

## BERMUDA SUPREME COURT

### ***In The Matter Of An Application For Information About a Trust [2013] SC (Bda) 16 Civ (12 March 2013)***

BERMUDA TRUST - INFORMATION CONTROL  
CAUSE - RIGHTS OF BENEFICIARIES - CORE  
OBLIGATIONS OF VALID TRUST - TRUSTEE'S  
DUTY TO ACCOUNT - DISCLOSURE

This matter raised a novel question of the impact of an information control clause or mechanism on the Court's supervisory jurisdiction over a Bermudian trust. The Plaintiff sought disclosure of what he characterised as basic information about the Trust of which he is a beneficiary. The trust deed prohibited the Trustees from disclosing any information without the consent of the Protector, the principal beneficiary of the trust. Two broad questions were considered. Firstly, whether the information control mechanism in the trust deed is valid on its face or whether its terms were incompatible with the irreducible core obligations inherent in a valid trust. Secondly, assuming that the relevant clause is valid on its face, what principles delineate the scope of the Court's jurisdiction to grant relief in circumstances which entail a departure from the strict terms of the governing instrument?

In giving Judgment, the Court noted that there was no clear consensus even amongst academic writers that a clause purporting to restrict (or stem altogether) the flow of information from trustees to beneficiaries would be invalid on its face. It was concluded that the trust deed was not invalid on its face for violating the irreducible core content requirements for a valid trust because the information control mechanism neither eliminated the Trustees' duty to account altogether nor purported to oust the jurisdiction of the Court to order appropriate disclosure.

In light of the above, the Court then went on to consider the grounds upon which the Court's supervisory jurisdiction over a trust can be invoked by a beneficiary not entitled to information under the express terms of a trust instrument. The Judge noted that the Court must show due deference for the terms of the trust

deed and only order disclosure if this is shown to be necessary in the proper exercise of the Court's supervisory jurisdiction. However, in giving judgment, it was held that the Plaintiff had made out a, *prima facie*, case for this Court's intervention by applying the threshold test of whether or not such intervention was required in order to hold the Trustees accountable for the due administration of the trust. The Judge held that the appropriate test was whether the Plaintiff has made out a *prima facie* case for disclosure, taking into account both the information control mechanisms created by the Settlor and how they have operated in practice in relation to the current information request. Applying this test, the Plaintiff was held to be entitled to an Order directing the Trustees to disclose financial information about the trust assets. The Judge took into account that a core requirement of a valid trust is that the beneficiaries must be in a position to hold trustees accountable in respect the trustee's fundamental duty to duly administer a trust.

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