



In The Supreme Court of Bermuda

CIVIL JURISDICTION

2025 No 294

IN THE MATTER OF THE TRUSTEE OF TWO TRUSTS

AND

IN THE MATTER OF AN APPLICATION UNDER THE TRUSTEE ACT 1975

AND

IN THE MATTER OF ORDER 85 OF THE RULES OF THE SUPREME COURT 1985

BETWEEN:

**CONYERS TRUST COMPANY (BERMUDA) LIMITED
(AS TRUSTEE OF THE FIRST TRUST)**

APPLICANT

AND

THE PROTECTOR OF THE SECOND TRUST

RESPONDENT

Application for relief under section 47A Trustee Act 1975

Date of Hearing: 22 December 2025

Date of Reasons: 22 December 2025

Appearances:

Scott Pearman of Conyers Dill & Pearman Limited for the Trustee

Protector of the Second Trust Notified but not represented and indicating no objection to the Orders being made

His Majesty's Customs and Revenue Department notified of the application but not represented

Reasons for Order

Introduction

1. This is an application brought by the Trustee of a Trust settled in 2005 (“the B Trust”) under section 47A of the Trustee Act 1975 for an Order setting aside in part the exercise of a fiduciary power by the Trustee made in May 2024. The Trustee is also Trustee of a related trust which I have called the “A Trust”.
2. The court made an Order sealing the Court file and anonymising the Court’s proceedings on the grounds that there is no public interest in the disclosure of private details of the internal administration of a trust and to ensure the anonymity of the parties and of any persons connected to the parties.
3. These reasons do not set out the full history of the matter in detail, but the court has limited the description of the background facts to those essential to an understanding of what the court has ordered and why, and explaining the exercise of its powers under section 47A of the Trustee Act 1975.

Background facts

4. The essential facts are that as part of a restructuring of the Trusts, the Trustee acting in its capacity as trustee of the B Trust entered into a phased transaction which entailed the distribution of the whole of the assets of the B Trust to a beneficiary (to whom I will refer as “X”). The second step of the phased transaction was that X made a gift of those assets to the Trustee in its capacity of the A Trust. The third step was the amendment of the A Trust to reflect the terms of the restructuring.
5. The court granted the Order setting aside the relevant part of the exercise of the fiduciary power and granted the declaration that the effect of the Order is that the distribution of the gift to X is to be treated as if it had not been made.
6. The court indicated it would give brief reasons for the making of the Order in these terms and these are those reasons.
7. The Trustee has explained in the evidence filed in support of the application that it did not take appropriate UK tax advice before exercising the fiduciary power to make the gift to the X. Had it done so, the Trustee explained that it would not have exercised the fiduciary power the way that it did, because it would have realised that the gift would have attracted unnecessary additional tax liabilities, and would not have made the distribution from the B Trust to X in the way that it did.
8. In order to correct this mistaken use of its fiduciary power, the Trustee has applied to the court for relief to set aside the exercise of the Trustee’s power to make the distribution to X and seek declaratory relief that the distribution is to be treated as if it had not been made.

The application under section 47A of the Trustee Act 1975

9. The Trustee comes to the court under the jurisdiction conferred by section 47A of the Trustee Act 1975 which empowers the court to set aside the exercise of a fiduciary power either wholly or in part.
10. The history of the section is well known to trust lawyers but, by way of summary, the powers granted by the section were added by the Bermuda legislature to give statutory relief to Trustees who have exercised a fiduciary power under a mistaken understanding of the effect of the exercise of that power without having to demonstrate that the power had been exercised in breach of trust, such statutory provisions in effect reversing the effect of the decision of the English Supreme Court in **Pitt v Holt**¹.
11. The effect of the statutory jurisdiction under section 47A has been comprehensively explained by Kawaley CJ (as he then was) in **Re F Trust**², so the court will not cover that ground here. It will suffice to say that the requirements of the section are that the Court must be satisfied that (i) the person exercising the fiduciary power (i.e. the Trustee) did not take into account a consideration of fact or law that was relevant to the exercise of the power and (ii) that but for the failure to take that consideration into account the Trustee would not have exercised the power at all or would have done so on a different occasion or would have exercised the power in a different manner.
12. Where those conditions are met, the court has a broad and unfettered jurisdiction to set aside the exercise of the fiduciary power wholly or in part and may make any consequential orders as the court thinks fit. The effect of making the order under section 47A is that the exercise of the relevant power or part set aside will be treated as never having occurred.
13. The only limitation is that the jurisdiction of the court to make such order may not be made if the effect would be to prejudice a *bona fide* purchaser for value.
14. The power to make distributions from the Trust is clearly a fiduciary power. In this case the evidence clearly shows that the Trustee did not take into account a relevant consideration (i.e. the effect of an aspect of UK tax law) before exercising its power to make a distribution from the B Trust to X, and if it had taken such advice, the Trustee would not have exercised its fiduciary power in the way that it did.
15. The court therefore finds that the preconditions for the grant of relief are satisfied. Further, it is clear that the interests of a *bona fide* purchaser for value are not affected, so the Court has an unfettered jurisdiction to grant the relief sought.
16. The evidence shows that the Trustee acted in good faith but without taking advice as to the application of and potential consequences of a particular aspect of UK tax law on the assets that it distributed to X, which was clearly a relevant consideration in respect of the implementation of the phased transaction which involved the distribution from the B Trust to X with the understanding that X would make a gift of those assets to the A Trust.

¹ [2013] UKSC 26 upholding the English Court of Appeal's decision on this point (see [2011] EWCA Civ 197).

² [2015] SC Bda 77 Civ (13 November 2015)

17. Accordingly, the court can and, in the circumstances of a mistaken exercise of the fiduciary power, ought to grant the relief sought to set aside the exercise of the Trustee's powers to enter into the phased transaction and make the distribution to X. Therefore, the court did so.
18. The effect of the court's Order is that the distribution from the B Trust to X is to be treated as if it had never occurred and the court, by way of consequential relief, also granted a declaration in those terms.

Dated this 22nd day of December 2025



THE HON. MR. JUSTICE ANDREW MARTIN
PUISNE JUDGE OF THE SUPREME COURT