

Contesting foreign Wills – new guidance from the BVI Courts

Service area / [Trusts and Private Wealth, Dispute Resolution and Litigation](#)

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Estate litigation continues to be on the rise across both the Cayman Islands and the British Virgin Islands (BVI), with an increasing number of proceedings involving some form of claim to assets in the estate of a deceased or against the actions of an executor. This trend is worth monitoring, and undoubtedly reflective of generational change as those who set up companies or transferred interests into these jurisdictions decades ago pass on and leave their families fighting for control of the assets they have left behind.

Contesting a foreign oral will

In a recent judgement entitled *In the Matter of the Estate of Sheikh Saoud Mohamed A.A. Al Thani (Deceased)*, a challenge to the validity of a foreign oral will was made in the BVI before the High Court (the **BVI Court**). The oral will had been made by the deceased, who was a Qatari national and domiciled in Qatar at the time of his death. As was customary, at age 24 he had attended before a judge of the Sharia Court in Qatar to formulate his will. At the time of his death he was still quite young, aged just 48 years.

The claimants in the BVI case were the deceased's sister, his niece, and a character described as the deceased "former right hand man" (the **BVI Claimants**). The BVI Claimants estimated that the deceased had left an estate worth around US\$1 billion, which comprised properties in London, artworks, and jewels. The defendants in the BVI case, who were the deceased's widow and his daughter (the **BVI Defendants**), said

that this figure was greatly inflated and in fact his estate was actually only worth around US\$15 million.

The Qatari Proceedings and the BVI Proceedings

A few months after his death, BVI Defendants had applied to the Qatari court contending that the will made when the deceased was 24 was not valid and enforceable and arguing that the deceased had subsequently revoked it (the **Qatari Proceedings**). Around a month later, the BVI Defendants also made an ex parte application for a grant of letters of administration in the deceased's estate from the BVI Court – seeking to take control of the shares in a valuable BVI company owned by the deceased. Crucially, the affidavit filed in support of the BVI application for letters of administration did not disclose the existence of the oral will or the fact of the Qatari Proceedings. The grant of letters of administration was issued by the BVI court.

The Qatari Proceedings ran through some 14 hearings over the course of a year and involved three appeals; each was very convoluted and hotly contested by the warring factions of the family. Ultimately, the Qatari court confirmed that the deceased's oral will was valid and enforceable. The BVI Claimants then approached the BVI Court to revoke the grant of letters of administration obtained by the deceased's widow and daughter, and to obtain probate of the oral will.

1 - BVIHCV 2019/0230, unreported, Ellis J

Recognition of a foreign oral will – and estoppel by judgment

On approach to the High Court, the BVI Claimants put forward for determination as a preliminary issue the question of whether the BVI Defendants were estopped from contending that the oral will was invalid or unenforceable by virtue of the Qatari judgment which had upheld the validity of the oral will. Ultimately, the Honourable Justice Ellis determined that the BVI Defendants were so estopped and formally recognised the foreign oral will as valid.

The judgment contains a very helpful analysis, running to many pages, of the principles of estoppel by judgment and also principles of private international law relevant in the context of contested estate matters. Of most assistance, the judgment confirms that it was appropriate, in the absence of applicable local legislation, for the BVI Court to rely on English common law principles of private international law to determine issues of succession to local assets owned by a foreign domiciled person who has died holding assets situated in the BVI. The BVI Court held that the overarching consideration to be given priority is whether the court of domicile has already reached a determination about the estate of the deceased. If the foreign court has done so, then the BVI Court will hold itself bound by that determination. The BVI Court found that the Qatari Court of Appeal had effectively already determined the validity under BVI law through the application of common law principles of private international law.

The judgment is also a helpful snapshot of the types of arguments that might be pursued in cross-border estate disputes. By way of example, an interesting argument put forward by the BVI Defendants was that the recognition of the Qatari judgment was contrary to public policy because Sharia law permits punishments that would be outlawed in the BVI Constitution, and treats men and woman unequally. These arguments are not analysed in any detail in the judgment, because the BVI Defendants appear to have conceded early on that while some features of Sharia law might be objectionable in the BVI, they were not of sufficient relevance to the matters before the court to make recognition of the judgment contrary to public policy.

Conclusion

Ultimately, the BVI Court found that the judgment of the Qatari Court of Appeal was conclusive for the purposes of determining the validity of the will and the validity issue could not be further litigated in the BVI. The case is a fascinating one, and the judgment itself will be a helpful guide for families, executors, and practitioners faced with similar issues in the future.



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