The Charity Law & Practice Review

CASE NOTE

Francesca Quint[1]

His Beatitude, Archbishop Torkom Manoogian, Armenian Patriarch of Jerusalem v Yolande Sonsino & Others Chancery Division (Jacob J), 5th July 2002 [2002] EWHC 1304 (Ch)

In this case the Armenian Patriarch of Jerusalem sought the determination of the Court on the proper law relating to a settlement made in 1961, whether the settlement created a valid charitable trust and, if so, what were its precise purposes and who was the trustee. The Defendants were Mrs Y Sonsino (the residuary beneficiary under the settlor's will), National Westminster Bank PLC (the named trustee of the settlement) and H M Attorney General (representing the Crown as protector of charities).

The Patriarch was represented by Frank Hinks QC, instructed by Messrs Gulbenkian Harris Andonian; Mrs Sonsino was represented by Shân Warnock-Smith QC, instructed by Mr Victor Sonsino; the Bank was represented by Francesca Quint, instructed by Messrs Osborne Clarke; and the Attorney General was represented by David Blayney, instructed by the Treasury Solicitor.

Background

Mrs Elda Carapiet, who originated from Iraq, married for the second time in 1948. Her husband was domiciled in India. He died in 1956. There was litigation in India between Mrs Carapiet and the Armenian Patriarch of Jerusalem. This was compromised with the execution of the 1961 settlement, when Mrs Carapiet, was living in England, although she later moved to Italy.

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Under the terms of the settlement, Westminster Bank Ltd was appointed the trustee and given power to charge fees, Mrs Carapiet was given a life interest in the trust fund and after her death the capital was to remain invested and the net income to be paid to the Armenian Patriarchate of Jerusalem '*or to pay or apply the same as the said Patriarchate of Jerusalem in Palestine shall direct for the purpose of the education and advancement in life of Armenian children or for such other charitable purpose or purposes as the said Patriarchate may consider allied thereto.*'

The Bank was given an express power to compromise proceedings and settle accounts, and a wide investment power. After the death of Mrs Carapiet, the investment power was to be exercisable subject to any specific written directions as to investment which might be made by the Patriarchate, except that the Bank was to retain full discretion whether or not to purchase land or buildings outside England and Wales.

On Mrs Carapiet's death the residue of her estate passed to her friend, Mrs Yolande Sonsino, under her will. The Bank was the sole executor and trustee of the will. Accordingly the Bank was obliged to be neutral in the proceedings. Nevertheless, before the proceedings commenced and in order to test the position, the Bank's solicitors approached the Charity Commission to enquire whether the Commission would (i) register the settlement under the Charities Act 1993 and (ii) make a scheme to appoint as trustees of the settlement, in place of the Bank, the partners in the firm of solicitors acting for the Patriarch, which was the expressed wish of the Patriarch. The Commission were content to await the outcome of the proceedings but indicated that, having regard to the terms of the settlement, they were not convinced that the Bank (as opposed to the Patriarch himself) was the charity trustee, and on that basis indicated that the settlement would be outside the jurisdiction of the Court and "not charitable". If the settlement were not exclusively charitable, it would be void for perpetuity and Mrs Sonsino would be entitled to the trust fund.

Proper law

In the absence of a specific provision in the settlement, the law applicable fell to be determined according to the territory with which the settlement was most closely connected. This (broadly) was the rule whether or not the Recognition of Trusts Act 1987 applied to a pre-existing settlement. In 1961 Jerusalem was divided between Israel and Jordan, and it was not contended that the law of either of these countries applied. Mrs Sonsino's counsel argued that the law of India could be said to be applicable since the funds had originated there, Mrs Carapiet

had an Indian domicile of dependency at the date of the settlement and it was created in the context of proceedings in the Indian courts. Against that, counsel for the Patriarch argued that the closest connection was with the law of England and Wales, being the location of the Bank and thus the place from which the administration of the settlement would be controlled. The judge accepted this argument. He gave weight to the fact that Mrs Carapiet wanted to take the funds out of India, which at the time had strict currency controls (cf *Chellaram v Chellaram* [1985] 1 Ch 40), and was herself living in London at the relevant time. He also noted the special provision regarding investment in property outside England and Wales.

Purpose of settlement

There were several competing interpretations of the clause relating to the application of income. No-one contended that the Patriarch was entitled to receive the income for his own purposes, given that the use of the word "Patriarchate" indicated that he would receive the income in his official capacity, and there was evidence that he was associated with a well-known school in Jerusalem. The judge concluded that the correct interpretation was that the word "or" was redundant in the relevant clause and that, accordingly, the whole of the income was applicable for either (I) the education and advancement in life of Armenian children or (ii) allied charitable purposes.

For Mrs Sonsino it was argued that the words "advancement in life" were too broad to be exclusively charitable, drawing an analogy with the Privy Council decision in *Attorney General of the Bahamas v Royal Trust Co Ltd* [1986] 1 WLR 1001 holding non-charitable a trust for any purposes "for and/or connected with the education and welfare" of Bahamian children. The judge distinguished that decision, holding that "advancement in life" in this case qualified the word "education", "and" being used in a conjunctive sense and the whole expression being referred to in the singular as a "purpose". He went on to say that if he were wrong on that interpretation, he would accept the argument put forward by the Claimant and the Attorney General that the term "advancement in life" denoted, not the type of advancement referred to in private trusts (which he described as its "jargon" meaning) but a modern version of "the education and preferment of orphans" and "the supportation, aid or help of young tradesmen [and] handicraftsmen" in the Statute of Elizabeth, as expressed in Charity Commission guidance as "the care, upbringing and establishment in life of children and young people". In other words, the advancement in life of children and young people was a charitable purpose under the fourth head in the *Pemsel* classification.

The judge went on to criticise a passage in Picarda's "The Law & Practice Relating to Charities" which indicated that, according to the Charity Commission, fourth head purposes were only charitable if of benefit to the community in the United Kingdom. He rejected this view, preferring the Commission's own formulation, to the effect that public policy was the only ground on which a purpose for the benefit of a foreign community which would otherwise be charitable might be held non-charitable. This was supported by the Court of Appeal's decision in *Re Dreyfus (Camille and Henry) Foundation Inc v IRC* [1954] Ch 672 (affirmed by the House of Lords at [1956] AC 39).

Trusteeship

The judge began by pointing out that, even if the Patriarch were the sole trustee, that would not render the settlement non-charitable, as the Charity Commission had indicated. It was not essential to a valid charitable trust that there should be a trustee within the jurisdiction. He went on to express a doubt whether, under the definition of "charity" in s.96(1) Charities Act 1993, the "control" of the High Court necessarily required presence within the jurisdiction, referring to various procedures open to the Court of exercising jurisdiction and enforcing orders. The judge did not, however, decide the point, since in his view it was not necessary: there was no doubt that the Bank was the sole trustee and the Patriarch might also be, but was probably not, a charity trustee. The Patriarch's role was similar to that of a tenant for life under a strict settlement, whose extensive powers did not make him a trustee of the settlement.

Comment

This is a useful decision which confirms that, in modern times, the "advancement in life" of young people, *i.e.* providing training to enable themselves to earn their own living, is a "fourth head" charitable purpose, without the necessity of proving that they are poor. It also corrects a misapprehension in a major textbook about charitable purposes carried out overseas and may lead the Charity Commission to take a more flexible view in two situations: as to the meaning of charity under s.96(1) Charities Act 1993 and as to the identity of the charity trustees. Although the judge did not decide the point, he cast serious doubts on the rule of thumb that all or a majority of the trustees must be resident in England and Wales in order for a charity to be within the "control" of the High Court within the meaning of that subsection. Secondly, he confirmed the traditional approach that the trustee which is responsible for the holding and administration of the trust fund remains the trustee of the charity

even if some other person makes decisions relating to the application of income and has power to direct certain investment decisions.