

Titris SA and another v A and others [2018] JRC059

April 2018

Background

The case involved a dispute between a widow and her two younger children on the one hand, and her eldest child on the other, who were the spouse and children of X, and the judgment relates to certain directions given by the Court as to the future conduct of the case. The proceedings were brought by the former trustee seeking directions as to how the trust fund should be distributed, the trust having come to an end.

The beneficial class was the "*legitimate heirs of X*". The original trust instrument, having been executed in Italian, used the term "*eredi legittimi*". It is the meaning of this phrase which was at the heart of the dispute. The eldest child argued that the phrase "*eredi legittimi*" had to be determined according to Jersey law alone. He also averred that a handwritten will of X made in 2012 appointed him as his sole heir and that, therefore, he was the sole legitimate heir of X and the sole beneficiary of the trust. The widow and other children argued, amongst other things, that identification of the "*eredi legittimi*" was a matter of Italian law as the phrase was a term of art used under the Italian Civil Code where someone died intestate, and that the will was irrelevant.

Decision

The Court referred to article 9 of the Trusts (Jersey) Law 1984 which provides that generally, any question of interpretation of a Jersey law governed trust, including any question concerning any beneficial rights, is a matter for the law of Jersey *only* and *no* rule of foreign law will be applied to such a question. If applied strictly, this would have the effect of disregarding the construction of "*eredi legittimi*" under Italian law, even though the trust instrument was written in Italian, and, further, no expert evidence of any foreign law would be permitted.

However, because the term "*eredi legittimi*" was considered to be ambiguous under Jersey law, it was held that, amongst other things, the *intention* of the makers of the trust, including the background to the surrounding circumstances, was relevant and needed to be ascertained. The Court made orders for discovery, for the exchange of witness statements and the exchange of the Italian law experts in order to determine what was intended by the phrase. It stressed that these orders were not to be interpreted as having applied a foreign law to determine the meaning of a Jersey law trust instrument, but that it was allowing evidence of foreign law because without it "*eredi legittimi*" could not be understood. It added that had the phrase not been ambiguous and there had not been any intention to refer to Italian law then Italian law would have been irrelevant.

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