

Trust Disputes, *Grosskopf v Grosskopf*: Light At End of Arbitral Tunnel ?

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Introduction

1. In the matter of *Grosskopf v Grosskopf* [2024] EHC 291 (Ch) (“*Grosskopf v Grosskopf*”), the High Court (“the Court”) reaffirmed the position (of English courts) that where parties agree to arbitration, the courts will enforce the arbitration agreement and stay the proceeding before it. This is the position even if a remedy requested from the Court falls beyond the powers of arbitrators.

The remedy

2. The remedy sought by the claimants in *Grosskopf v Grosskopf* was the appointment of a judicial trustee by the Court. The Court’s power vests in section 1(1) of the Judicial Trustees Act 1896 which envisages that: “*Where application is made to the court by or behalf of... a beneficiary, the court may in its discretion appoint a person ... to be a trustee of that trust... in place of all or any existing trustees.*”

Summary of Facts

3. The parties, both the Claimant (Chaim Grosskopf) and the Defendants (Yeziel Grosskopf and Jacob Moshe Grosskopf), are beneficiaries of a settlement trust set up on 22 March 1974 (“the Trust”) by Myer Grosskopf (“the Settlor”). The Trust was created for the benefit of the Settlor’s children, among others. The Defendants are the current trustees of the Trust. One of the original trustees was Malka Grosskopf, the wife of the Settlor. The Settlor passed away on 15 November 2016.

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4. The Claimant had concerns over the management of the financial affairs of the Trust. On 14 June 2017 by way of an arbitration agreement (“the Arbitration Agreement”) the parties submitted to the jurisdiction of the Beth Din of the Federation of Synagogues sitting in London (“the Tribunal”) on matters concerning: “... a claim about (the) full disclosure of the estate/assets of the late R’Myer Grosskopf (the Settlor).”

The First Interim Award

5. The Tribunal issued 4 interim awards. By way of the first award the Tribunal ordered the Defendants to provide, *inter alia*, (i) a report reflecting the current estate of the Settlor (together with information on any disposals) and (ii) updates on a quarterly basis.

The Second Interim Award

6. Due to the Claimant’s dissatisfaction with the information provided, he sought a full investigation into the financial affairs of the Trust. On 20 October 2017 the Tribunal made a further award ordering the Defendants to provide detailed accounting of the assets owned by the Trust and a clear plan for the management of the Trust going forward.

The Third Interim Award

7. Thereafter, the Claimant refused to sign a further agreement submitting to the jurisdiction of the Tribunal on all claims arising out of the estate of the Settlor. On 22 January 2018, the Tribunal, following a hearing which the Claimant did not attend, issued the third award. The award in question noted, amongst other things, that all the relevant information pertaining to the assets of the Trust had been provided to the Claimant. The Claimant then resorted to the Court.

The First Claim

8. In his first claim before the High Court (“the First Claim”), the Claimant sought detailed information on the financial affairs and management of the Trust and its assets. In a written judgement given on 6 November 2018, Master Price held that the First Claim was within the

scope of the Arbitration Agreement and adjourned the proceedings. The proceedings were subsequently stayed following a consent order resulting from the Defendants' appeal.

The Fourth Interim Award

9. As a result, the parties continued with the arbitration and on 6 April 2021, the Tribunal issued the fourth (interim) award. The key points of the award were that the parties would submit to the jurisdiction of the Tribunal in all disputes concerning the estate (of the Settlor) and the Trust and that no evidence of impropriety had emerged from the disclosure.

The Claim

10. Following this the subject matter Claim was issued on 5 December 2022, where the Claimant invited the Court to appoint a judicial trustee.
11. In determining the application, Master Clark considered the following issues:
 - (i) What are the matters in issue in the claim?
 - (ii) Has the Court or the Tribunal decided that the matters in issue in the claim fall subject of the Arbitration Agreement?
 - (iii) If the answer is no, then does the Court consider the matters in issue to fall subject of the Arbitration Agreement?
 - (iv) If the answer to question (iii) is no, then does the remedy sought by the Claimant, which the Tribunal cannot grant, has the effect of making matters of the subject claim inarbitrable?
12. The matters in issue concerned the Claimant's complaints regarding the sale of certain Trust property, the granting of loans by a company owned by the Trust and directors' remuneration.
13. As to whether the matters in issue fall within the scope of the Arbitration Agreement, Master Clark stated that Master Price had already decided the issue in the First Claim and held that they do. The Arbitration Agreement extended to deciding whether a full financial investigation

of the Trust was needed. The same was decided in the fourth award of the Tribunal (please see para 9).

Is the Claim inarbitrable?

14. The final point the Court had to consider was whether the inability of the Tribunal to grant the specific remedy sought, rendered the claim inarbitrable. As pointed out in para 2, it is only the court that has power to appoint a judicial trustee.
15. In its submissions the Claimant posited the arguments that an arbitrator will lack the powers conferred on the court by statute, there were other persons not party to the arbitration proceedings with vested interests similar to the Claimant, the Defendants/Respondents as trustees could not be ordered by the Tribunal to appoint new trustees, as the power vested with Malka Grosskopf (an original trustee) and the Hight Court had a supervisory jurisdiction over the Trust to ensure that it was properly administered.

The decision

16. In deciding on the matter, Master Clark stressed that there is no statutory prohibition of trust disputes being resolved out of court. Further, Master Clark added that grounds on the need to appoint a judicial trustee may be resolved by arbitration. The Court's supervisory role is not exercised on its own initiative, but ought to be invoked. Otherwise, private trusts are left to operate outside of court.
17. Although, the Tribunal does not have the power to directly appoint a judicial trustee, it has the power to seek the Defendants to step down and seek the appointment of new trustees from Malka Grosskopf. If that fails, then the interested party (a beneficiary) may seek the remedy from the Court.

18. In its finding the Court did not see that an agreement between a beneficiary and a trustee to step down would prejudice the rights of other beneficiaries. Plainly because their rights are not affected by the change of trustee, and they could still invoke the Court's supervisory power.
19. Due to the inexistence of English authorities dealing directly with this point, Master Clark referenced the Australian case of *Rhinehart v Welker [2012] NSWCA 95* where it was held that the inability of an arbitrator to grant all the relief sought, does not result in the dispute being inarbitrable.
20. Also, Master Clark compared the dispute of the beneficiary and trustee to that of shareholders in a company. In a winding up petition it is only the court that can make the order, however the shareholders dispute may be resolved by arbitration (*FamilyMart China Holding Co Ltd v Ting Chaun (Cayman Islands) Holding Corporation [2023] UKPC 33*)
21. Hence, Master Clark held that the claim is arbitrable.

Comments

22. The decision in *Grosskopf v Grosskopf* enshrines the spirit of section 9 of the Arbitration Act 1996. English courts will give prevalence to arbitration where parties have reached such an agreement. Also, the courts will encourage alternative dispute resolution under its overriding objectives. Master Clark followed *Rhinehart v Welker (2012) NSWCA 95*, as there was no previous English authority on the point, in finding that the fact that the Arbitral Tribunal was asked for an order that can only be granted by the High Court did not see the claim become inarbitrable. The courts of England & Wales will not bar arbitration claims bearing on the administration of trusts. The arbitral tribunal will not be able to appoint a judicial trustee but can have other remedies open to it. This is an area of law where further development should be expected.

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