



In The Supreme Court of Bermuda

CIVIL JURISDICTION

2021: No. 331

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 CT2 TRUST

EX TEMPORE JUDGMENT

Date of Hearing: 22 November 2021

Date of Judgment: 22 November 2021

Appearances: Simon Taube QC, Ten Old Square, London, Special Admission and Jeffrey Elkinson, Conyers, for Plaintiff

Matthew Watson, Cox Hallett Wilkinson, 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 CT2 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 TT 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 and in the draft minute of order as filed with the Court subject to some amendments as indicated by Queen's Counsel.
5. In respect of section 47 of the Trustee Act 1975 and the request for authorization for the Plaintiff and any other trustee of the CT2 trust henceforth to administer and hold the trust property of the CT2 trust in accordance with the trust, powers and provisions thereof as amended in the draft declaration of trust incorporated in the draft minute of order which is exhibited to 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 has no broad power of appointment permitting it to resettle or simplify the trust and powers in the manner proposed. Thus the first requirement of section 47 is satisfied.
 - c. I am satisfied that the proposed restatement of the trusts and powers in the updated trust document in the draft minute of order comes within the broad meaning of a transaction. Thus the second requirement of section 47 is satisfied.

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

- d. I am satisfied that the proposed restatement of the trust and powers is expedient for CT2 trust as a whole. Thus the third requirement in section 47 is also satisfied.
 - e. Therefore, I make the order as set out in the terms of the draft minute of order subject to some amendments as indicated by Queen's Counsel.
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 transaction caused by the rule against perpetuities. This will facilitate the transfer by the trustee of the TT trust of its trust funds to the updated CT2 trust.
 - c. I order that the rule against perpetuities shall not apply to the CT2 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 CT2 trust.

Dated 22 November 2021

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