew, any income that would otherwise have been paid to him was to be accrued to capital and upon the death of the second Nephew, the entirety of the fund was directed to be paid to the Greek Government for the purpose of establishing a *Prêt d'Honneur Trust*. Under the *Prêt d'Honneur Trust*, Dr Mattas intended for the Greek Government to apply the Trust capital and income to establish a scholarship fund to provide interest-free loans to "*intelligent and promising young men of Orthodox Greek Church religious belief born in Greece of Greek Nationals*", who wished to pursue university education and who had undertaken to practise their profession in Greece for ten years afterwards and to repay the loans. However, the scholarship fund was subject to a proviso in favour of the children and grandchildren of the Nephews, giving them access to the fund in priority to members of the wider beneficial class. Accordingly, the Trust had a dual purpose as, whilst the general nature of the scholarship fund appeared to be charitable, the proviso introduced a private element to the purpose of the trust.

What were the issues?

Having regard to the uncertainty of the beneficial class of the Trust and the Trust's partly charitable and partly non-charitable purposes, the Trustee sought the Court's guidance. The Court was asked to consider:

- Whether Dr Mattas intended to create a trust in his Will;
- If so, whether the Trust was valid due to:
 - lack of certainty of beneficiaries; or
 - its indefinite duration;
- If the Trust was not a valid non-charitable trust, whether the Trust was nevertheless a valid charitable trust; and
- Given the mixed purposes of the Trust, whether the charitable aspects could be saved or severed.

Intention to create a trust

In the first instance, the Court had to grapple with the issue of whether Dr Mattas had intended to create a trust in his Will at all. Despite the submissions made on behalf of the Greek Government that Dr Mattas instead intended to make a gift with merely an expression of wishes, or a gift subject to a condition subsequent, the Court established that Dr Mattas had, in fact, intended to create a trust in his Will.

Validity of the trust

Accordingly, the Court proceeded to consider the validity of the Trust. It is well established that there must be certainty of objects for a non-charitable trust to be valid under Jersey law. There was no dispute that it could be ascertained whether any given person was born in Greece, or whether they are a man. It was also not disputed that it could be ascertained whether any given individual is, or is not, of Orthodox Greek religious belief.

The Court, however, determined that the category "young" was too imprecise. *"At what point does a person cease to be young?"*, the Court asked: was, for example, a 35-year old "young"? Various suggestions were made by the parties, including that the expression included anyone below the age of retirement in Greece. For similar reasons, it was held that the adjectives "promising" and "intelligent" also lacked sufficient precision. The suggestion that those words were not intended to be definitions of the beneficial class but merely criteria for selection within a class was rejected. In the absence of any objective criteria specified in the Trust to assist in resolving any uncertainty, the Court held that, if sought to be upheld as a non-charitable trust, the Trust was void for want of certainty of objects.

The Court went on to provide some helpful insight on the application of the rule against perpetuities under Jersey law.

Advice obtained from English counsel stated that under English law, the Trust (unless found to be charitable) would be void as its indefinite duration breached the rule against perpetuities. It was therefore a question for the Court as to whether this principle had an equivalent in Jersey law. As the Will was executed before the enactment of the Trusts (Jersey) Law 1984 (the "**1984 Law**"), the Court directed that the question of whether the Trust was void due to indefinite duration had to be considered without reference to the 1984 Law.

Upon hearing the parties' submissions, the Court concluded that there was nothing in the customary law of Jersey which conflicted with the rule of English trust law prohibiting trusts of indefinite duration (other than charitable trusts). Accordingly, the English rule formed part of the Jersey law of trusts as it existed before 1984. It thus followed that, unless the Trust was a valid charitable trust, the Trust would be void as being in breach of the rule prohibiting trusts of indefinite duration.

It is well established under English and indeed Jersey law that the requirement for certainty of objects does not apply in relation to a charitable trust, and that such trusts can also last indefinitely. The Court was therefore tasked with considering whether the Trust was indeed a valid charitable trust. As to this, the Court was satisfied that insofar as the Trust furthered the advancement of the education of young Greek men this satisfied the requirements for a valid charitable trust. However, the provisions relating to further education for the children and grandchildren of the Nephews could not be charitable as they did not benefit a cross-section of the community.

Accordingly, the question for the Court was whether the terms of the Trust providing for benefit to the children and grandchildren of the Nephews (those terms being void as non-charitable dispositions on account of perpetuity) meant that the Trust as a whole would fail, or whether the charitable aspect of the Trust could be saved. Whilst the starting point has been that trusts that are not for exclusively charitable purposes cannot be upheld as valid charitable trusts, the Court had regard to the English case of *Re Coxen* [1984] 1 Ch 747 and considered that the Trust fell into what Jenkin J termed "Category (d)", which provides that there is an exception where, as a matter of construction, a gift to charity is subject to payments required to give effect to a non-charitable purpose. In such a case, where the non-charitable element fails, the whole of the property can be applied for the charitable purpose. Accordingly, the Court held that on the death of the survivor of the Nephews, all of the residuary estate will be held on charitable trust for the education of young Greek men, without being subject to the proviso which afforded priority to the children and grandchildren of the Nephews.

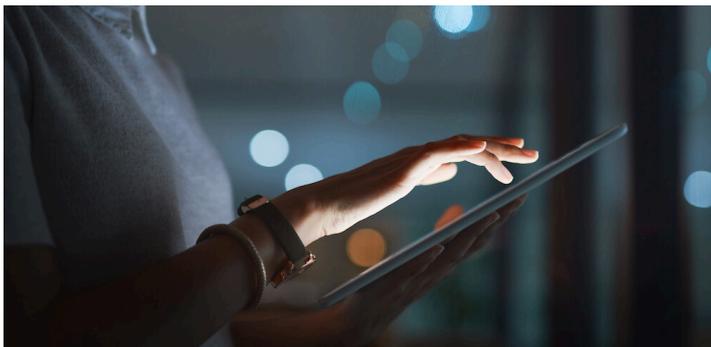
What happens next?

The Judgment provides important clarification of the basic principles applicable to the construction of charitable and non-charitable trusts, including the beneficiary principle (certainty of objects), the rule against perpetuities for non-charitable trust, and potential severance of valid charitable and invalid non-charitable purposes. Whilst the unique facts of this case are unlikely to re-appear in the future, the case has clarified the rules which apply to trusts settled prior to the introduction of the 1984 Law, including the rule against perpetuities. Whilst the Judgment indicates that Courts are willing, in certain circumstances, to save charitable trusts by severing invalid non-charitable purposes, this is not a blanket approach and specialist advice should be taken.

From a practical perspective, trustees may wish to consider any unusual features in the description of the beneficial class they encounter in trust instruments, especially when assuming trusteeship, or are requested to incorporate them into trust instruments, and take advice if there is any uncertainty.

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