

## CAYMAN ISLANDS HIGH COURT (COMMERCIAL DIVISION)

***In The Matter Of The Trust Law (2001 Revision). FSD 180 of 2010, Smellie CJ, 13 August 2012***

A settlement agreement was reached under which two beneficiaries of a trust (the minor, "A" and the mother of the minor, "B") exited the trust. The settlement agreement was brought before the Court for approval. Orders were made by the Court as to the mechanism for valuing the trust assets and the settlement was approved by the Court. After the settlement, A and B brought an action against the Trustees for, *inter alia*, breach of the fair-dealing rule, on the ground that the valuations underpinning the settlement agreement failed to reflect a transaction that was being negotiated by the Trustees during the settlement talks. It was alleged that this transaction would have had a material impact on the value of the trust assets and that the exiting beneficiaries were deprived its benefit by exiting the trust when they did.

The Trustees' primary defence was that the transaction in question did not materially impact the value of the Trust assets. Further, the Trustees had taken legal advice as to whether they ought to disclose the transaction, as the deal was commercially sensitive and confidentiality was required, and had been advised not to disclose. As such, the Trustees claimed to have acted in good faith and not in breach of the fair-dealing rule. As a secondary matter, another beneficiary, in a representative capacity, counterclaimed against B on the basis that, based on her conduct, she had forfeited her interest under the trust before the settlement agreement was reached. The Court dismissed the counterclaim, holding that the forfeiture issue had been comprised and determined by the settlement agreement which had been approved by the Court. With respect to the primary claim, the Court held that equitable compensation is a remedy available at law. The Court may award equitable compensation for loss resulting from a breach of the fair-dealing rule by

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trustees. Equitable compensation is a free standing remedy independent of the right to rescind. In this case, the Court held that the Trustees had breached the fair-dealing rule and awarded equitable compensation accordingly in favour of the minor, A. However, the adult plaintiff, B did not receive equitable compensation from the Court. She had failed to complain about the settlement agreement (despite having gained the knowledge of the underlying transaction) while it was still possible to restore the trust assets after the settlement agreement was approved. Her claim was therefore barred on the bases of laches, estoppel or acquiescence.

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