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A \$outh Pacific \$tory

Money, money everywhere: A behind-the-scenes look at offshore accounts

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Take a six-hour flight, due west from BWI, across the United States, spend another six hours in the air to Hawaii, and then hang a left for a 10-hour ride to Cook Islands where only one of the seven airports scattered throughout the 15-island archipelago is paved.

The hard trip may just be worth it, considering that you end up in the heart of the South Pacific, not far from the romance of Tahiti.

The capital island is Rarotonga, where the temperatures play between 70 degrees and 84 degrees, the crystal clear waters create a snorkeler's paradise, the island dancers captivate audiences with their hip gyrations and the laws protect assets from creditors.

Cook Islands could be the final destination for lawyers representing Bank of America and Allfirst who are trying to recover the tens of millions of dollars in loans under default by Brian and Elizabeth Weese, owners of the bankrupt Bibelot bookstores.

But the trip to Cook Islands will consist of more, much more, for the lawyers than an exceptionally long flight.

Dramatis personae

Bank of America is seeking the repayment of a \$17 million promissory note dated May 31, 1999, that was taken out on behalf of Bloomsbury Group, which owned four Bibelot bookstores. At the time the loan was drawn, the bank — aware that Bloomsbury was not prospering — required a guarantee.

Elizabeth Grass Weese, 43, daughter of Rite-Aid founder Alexander Grass, stepped up and guaranteed the loan. Her net worth: \$41 million, including a \$2.8 million Baltimore County home and \$35 million in bank accounts, securities accounts, bonds and other



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assets, according to documents filed in Baltimore County Circuit Court.

However, a few months after the loan came due, she had transferred more than \$25 million in assets into offshore accounts, transfers she admitted during a deposition. Her attorney has said there was nothing fraudulent about the placement of the assets in an offshore

account. Other lawyers say timing and intent is everything.

Michael Gallerizzo, who represents Bank of America, has his work cut out for him. To prove fraud in the case, he will have to show conclusively that the transfer was executed specifically to protect the assets from the creditor bank.

Gallerizzo, who refuses to discuss the case, is asking the Baltimore County court to, in essence, void the transfer. But should he have to go to Cook Islands, he'll be practicing under a different set of rules in a country with the strongest asset protection provisions in the world.

He's facing a strictly enforced statute of limitations. In the Cook Islands, there is a two-year limitation period for claims that exist at the time the trust is first funded with assets.

"There are two stages of every legal proceeding. Stage one is to prove liability," said Maurice Offit, an estate planning and asset protection specialist at Offit, Kurman & Alms, an Owings Mills-based law firm. "The other stage is to collect once you prove liability has taken place. Asset protection deals with stage two.

"We're assuming liability can be proven by virtue of the fact loan documents have been signed. The question comes in, can the collection take place?" said Offit, who has no association with the legal proceedings in the case against the Weeses but is considered by his peers to be a premier authority on offshore trusts.

Even if the defendant loses the case, Offit says the defendant doesn't have to pay; it's up to the plaintiff who filed the case to seize and sell assets to satisfy the payment.

"You can always seize and sell assets owned by the defendant. The question is: Can you seize and sell assets the defendant no longer owns?" he said.

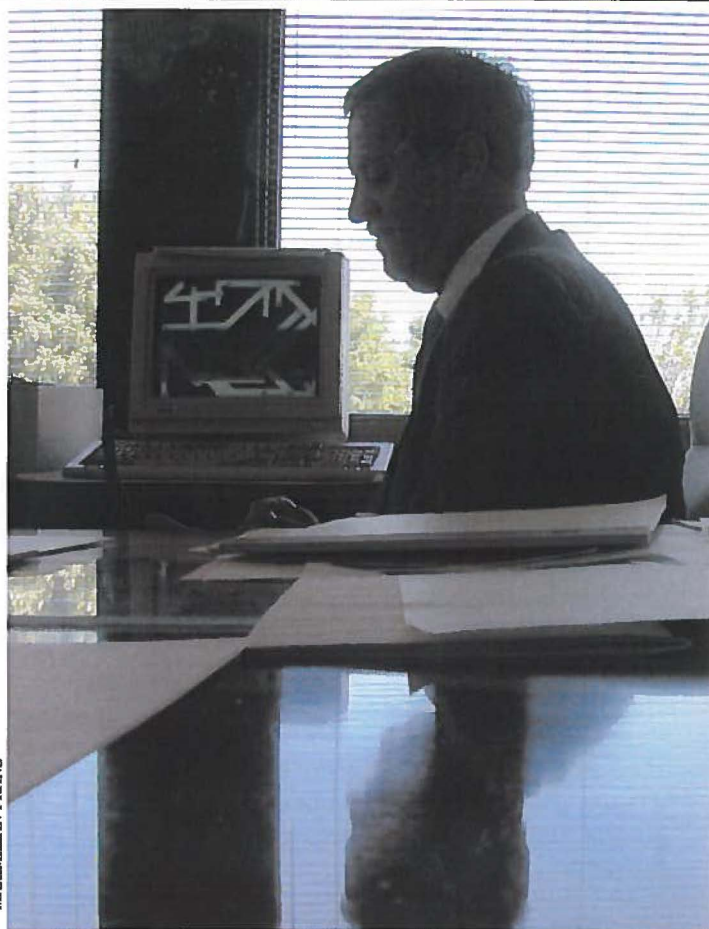
Trustees' paradise ...

When playing in the Cook Islands backyard, creditors are engaged in a territory already blacklisted by the Organization for Economy Cooperation and Development for failing to enforce U.S. judgments, said James W. Constable, senior partner at Wright, Constable & Skeen, a Baltimore-based law firm with expertise in international law. The OECD, a Paris-based group including the United States and countries in the European Union, seeks to place sanctions on so-called "tax havens."

"It's a pretty darn good place to go to avoid creditors," said Constable, whose firm is not associated with the Bibelot case. "The assets can still be in the U.S., but belong to the trust. In order to get the assets, you have to go to the site of the trust and get that country to enforce the U.S. judgment and get at the assets."

And it's probably no wonder Cook Islands doesn't care about being blacklisted. The country claims trust companies' fees of \$2 million a year, second only to tourism in annual revenue. Trustees charge anywhere from \$2,000 to \$5,000 a year to manage trusts.

Constable, meanwhile, said if a U.S. court determines a transfer to be fraudulent, the action can be voided, meaning the assets — as long as they are still held in the U.S., even if they were placed in an offshore trust — may be



MAXIMILIAN FRANZ

One of the region's leading experts on the legal complexities of offshore accounts, Maurice Offit of Baltimore-based law firm Offit, Kurman & Alms says creditors have their work cut out for them if the trust is based on Cook Islands.

attached by the creditor.

"From what I am seeing and reading, a creditor with a tremendous amount of tenacity can unwind these situations," Constable said. "But you must prove the trust was created to avoid creditors."

... attorney's hell

Offit notes that being forced to litigate in Cook Islands poses a difficult situation for attorneys.

"There's a number of provisions in Cook Islands law that come into play with respect to whether those assets in the trust can be taken," he said.

"The first concept is Cook Islands does not give full faith and credit to any orders of a court obtained outside the Cook Islands. That's contrary to our system of justice within the United States. Under the U.S. Constitution, we have the full faith and credit clause ... any judgment obtained anywhere in the U.S. is recognized in another jurisdiction," he said.

This ultimately forces a legal proceeding in the Cook Islands, which conceived the asset protection trust in 1981 as a joint mission between the government and the islands' financial services industry.

The next major challenge is the burden of proof. While general civil cases in the United States set a standard of clear and convincing evidence, the Cook Islands statute says claims must be proven beyond a reasonable doubt — the standard usually applied only in criminal cases in this country.