Interpretation of Wills – Where an English Will Covers Jersey Assets

January 2022

In an interesting recent English Court of Appeal decision, *Partington v Rossiter [2021] EWCA Civ 1564*, the Court determined that where an English will was expressed as only having "effect in relation to my UK assets" it was possible for such reference to the UK to include Jersey. You might ask why this is an interesting decision from a Jersey law point of view? Well, the principal reason is that Jersey is a not a part of the UK from a constitutional perspective nor has it ever been. Jersey is a separate jurisdiction with its own legislature, courts and legal system with no representation in the United Kingdom's parliament.

It might therefore seem rather surprising that the English Court of Appeal should reach the conclusion that it did. The judgment also highlights the importance of wills properly identifying their intended jurisdictional scope. The reasons for the decision certainly merit closer consideration.

Background

As well as holding assets outside of Russia (where Mr Rossiter was domiciled at his date of death), Mr Rossiter also held assets in both Jersey and the UK. Although in a will prepared in 2013 (the "Will") he had stated "I confirm that this will only has effect in relation to my UK assets", following his death a dispute arose between his wife and his children, which came before the English Courts, as to whether or not the Will covered his Jersey assets. If it did not, the effect would be that there would be a partial intestacy and the Jersey assets would, it was understood, pass to his wife as opposed to passing to his children in accordance with the terms of the Will.

The English Court of Appeal therefore had to consider two questions:

i. Was the devolution of Mr Rossiter's Jersey assets covered by the Will?
ii. If not, should the Will be rectified so that they were?

When the Will was being prepared, Mr Rossiter's English solicitors had advised that he should make a separate will to deal with any assets he owned outside of the UK. Although Mr Rossiter had confirmed that he understood this, and that separate wills were being prepared, it was noted by the English Court of Appeal that no will specifically dealing with Mr Rossiter's Jersey assets had ever been found.

The English Court of Appeal's Decision

The Court of Appeal first considered both the constitutional position of Jersey and the dictionary definition of the UK, in determining whether Jersey was part of the UK. Under both headings, the Court of Appeal found that Jersey was not. The Court of Appeal however indicated that there were contexts in which the UK had been held to include the Channel Islands. It cited a number of authorities, including the case of *Royal Society v Robinson [2015] EWHC 3442* which involved a will extending "only to property of mine which is situated at my death in the United Kingdom". In that case, as here, the testator owned substantial off-shore assets both when he executed the will and at his date of death. In that case, the Court concluded that it was entirely possible that a layman might consider that the UK included the Channel Islands and the Isle of Man.

>>

The Court of Appeal in this case concluded that it was possible for the term "United Kingdom" to include the Channel Islands, when used in a private instrument. It was a matter of interpreting the meaning of the words that had been used in the Will. When considering the interpretation of wills generally, the Court of Appeal considered the following principles:

(i) the English law principle laid down in the Supreme Court decision in *Marley v Rawlings [2014] UKSC 2 [2015] AC 129* which stated that, when interpreting wills, the approach should broadly be the same as for interpreting contracts. The aim is to identify the intention of the parties to the document by interpreting the words used in their documentary, factual and commercial context;

(ii) in the context of interpreting contracts, if one realistic interpretation results in a contract being invalid and another would mean that it was valid, the Court should prefer the latter over the former. In considering this principle, the Court of Appeal stated that this was a "golden rule", stating that the courts will strive to give effect to a testator's intentions as expressed in a will; and

(iii) that, as a matter of English Law, it is permissible to use extrinsic evidence, including direct evidence of the testator's intention, to explain an ambiguity in a will. In this case the Court of Appeal was satisfied that the Will was ambiguous. It found that it was possible to interpret the meaning of UK to include Jersey, noting amongst other things that (1) the location of the assets when the Will was drafted and on the death of the testator included assets in Jersey and (2) the initial draft will Mr Rossiter had prepared (but not signed) prior to the Will intended to make specific legacies of his Jersey assets but, at the same time, stated that such will was only to deal with his UK assets. The Court of Appeal therefore held that this could only be reconciled on the basis that Mr Rossiter had intended the term "the UK" to include Jersey.

In light of the above, the Court of Appeal concluded that the abbreviation "UK" in the Will was intended by Mr Rossiter to include Jersey. As such, the Will did apply to Mr Rossiter's Jersey assets.

Key Points Arising

Although the Court of Appeal ultimately concluded that the use of the term "UK" in the Will was intended by Mr Rossiter to include his assets in Jersey, significant costs will have been incurred in reaching that decision. Such costs could have been avoided quite simply by Mr Rossiter preparing a Jersey will to deal with his Jersey assets, or by ensuring that the Will had been properly drafted so as to make it clear that it was to apply to his Jersey assets. This case therefore clearly highlights the importance of wills being drafted with sufficient clarity and detail so as to ensure that (1) they accurately reflect the testator's intentions, (2) those intentions can be given effect to and (3) they cover all relevant jurisdictions and assets of the testator.

Furthermore it is likely that before a grant of probate will be issued in Jersey, which is required to deal with the deceased's assets in the jurisdiction and to avoid committing the criminal offence of intermeddling, the judgment of the English Court of Appeal will need to be recognised by the Jersey Courts. This is because the Will itself refers only to Mr Rossiter's UK assets and it is only by the Court of Appeal's interpretation of the Will, as set out in its judgment, that it has been determined to include his assets in Jersey. The costs of obtaining the grant of probate in these circumstances are likely to be not insignificant and certainly far greater than the costs of preparing a Jersey will and obtaining a grant of probate would have been.

Authors

For further information please speak with the authors below or your usual contact at Walkers:

Robert Dobbyn
Partner, Jersey
T: +44 (0) 1534 700 773
E: robert.dobbyn@walkersglobal.com

Sevyn Kalsi
Senior Counsel, Jersey
T: +44 (0) 1534 700 775
E: sevyn.kalsi@walkersglobal.com

James Turnbull
Senior Associate, Jersey
T: +44 (0) 1534 700 776
E: james.turnbull@walkersglobal.com

Disclaimer
The information contained in this advisory is necessarily brief and general in nature and does not constitute legal or taxation advice. Appropriate legal or other professional advice should be sought for any specific