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Select US case law developments relevant to asset protection trusts

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Abstract

In recent years, there have been several US domestic court decisions that are relevant to asset protection planning trusts. This article highlights five of these recent decisions. Substantial portions of this article originally appeared in '*Domestic and Foreign Developments in Asset Protection: 2011 to Present*', by Barry S Engel and Eric R Kaplan, *Estate Planning* (May 2013).

Introduction

The *Rush* decision, as first discussed below, underscores the notion that creating a trust under the protective laws of one jurisdiction may not, in and of itself, protect a trust's assets in another jurisdiction (Illinois, in this case); additional planning and protective measures must be considered. In the *Goldberg v Rosen* case, a court found that a client's execution of an Affidavit of Solvency, in which she stated that she was solvent when funding an asset protection arrangement, was of evidentiary import in her later bankruptcy proceeding. The existence of the Affidavit helped protect her attorney from the bankruptcy trustee's claim that the client was actually insolvent when funding the arrangement, and that the attorney should therefore return his attorney fees. In the *Kilker v Stillman* case, the California court held that a creditor can obtain a remedy against a debtor under the California Uniform Fraudulent Transfer Act, even if the creditor did not have a claim when the assets were transferred, and even if the debtor would not have reasonably foreseen that specific creditor's claim; the intention to defraud can be general in nature with respect to future creditors.

In the *Yerushalmi* case, discussed further below, a United States Bankruptcy Court excluded from the debtor's bankruptcy estate a residence that the debtor had many years before transferred to a 'qualified personal residence trust'. The court held that the transfer did not fall within the reachback period for fraudulent conveyances under bankruptcy law. The court also held that, despite less than meticulous administration, the trust could not be pierced as the debtor's 'alter ego' because the debtor's conduct was not inconsistent with the trust's ownership of the residence and the evidence did not reflect his complete dominion and control over the property. In the final case discussed in this article, the *Grant* case, the court found a co-settlor of an offshore trust to be in violation of an old but still effective Order to Repatriate several years after it found the co-settlor not to be in contempt of court of the same Order given her apparent inability at the time to repatriate trust assets.

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Rush University Medical Center, Appellant v Roger Sessions et al., Trustees, Appellees[1]

The *Rush* decision was recently handed down by the Illinois State Supreme Court (in this Section I., the 'Court'). *Rush* involved an individual who settled a Cook Islands Trust in 1994, and subsequently (but unrelated thereto) intentionally failed to fulfil a 1995 philanthropic pledge he made to Rush University (the 'University').

Proceedings to enforce the pledge were brought by the University against the US-based co-trustees, in their capacities as such.

The trust was funded with a mix of US real estate and other property interests.

A single principle of Illinois common law was pivotal in the Court finding for the University against the trust, even though the trust was not itself obligated on the pledge; which is, self-settled trusts are not enforced in Illinois. At paragraph 20 of the decision, the Court states:

> Traditional law is that if a settlor creates a trust for the settlor's own benefit and inserts a spendthrift clause, the clause is void as to the then-existing and future creditors, and creditors can reach the settlor's interest under the trust.' Helene S. Shapo et al., Bogert's Trusts and Trustees § 223, at 424-67 (3d ed. 2007). 'And the rule is 'applicable although the transfer is not a fraudulent conveyance *** and it is immaterial that the settlor-beneficiary had no intention to defraud his creditors.' Restatement (Second) of Trusts § 156 cmt. a (1959).

In its footnote 3, the Court states that

> this rule has a 500-year lineage..., has been consistently applied as the law in Illinois for over 140 years..., at least until the instant appellate court's decision, and remains the law in the vast majority of states through-out the nation....

The Illinois Supreme Court thus reversed the decision of the Appellate Court that found in favour of the trust, and remanded the proceedings to the Circuit Court of Cook County for further action consistent with the decision.

The 500-year lineage rule is certainly well-known and is in fact the impetus to approximately 25 per cent of the states in the United States and more than 20 offshore jurisdictions having enacted asset protection trust legislation since 1989. When an individual is domiciled in a state that follows this common law rule, then in the event of a challenge to the trust, a number of factors will be important in determining the outcome, including (i) the design of the trust; (ii) the applicable law of the trust; (iii) the mix of assets in the trust; and (iv) the physical location of the trust property.

Several planning principles are reinforced by the *Rush* decision. One is that protective measures can be considered by the trustee(s) of a trust when it is threatened with litigation.

Second, real estate requires special consideration when it forms a part of a trust's corpus, whether offshore or domestic. Its protection by the trust cannot be as assured as asset classes that can be repositioned if need be by the trustee(s), out of harm's way.

Third, a trust can be designed flexibly by and for its settlor without meeting the definition of a classic discretionary self-settled trust, which would then limit the effective application of the common law rule relied on in *Rush*.

Finally, even when the outcome of a case appears fairly predictable (such as when a trust holds real estate it used in a state that does not recognize self-settled trusts), nothing is certain when it comes to litigation. Indeed, here, the law and the facts were reviewed by the appellate bench, which is by no means a body that lacks legal credentials, and the outcome at that high level of proceedings was favourable for the trust. Then, as we have seen, the University had to appeal to the Illinois Supreme Court before it could obtain a decision against the trust.

1. 980 N.E.2d 45, 2012 IL 112906, 2012 WL 4127261 (Ill., September 20, 2012).

Goldberg v Rosen[2]

Goldberg v Rosen is a case of first impression with respect to asset protection trusts, as it is the first time a settlor's Affidavit of Solvency was so pivotal in the case.

An Affidavit of Solvency is typically required not only by the asset protection attorney but by the trustee(s) of the trust as well, for these professionals want the client to swear or attest, in a notarized document, as to the client's financial well-being as of the time of settlement. In an Affidavit of Solvency, the client will typically represent that (among other things) there are no pending, threatened, or expected claims or outstanding judgments, and that the client is not contemplating bankruptcy at the time the trust is settled.

Goldberg v Rosen involved Akram Niroomand ('Debtor'), who in 2007 hired Howard D. Rosen, Esq. of Donlevy-Rosen & Rosen, P.A. ('Rosen') in Florida to prepare an offshore asset protection trust (the 'Trust'), for $45,000 in legal fees. About a year later, a judgment of close to $3 million (the 'Judgment') was entered against Debtor. About six months later, Debtor filed for bankruptcy protection. Alan Goldberg was the bankruptcy trustee ('Trustee') in Debtor's Chapter 7 bankruptcy case.

Trustee filed a claim against Rosen seeking to recover the $45,000 in attorney fees and costs paid as fraudulent transfers under 11 USC Section 548, arguing, among other things, that Debtor was insolvent at the time of the Debtor's transfers to the Trust.

> The bankruptcy court conducted a bench trial of Trustee's claims. The Trustee presented only testimony of the Debtor and then rested, although the district court [in subsequent proceedings] admitted 'voluminous documentary and testimonial evidence.' Included in that evidence was the Debtor's Affidavit of Solvency executed when she retained the defendants' services in which she testified that she was solvent and could pay her anticipated debts, including lawsuit judgments.[3]
>
> The Debtor testified that she was insolvent at the time of the transfers, but the record evidence, including her affidavits [*sic*] of solvency, was used to impeach her. As a result, the bankruptcy court did not credit her testimony.[4]

The bankruptcy court found against the Trustee, and the Trustee appealed to the District Court. The District Court also found against the Trustee, who then appealed to the United States Court of Appeals for the 11th Circuit. The Court of Appeals found that there was no establishment of insolvency with respect to potential constructive fraud or fraudulent transfer claims, and stated:

> In fact, the record is abundant with records of solvency. The witness signed a solvency affidavit, which she said she did not read, but the Court notes—noted that the witness could remember some things in the way of financial numbers of a rather complicated structure down to the penny, and other things, she couldn't remember at all. But aside from that, it's the opinion of the Court that the [Trustee's] case is woefully lacking in any proof on any of the counts, and therefore, [Rosen's] motion to dismiss should be granted.[5]

Kilker v Stillman[6]

In what is yet another good argument in favour of offshore trust planning versus domestic trust planning, the California Court of Appeal for the 4th District held that the California Uniform Fraudulent Transfer Act (CUFTA) had application to a case brought four years after a Nevada trust was settled

2. 493 Fed. Appx. 11, 2012 WL 4933299 (11th Cir., 17 October 2012).
3. ibid, 1.
4. ibid.
5. ibid, **1–2.
6. 2012 WL 5902348 (Cal. App. 4 Dist., Unpublished, 26 November 2012).

by defendant Stillman, a California resident, which was eight years after Stillman's services were performed for plaintiffs (the Kilkers). In getting to this result, the court ruled that a transfer made with the sole purpose of asset protection is a *per se* fraudulent transfer under CUFTA.

In calendar year 2000, soil engineering services were performed for the Kilkers by Stillman. Several years later, in 2004, and unrelated to the services rendered to the Kilkers, Stillman formed a Nevada trust. Subsequently, the faulty nature of the services became known, a suit was filed and later settled for $92,500. Stillman then failed to pay the settlement and apparently took refuge behind the 2004 Nevada trust he settled. As part of the collection efforts the Kilkers sought recovery from the Nevada trust.

There was a bench trial, and Stillman was the sole witness.[7] Stillman testified that 'he transferred . . . virtually all of his assets'[8] and that he was 'left personally with no assets worth more than $500'.[9] Stillman further testified that his intent was for '"[a]sset protection" and so that his "creditors could not go after any equity . . ."'.[10]

Based on the foregoing the trial court found the trustee's claim to the real property was invalid. The trial court issued a minute order stating the third-party claim of the trustee was denied because (i) Stillman's transfer of the property constituted a fraudulent transfer within the meaning of CUFTA, and (ii) Stillman was the alter ego of the trust.[11]

In its Minute Order, the [trial] court found that Stillman transferred the [real property] with the actual intent to hinder, delay or defraud any creditor. The court did so citing Stillman's testimony that he transferred the [real property] because soils engineers are frequently sued. The [trial] court found the Kilkers were 'reasonably foreseeable'[12] as future judgment creditors within the meaning of CUFTA. The [trial] court also found 'Stillman had the requisite [fraudulent] intent because he retained control of the [real property], transferred assets to [the trust], and did not receive any consideration for such transfers . . .'.[13]

On appeal, Stillman and the trustee of the Nevada trust argued that the trial court erred by finding Stillman's conveyance of the real property was a fraudulent transfer under CUFTA. They argued the court erred in its analysis of 'present' and 'future' creditors within the meaning of CUFTA, and that insufficient evidence existed for the finding that transfers were made with the intent to hinder, delay or defraud. The appellate court stated these arguments were without merit.

> 'A fraudulent conveyance under the UFTA involves "'a transfer by the debtor of property to a third person undertaken with the intent to prevent a creditor from reaching that interest to satisfy its claim.'"' . . . Substantial evidence, most notably Stillman's testimony, showed Stillman transferred the property . . . with the actual intent to hinder, delay, or defraud any creditor. . . . Because [the trust's] third party claim was invalid based on the application of the UFTA, we do not decide whether the claim was invalid based on an alter ego theory as well.[14]

The appellate court noted that:

> [t]here is no dispute between the parties or in the evidence presented that the Kilkers were not present creditors in 2004 the year that Mr. Stillman transferred his assets to the trust in question. The question actually turns on whether the Kilkers can be truly considered to be actual future creditors.[15]

7. ibid, *2.
8. ibid.
9. ibid.
10. ibid.
11. The Court meant to say the trust was the alter ego of Stillman.
12. ibid.
13. ibid.
14. ibid *1.
15. ibid, *4.

The court held they were.

In an exercise of statutory construction to determine whether the Kilkers were 'future creditors' under CUFTA, the appellate court proceeded to examine the CUFTA definitions of the words 'claim', 'creditor', 'debtor', and 'transfer'. Of course, if the Kilkers did not have a 'claim' at the time of the 2004 transfer, then the transfer could not have been a fraudulent transfer under CUFTA. Similarly, with the other three definitions examined by the appellate court.

In construing the word 'claim' the appellate court stated:

> [t]he UFTA defines 'Claim' as 'a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured...'.[16]

Importantly, the court did not list 'non-existent' as being within the CUFTA definition of 'claim'. But apparently, this was not important to the court.

Query: If the wrong in question had already occurred at the time the Nevada trust was settled in 2004, should this not have been analysed as a current creditor case rather than a future creditor case? Moreover, if Stillman denuded himself of assets when he settled the trust, should this not have been analysed on the basis of the transfers being constructively fraudulent under CUFTA?

The court stated

> [a]ppellants do not challenge the findings that Stillman is a 'Debtor,' each of the Kilkers is a 'Creditor' with a 'Claim' and that Stillman's conveyance of the...property to the [trust] constituted a 'Transfer'.... Appellants argue that 'for fraudulent transfer purposes the world of creditors must be divided into three classes: 1) present creditors, 2) future creditors, and 3) future potential creditors.' [and that] '[a] future creditor should be defined as a creditor whose claim arises after the transfer in question, but where there was a foreseeable connection between the creditor and the debtor at the time of the transfer.... [The statute] does not require that, from the debtor's perspective, a creditor who challenges a transfer as fraudulent under the UFTA to have been reasonably foreseeable as the debtor's creditor before pursuing remedies under the UFTA.'[17]

The court goes on to note that the intention to defraud can be general in nature; that is, there need not be an intent to defraud a specific creditor.[18]

The statutory construction exercise should have been the end of analysing the issue by the court. But the court makes more than one reference to a number of factors that apparently were also important to the court in its analysis:

- Stillman testified that 'he transferred... virtually all of his assets'[19] and that he was 'left with no assets worth more than $500'.[20] A constructive fraudulent transfer analysis therefore seems to have been the appropriate analysis, but was not undertaken.
- Stillman further testified that his intent was for '"[a]sset protection" and so that his "creditors could not go after any equity..."'.[21]
- Stillman operated his business out of the property owned by the trust, rent free.
- Stillman and his trustee lived in another property owned by the trust, rent-free.
- Stillman was the 'managing director' of the trust (whatever that means) - 'He makes deposits and withdrawals; writes checks; opens bank accounts; buys, sells and trades real property and other

16. ibid (emphasis added).
17. ibid.
18. ibid.
19. ibid, *2.
20. ibid.
21. ibid.

property of[22] the trust; he 'lends or borrows money in the name of[23] the trust; he buys, sells and trades stocks and bonds; he selects tenants and signs leases for the rental of trust property.

- Stillman's brother is the beneficiary of the trust (and, apparently, not Stillman himself).
- Even though Stillman was not the beneficiary, 'Stillman uses [trust] funds to pay his personal expenses,'[24] including his XM radio bills, newspaper and National Geographic subscriptions, and personal attorney fees.
- Stillman had not been in contact with the original trustee since 2005.

So, query the extent to which the ultimate result of this case was coloured if not determined by these cited factors that are irrelevant to the exercise of fraudulent conveyance statutory construction.

Re Yerushalmi[25]

In *Yerushalmi*, the United States Bankruptcy Court for the Eastern District of New York (the 'Court') decided that (a) a Qualified Personal Residence Trust (known in the vernacular as a 'QPRT') that was settled in 1995 and funded in 1996 was to be recognized as the owner of certain residential real property located in Great Neck, New York (referred to in the case as the 'Great Neck Residence'); and (b) the Great Neck Residence was not part of the debtor's bankruptcy estate in Joseph Yerushalmi's (the 'Debtor') bankruptcy as filed in July of 2007. The Court also decided that the chapter 7 trustee (the 'Trustee') was not entitled to recover 'the real property expenses that were paid by the Debtor from 1996 until the bankruptcy petition date...'.[26]

The Trustee filed an adversary proceeding claiming that the QPRT was the

> alter ego of the Debtor and consequently the property held by the trust is property of the estate which must be turned over for the benefit of all creditors of the estate.[27]

The Court noted that Debtor is an attorney, and that his law partnership dissolved in 1995, which is the same year as when the QPRT was created. While the timing was called into question by the Trustee, the Court stated that

> whatever the motivation for the transfer... this transfer... fall[s] outside of the reach back period for fraudulent conveyances and cannot be avoided on that basis.[28]

In its alter ego claim, the Trustee

> allege[d] that:

- the Debtor 'controlled and dominated all aspects of the QPRT' since its creation;
- the real property owned by the QPRT was purchased with the Debtor's own funds;
- the QPRT never established its own checking account;
- the QPRT did not maintain books and records;
- the Debtor's wife, 'Malka acted at all times as the nominee of the Debtor with respect to the QPRT'; [and]
- 'the Debtor used his control of the [QPRT] to conceal his assets and to engage in fraudulent conveyances to shield funds from the reach of his creditors[.]'[29]

22. ibid.
23. ibid.
24. ibid.
25. 487 B.R. 98, 2012 WL 5839938 (Bkrtcy. E.D.N.Y., Slip Copy, 19 November 2012).
26. ibid, *3.
27. ibid, *1.
28. ibid, *2.
29. ibid, *4.

In what is another strong argument for offshore trust planning when comparing it to domestic trust planning, the Court held that the Trustee's

> alter ego claim is subject to neither the six-year statute of limitations for fraud under New York law, nor the 20-year statute of limitations to enforce a judgment.[30]
>
> The Court agrees with the Trustee that there is no statute of limitations or reach back period imposed on a trustee's cause of action to recover property of the estate under section 542 of the Bankruptcy Code.[31]

The Court then turned to the merits of the alter ego claim, that

> following the formation of the QPRT, the Debtor used the QPRT as his own personal vehicle to shield his assets from creditors.[32]
>
> The Trustee allege[d] that the QPRT is the 'mere instrumentality' of the Debtor and the trust should be pierced....[33]

The Trustee asserted among other things that the QPRT should be pierced because the Debtor exercised 'complete dominion and control' over the QPRT; that the Debtor made all financial decisions for it; that only the Debtor's funds were used to pay expenses of the Great Neck Residence; and that no trust formalities were followed.

The Court first examined 'whether a validly-formed estate planning trust can ever be "pierced"'.[34]

The Court cited a string of other cases, and then quoted one case in particular that

> [t]here is no authority for applying, by analogy, a theory of 'piercing the corporate veil' to disregard the form of a trust, when the trust was not formed for an illegal purpose and there is the requisite separation between beneficiary and trustee.[35]

The Court then found that

> the weight of the caselaw in the state of New York supports a ruling that estate planning trusts generally are susceptible to attack if used for a fraudulent purpose. However... the Court finds that the facts of this case do not rise to the level necessary to 'pierce' the veil of the QPRT.[36]

The Trustee conceded that the

> correct analysis is not of the circumstances surrounding the transfer to the QPRT, but rather the Debtor's conduct subsequent to the formation of the trust. The... best evidence to support [the] alter ego theory is that the Debtor allegedly claimed ownership of the Great Neck Residence[37]

(which claimed ownership the Debtor denied). The Court stated it did not find this to be a material fact, for even assuming this was the case

> it does not mean that the Debtor in fact *owned* the Great Neck Residence, nor does it prove that the Debtor completely dominated and controlled the QPRT. Without more, this statement is insufficient to declare the QPRT an alter ego of the Debtor. The cases which have pierced the trust veil have done so on much more egregious facts than these.[38]

The Court closed its discussion by stating that

> [b]ased on the undisputed facts, the Court finds that the Debtor did not engage in any conduct or enter

30. ibid, *7.
31. ibid.
32. ibid, *8.
33. ibid.
34. ibid, *9.
35. ibid, quoting *Nat'l Union Fore Ins Co v Eagle Equip Trust*, NYS2d 308 (NY App Div 1st 1995).
36. ibid.
37. ibid, *11.
38. ibid.

into any transaction that would be inconsistent with the QPRT's ownership of the property and the Trustee has failed to prove that the Debtor exercised complete domination over the trust, or even if he did, that he used that domination to commit a fraud or wrong.[39]

United States of America v Raymond and Arline Grant[40]

The issue in the contempt of court aspect of the *US v Grant* case was whether Raymond and Arline Grant (the 'Grants', or individually by first name) in fact had the power to repatriate trust assets based upon the provisions of two offshore trusts they settled in the early 1980s (one of which was settled in Bermuda, and one of which was settled in Jersey, Channel Islands).

Procedural background: In 2000, the US government brought a civil action against the Grants to collect over $36 million from them on account of their unpaid federal income tax liabilities. In 2003 final judgment entered against the Grants for this amount, plus interest.

In the Court's 2 September 2005 'Report and Recommendation that the Government's Amended Motion for Repatriation of Assets be Granted', the Court answered the issue of whether Arline (Raymond having deceased by that time) had the power to effect a repatriation of the trust assets by stating:

> 'Clearly, she has such power. She has unreviewable discretion to change the trustees, and the present trustees must comply with such a request. This Court can, therefore, order [Arline] to change the trustee of each trust to a U.S. trustee, which will result in the repatriation of these assets.[41]

On 22 December 2005, the Court held in a 'Repatriation Order' that based upon the trusts' provisions, the Grants had the power to repatriate the assets of the two trusts, and repatriation was ordered.

Repatriation did not follow, however, so in October 2007, the government filed a Motion for Issuance of Order to Show Cause. This was denied on 27 May 2008. In denying the Motion, the Court concluded that Arline had sufficiently established she was unable to comply with the Court's Repatriation Order.

The Court acknowledged that Arline

> 'made significant efforts to repatriate the funds to the United States, either directly to her or to a U.S. trustee, to no avail. For example, on January 17, 2006—less than a month after the repatriation order was issued, she sent a letter to the Jersey trustee, enclosing the repatriation order and seeking information about the procedure to repatriate funds.[42]

In response to Arline's letter, the Jersey trustee's lawyers informed her

> that any attempted exercise by you of your right to remove our client as trustee of this Trust and to appoint a U.S. resident trustee in its place would not be a valid exercise of [Arline's power as trust beneficiary] and would therefore be void and of no effect, which means that our client will remain the trustee of the trust, notwithstanding your attempted exercise of your power.[43]

The Court further acknowledged that Arline contacted the trustee for the Bermuda trust. Her attempt was met with a similar response, which stated

> 'the Trustees of the above trust have considered your request to transfer the entire trust fund to you. We

39. ibid, *12.
40. Case No 00-08986-Civ-Jordan (SD Fla 2005).
41. Report and Recommendation that the Government's Amended Motion for Repatriation of Assets be Granted p 7.
42. Order on Motion for Order to Show Cause, p 2.
43. ibid, quoting a 6 February 2006 letter to Mrs Grant.

wish to advise at this time we cannot comply with your request.[44]

Arline also sent letters to financial institutions, asking them to serve as transferee trustees. These requests were rejected in part because of the possibility that the offshore trustees would fight any attempt to repatriate.[45]

The Court acknowledged that while more than two years had elapsed since the issuance of the Repatriation Order, the failure to repatriate the funds was 'not for a lack of effort'. The Court stated that it was 'reluctant to fault [Arline] for her trustees' denial of her requests to repatriate the funds.'

As a result, the Court ruled in this 2008 decision that Arline had sufficiently established that she was not able to comply and repatriate the offshore funds. Therefore, the government's Order to Show Cause was denied and Arline was not held in contempt of court. Note, however, that while Arline was not found to be in contempt of court, the Repatriation Order still continued and stood in full force and effect.

Subsequent actions led to contempt of court finding: And that was the end of it—or so Arline Grant (and likely her advisors) thought—so much so that in the years following the 2008 decision more than $500,000 of the many millions held offshore was repatriated to the United States, part of which was spent by Arline and part of which was placed in accounts in the name of the Grant children.

When this came to the attention of the US government, it was not too pleased and in fact on 13 January 2012 the US government filed a Motion for Permanent Injunction and a second Show Cause Motion. The Court granted this Motion and required Arline to show cause why she should not be held in contempt of court for her failure to comply with the Repatriation Order upon her receiving funds from the trusts (Order dated 22 June 2012). Arline Grant responded with a Motion to Discharge the Show Cause Order, which the court denied, instead holding Mrs Grant in contempt with respect to both the Repatriation Order and the June 22 Order.

As of 22 April 2013, the date of this latest Order in the *Grant* case,

> Mrs. Grant has not satisfied the judgment, nor has she paid to [the government] any portion of the monies transferred to her from the trusts.

In this latest decision, the government's Motion for Permanent Injunction was granted, ordering that:

- Mrs Grant's request on a quarterly basis that the trustees of the offshore trusts transfer all available income to accounts within the United States.
- Funds transferred to Mrs Grant in the past and that are still in her possession, custody or control of her or her children be provided to the United States.
- Funds transferred to her or her children in the future be similarly turned over
- No further accounts be opened by Mrs Grant or others acting in concert with her for the purpose of receiving funds from the trusts, without those being immediately turned over to the United States
- Neither Mrs Grant nor anyone working in concert with her communicate to the foreign trustees the existence of this latest Order 'or the suggestion that distributions requested are being compelled'. (If and to the extent the foreign trustees in *Grant* read *Trusts & Trustees*, the author expressly disclaims any association with Mrs Grant or anyone working in concert with her.)

The question arises, is this latest incarnation of the *Grant* case a victory or a loss for Arline, for the Grant trusts and for asset protection principles generally? In the course of deciding, the reader should consider:

- That many millions remain offshore, free from the Grant judgment and after more than a decade of litigation, free from the reach of the adversary.

44. ibid, quoting 13 December 2007 letter to Mrs Grant.
45. ibid, 2–3.

- Several hundred thousand was repatriated that was expended for the benefit of Mrs Grant and/or her family.
- Only $221,000 was turned over to the adversary.
- The favourable contempt of court principles of the 2007 Order in this case and of any related cases remain unchanged... it was the fact that Mrs Grant had taken receipt (or custody or control) of assets without turning them over, in violation of the Repatriation Order, that led to Mrs Grant being found to be in contempt of court and that led to the court being offended to the extent it was.
- There is no mention in the Order of Mrs Grant being fined, penalized, incarcerated, or the like.

As the selected US court cases discussed above demonstrate, asset protection planners must stay abreast of a myriad of potential issues if they are to expertly advise and assist their clients. Cases in different jurisdictions, often regarding diverse and seemingly unrelated issues, can all be of great significance to the planner and to his or her clients. It is the responsibility of expert planners to stay well informed in this regard, and the authors hope that this article has helped serve that purpose for its readers.

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