

BERMUDA SUPREME COURT

Between: (1) Trustee 1; (2) Trustee 2; (3) Trustee 3; (4) Trustee 4; -and- (1) the Attorney General; (2) Respondent 2; (3) Respondent 3 [2014] SC (Bda) 52 Com (5 June 2014)

ORDER 24 RULE 10 - INSPECTION - PRODUCTION THAT IS NECESSARY FOR FAIR DISPOSAL OR SAVING COSTS - RELEVANT DOCUMENTS - RES JUDICATA - TRUSTEES DUTIES OF FULL AND FRANK DISCLOSURE

The Court had previously ruled on two applications for disclosure made by the Second Defendant in the course of Beddoe proceedings commenced by the Plaintiffs (“The Trustees”). The Court was now asked to consider: (1) A first summons seeking inspection of a number of documents said to have been mentioned in the Trustees’ evidence in reply; and (2) A second summons seeking the production of various categories of documents pursuant to the Court’s supervisory jurisdiction to administer trusts.

In respect of the first summons, it was noted that the request must relate to a document to which “reference is made” in the affidavit in the sense of a “direct allusion”. However, the Court will not order the production of a document unless it is of the opinion that its production is necessary either for disposing fairly of the cause or matter or for saving costs. The Judge dismissed the First Summons as the requests did not relate to documents to which a direct allusion was made, save in one case where production of the requested documents was not necessary for disposing fairly of the matter or for saving costs.

In respect of the second summons, the Trustees raised the preliminary issue of res judicata, arguing that the issue had already been before the Court at a hearing earlier this year. See Offshore Case Digest Issue No. 6. At that hearing, the narrow issue of whether the Trustees’ duty of full and frank disclosure included a duty to disclose documents was considered together with the broader issue of whether the Court had jurisdiction to compel the production of documents by the Trustees. During that hearing, the Court was only asked to render a decision on the

narrow issue but, in determining the point of res judicata, the Judge held that the broader issue was impliedly raised. The Judge upheld the Trustees’ objection and noted that the Court’s ruling on the legal principles applicable to the applications for the production of documents at the earlier hearing would also be applicable to any further application for the production of documents in the continuing Beddoe proceedings.

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