Personal liability clarified: Investec v Glenalla in the Court of Appeal

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In a decision that will bring a sigh of relief to trustees in both Guernsey and Jersey, the Guernsey Court of Appeal has clarified the extent of a trustee's liability when transacting with third parties in Investec Trust (Guernsey) Limited et al v Glenalla Properties Limited et al [28/2014].

Readers may recall that last year the Guernsey Royal Court decided that the provisions of Article 32 of the Trusts (Jersey) Law, 1984 ("**Jersey Trust Law**") (which is very similar to the provisions of Section 42 of the Trusts (Guernsey) Law, 2007 ("**Guernsey Trust Law**")) were not as far and wide reaching as trustees may previously have thought. Article 32 of the Jersey Trust Law (and likewise, section 42 in Guernsey) protects trustees when they contract with third parties on behalf of the trust (for example, where trustees borrow from a bank) and ensures that, as long as the third party is aware that the trustee is contracting as a trustee of a trust, the trustee's liability will be limited to the value of the trust fund. Importantly, the trustee will not be personally liable under the transaction and so creditors cannot attach their rights to the trustee's personal assets.

However, in the Royal Court decision in Investec v Glenalla the Court determined that this provision did not apply in all circumstances. Those familiar with this case will recall that in this case the former trustees, both of which were Guernsey companies, were administering a Jersey law trust, which owed monies to various BVI companies. These companies were in liquidation and the liquidator had demanded repayment of the outstanding loan monies and so the former trustees applied to, importantly, the Guernsey Royal Court for a declaration that they were not personally liable to repay these monies but instead that their liability to repay was limited to the value of the trust fund of the Jersey trust.

The Guernsey Royal Court disagreed. The Royal Court determined that it was unable to apply Article 32 of the Jersey Trust Law to the questions brought before it by the former trustee because Section 65 of the Guernsey Trust Law (which confirms that a foreign trust shall be interpreted by its proper law) did not require the Court to apply Article 32 because the liquidator's claims did not involve the enforcement of the trusts of the trust.

This decision left Guernsey law in a state of flux and it seemed that the benefit of Article 32 of the Jersey Trust Law (or likewise Section 42 of the Guernsey Trust Law) was limited in its application to trustees and may only be useful to trustees if claims were made to the Courts of the proper law of the trust.

However, the Court of Appeal has now reversed the Royal Court's decision on this point and held that the former trustees in this case were not personally liable to repay the loans but instead that they could rely on Article 32 of the Jersey Trust Law to limit their liability to the value of the trust fund.Importantly, the Court clarified that section 65 of the Guernsey Trust law does not prevent the Guernsey Courts from applying foreign trust law to any questions brought before it that do not concern the enforcement of the trusts of foreign law trusts. Instead Section 65 simply identifies the proper law by which a trust is to be governed and construed. The Court highlighted that the question of whether the former trustees were able to rely on Article 32 was actually a conflict of

laws question (and not a question as to the interpretation of Section 65) and held that, as a matter of private international law, the Guernsey Courts should recognise Article 32 when determining the issue of liability.

For more information please contact:

Angela Calnan

Partner // Guernsey

t:+44 (0) 1481 734233 // *e:*angela.calnan@collascrill.com