

BERMUDA SUPREME COURT

In the matter of C Trust [2016] SC (Bda) 53 Civ

TRUST - EXTENSION OF DURATION PERIOD - SECTION 4 OF THE PERPETUITIES AND ACCUMULATIONS ACT, 2009 - APPROPRIATENESS OF GRANTING EX PARTE RELIEF - LEGISLATIVE INTENT TO FACILITATE COST-EFFECTIVE APPLICATIONS

In this case, the Court was asked to make an Order under an *ex parte* Originating Summons pursuant to Section 4 of the *Perpetuities and Accumulations Act, 2009* as amended with effect from December 2015. This was believed to be the first instance of an Order being made pursuant to the new rules.

Kawaley CJ addressed the appropriateness of *ex parte* proceedings in the instant case. In so doing, he referred to Bermuda's Parliamentary Hansard in support of his finding of the relevant legislative intent, which was that Section 4, had been intended to create a more simplified means of extending trust periods than previously available. Under the pre-existing route, pursuant to Section 47 of the *Trustee Act, 1975* (the "Act"), the Court had to be satisfied that proposed changes to trust terms were 'expedient'. It was suggested and accepted by the Court that if Section 4 was to achieve its aim of being more flexible and efficient, it must have weaker test than 'expediency'. This consideration also led the Court to proceed in a more economical manner than would have been required under Section 47.

Adding to the justification for using *ex parte* proceedings in this case was the fact that there was a sole beneficiary (albeit with the sole beneficiary's children being additional contingent beneficiaries). Evidence was given of the beneficiary's express consent to the adjustment of the Trust terms. Kawaley CJ noted, however, that in the instance of a trust with more than one beneficiary, direct evidence of their consent, whether by agreement or otherwise, would have to be brought in order to

justify the Court proceeding without their formal joinder to the proceedings.

On the merits of the case, Kawaley CJ found that the statutory conditions for granting the relief were all met under Section 4 and that the Court's discretion to grant the relief was unfettered. The main rationale for extending the duration of the Trust was its substantial size, as well as the wishes of the Settlor that the Trust be enduring and dynastic, so that no succeeding beneficiary was "spoiled" by suddenly acquiring great personal wealth, a purpose the Judge found to be neither irrational nor in any way objectionable. However, he also saw fit to adopt the following guiding principles to this and similar extensions of Trust duration: 1) that the Court should not be a "rubber stamp"; 2) that the Court should have regard to the best interests of all interested parties; and 3) that the fact that extending a Trust will dilute the economic interests of existing beneficiaries will ordinarily be an irrelevant consideration. Kawaley CJ saw no reason to consider the application's merits in the framework of Section 47 of the Act.

For these reasons, he granted the Trustee's application to extend the duration of the Trust under the newly effective Section 4 procedure. He concluded by noting that the duration of the proceedings from Originating Summons to final Order was eight days, a time period he hoped to be indicative of the success of Parliament's intent in seeking to provide a more streamlined and efficient means of varying trust terms.

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