

Enforcement of foreign wills – updated guidance from the BVI courts

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

Legal jurisdiction / [British Virgin Islands](#)

Date / [May 2022](#)

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. A helpful new judgement from the Eastern Caribbean Court of Appeal (the **Appeal Court**) handed down on 23 March 2022, provides helpful further insight into family disputes over wills.

Contesting a foreign oral will

The appeal proceedings arose from the findings in a judgment entitled *In the Matter of the Estate of Sheikh Saoud Mohamed A.A. Al Thani (Deceased)*, which concerned 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 and validly record his will under Qatari law. At the time of his death he was still quite young, aged just 48 years.

A dispute arose both over the value of the deceased's estate, as well as the deceased's will. The dispute found its way before the BVI Court. 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 valuable jewels. The defendants in the BVI case, who were the deceased's widow and his daughter and first son (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, the 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 on the basis that the deceased had died intestate.

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

¹ BVIHCV 2019/0230, unreported, Ellis J

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 BVI Defendants, and to obtain probate of the oral will.

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 “**BVI Judgment**”).

The BVI 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. Importantly, the judgment confirmed 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.

Appeal

The BVI Defendants appealed the BVI Judgment. Their appeal was dismissed by the Appeal Court, which confirmed the well-established principles applicable to *res judicata* and issue estoppel and found that the Qatari Proceedings and the BVI Proceedings should not be re-litigated on the basis that they were materially identical. The conclusions reached in those proceedings were not to be disturbed: a foreign oral will found to be valid under the law of the deceased's jurisdiction of domicile will be considered valid and enforceable in the BVI for the purposes of succession of the deceased's movable property. And, while the BVI Defendants had sought to rely on section 245 of the BVI Business Companies Act 2004 to support their position that the shares held by the deceased at the time of death were in fact immovable assets, the Appeal Court determined that while the company shares were located in the BVI for the purposes of title, they were still movable property for succession purposes.

Conclusions

The judgment is also a helpful snapshot of the types of arguments that might be pursued in cross-border estate disputes as family estates become more complicated. By way of example, an interesting argument put forward by the BVI Defendants at an early stage in the proceedings 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.

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.



FIND US

Carey Olsen (BVI) L.P.
Rodus Building
PO Box 3093
Road Town
Tortola VG1110
British Virgin Islands

T +1 284 394 4030
E bvi@careyolsen.com



FOLLOW US

Visit our trusts and private wealth team at careyolsen.com



PLEASE NOTE

This briefing is only intended to provide a very general overview of the matters to which it relates. It is not intended as legal advice and should not be relied on as such. © Carey Olsen 2022.