

Chancery Bar Association's Cayman Islands Conference 2016

Cayman Trusts in English Divorces

Nicholas and Helena married in 2003, having lived together since 1998. They are now divorcing. They have sons of school age. Nicholas' father, Alexander, is a former Russian National who appears to have great wealth, the source of which is obscure. Nicholas has an older brother, Stephan and a younger brother, Viktor. Stephan is unmarried with no issue. Viktor married Flora in 2002 but their marriage was dissolved in 2003. Viktor and Flora have one child, Edith who is 15. Viktor has had no contact with any member of his family since 2003.

Nicholas and Helena are both in their mid-40s. Nicholas has a history of drug abuse and has never managed to hold down a job. Helena has never worked. Nicholas and Helena have no assets of any real value other than a holiday house in Devon worth around £300,000. Prior to their separation Nicholas and Helena lived in Manor Mansion, a substantial house in Chelsea and Helena remains there with the children.

Nicholas is a beneficiary of a trust, the Triangle Trust. This is a Cayman law trust created by Alexander in 1990. The trustees have always been a Cayman based trust company, Triangle Trust Co ("TTC"). The trust is discretionary for a wide class of beneficiaries which includes Alexander, his children and remoter issue and their spouses.

The trust assets consist of:

- The Manor Mansion, which is held via a UK Company, Manor Mansions Ltd. The property is believed to be worth around £7m.
- A BVI holding company ("BVI Co") which in turn owns a UK holding company ("UK Holding Ltd") which owns various properties in London worth around £15m and investments worth around £5m.
- Cash, and other investments of circa \$15m located around the world and held directly by the trustees.

In 2006 TTC appointed the shares in BVI Co on trusts that were similar to the original discretionary trusts but which limited the class of beneficiaries to Nicholas, any spouse of his and his issue and Stephan, any spouse of his and Stephan's issue.

TTC have never paid income or capital to any beneficiary outright. From time to time, TTC have made loans to beneficiaries, including a series of interest free loans made between 2006 and 2007 to enable Nicholas and Helena to carry out some improvement works to Manor Mansions. The total amount loaned for this purpose by TTC was £250,000. The loans were made to the couple jointly, were repayable on demand and are secured by a charge over the Devon property.

There is no letter of wishes. The trustees do have on file a number of letters between Alexander and TTC from which it is apparent that TTC has broadly followed his direction. TTC are considering, at Alexander's request, executing a deed to exclude spouses from benefit from the trust altogether. Alexander has also asked them to call in the loans to Nicholas and Helena.

Helena, via her solicitors, asserts ignorance regarding the trusts other than a vague knowledge of their existence. She says she was never informed that she and Nicholas did not own Manor Mansions and she is determined to remain there. Her solicitors, W & Co, have written to TTC asking for disclosure of the trust documents, accounts from 1998 onwards, trustee minutes, letters of

wishes or other correspondence between the trustees and the settlor that refer to the settlor's wishes. Nicholas is opposed to any disclosure.

The Advice Sought

TTC are faced with numerous issues:

- Can they or should they provide any of the disclosure Helena has asked for.
- Should they do as Alexander asks concerning exclusion of the spouses and the calling in of the loans.
- Whether Helena is able to make an application in respect of the Triangle Trust and whether (and where) any order could be enforced.
- How they can know what is being said in the Family Division, and whether they should ask to be made parties.
- What steps they should take in those proceedings.
- What they should do in Cayman, whether they should seek directions and, if so, what directions.