In The Supreme Court of Bermuda

CIVIL JURISDICTION

2021: No. 330

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

AND IN THE MATTER OF SECTION 47 OF THE TRUSTEE ACT 1975 AND SECTION 4 OF THE PERPETUITIES AND ACCUMULATIONS ACT 2009

AND IN THE MATTER OF THE TT TRUST

EX TEMPORE JUDGMENT

Date of Hearing:	**22 November 2021**
Date of Judgment:	**22 November 2021**

Appearances: **Eason Rajah QC, Ten Old Square, London, Special Admission and Jeffrey Elkinson, Conyers, for Plaintiff**

                               Keith Robinson, Carey Olsen, for First Defendant

JUDGMENT of Mussenden J

Introduction

1. This is an application by way of an Originating Summons dated 27 October 2021 for certain relief under section 47 of the Trustee Act 1975 and section 4(2) of the Perpetuities and Accumulations Act 2009 in respect of the TT trust.

2. I have read the various affidavits and other relevant documents in this matter and I have heard submissions from Learned Queen's Counsel for the Plaintiff and counsel for the First Defendant. The Attorney-General has indicated that she has no objections to the application and therefore does not wish to be heard on the application.

3. I understand the nature of the application and I am cognizant that the application is in parallel with an application by way of Originating Summons in respect of another trust, the CT2 trust.

4. I am satisfied that I should make the orders to grant the relief as sought by the Plaintiff as set out in the Originating Summons.

5. In respect of section 47 of the Trustee Act 1975 and the transfer of the trust fund to the trustee of the CT2 trust to hold as trustee on the varied terms of the CT2 trust as set out in the updated trust document as defined in the affidavit evidence:

    a. I have considered the judgment of Chief Justice Hargun in *In the Matter of GA Settlement and Others*[1] where he summarised the case law and relevant legal principles.

    b. I am satisfied that the Plaintiff does not have the power to make the transfer without the court's authorization under section 47 of the Trustee Act 1975 and section 4 of the Perpetuities and Accumulations Act 2009.

    c. I am satisfied that a transfer by the Plaintiff of the TT trust fund to the trustee of the CT2 trust to hold on the terms of the CT2 trust, even as varied by the updated trust document, is not permitted by the terms of the TT trust, thus the first requirement of section 47 is satisfied.

    d. I am satisfied that the second requirement of section 47 is satisfied as I agree that a transfer of the trust fund of the TT trust to the trustee of the CT2 trust fund to hold on different trusts is a transaction.

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[1] [2019] SC (Bda) 38 Civ (14 June 2019)

e. I am satisfied that the Plaintiff's transfer of the TT trust fund to the trustees of the CT2 trust fund to hold on the terms of the updated trust document is expedient for the TT trust as a whole and that the third requirement in section 47 is also satisfied.

f. Therefore, I order that the Plaintiff shall have power and is directed to transfer the trust fund of the TT trust to the trustee of the CT2 trust fund on the terms as set out in the Originating Summons.

6. In respect of section 4(2) of the Perpetuities and Accumulations Act 2009:

a. I have again considered the judgment of Chief Justice Hargun in *In the Matter of GA Settlement and Others* where he summarised the case law and relevant legal principles.

b. Having regard to my Ruling in respect of section 47 as set out above, in my view, in applying the guidelines including having regard to the best interests of all interested parties, broadly defined and looked at as a whole, I am satisfied that I should exercise my discretion to remove any obstacle to such transfer caused by the rule against perpetuities.

c. I order that the rule against perpetuities shall not apply to the TT trust.

7. Costs of and incidental to the Originating Summons to be raised and paid on the indemnity basis out of the trust funds of the TT trust.

Dated 22 November 2021

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HON. MR. JUSTICE LARRY MUSSENDEN
PUISNE JUDGE OF THE SUPREME COURT