

## BERMUDA SUPREME COURT

### *BCD Trust* [2015] SC (Bda) 83 Civ

### CONFIDENTIALITY IN TRUST PROCEEDINGS - SECTION 47 OF THE TRUSTEE ACT - PRIVACY OF BENEFICIARIES

Confidentiality in trust proceedings, especially non-contentious proceedings, can be a pressing issue for trustees. Trustees sometimes need to obtain the guidance of the Bermuda Court, or the exercise of the Court's broad powers under Section 47 of Bermuda's Trustee Act, on entirely non-contentious issues. The trustees may not, however, want undue press attention placed on the beneficiaries. Trustees may avoid seeking the assistance of the Court if, by doing so, they might undermine their beneficiaries' privacy. For this reason, trustees often seek confidentiality orders, which typically provide that the names of the parties involved can be anonymised in the cause book, for the hearing to be heard in private and for subsequent access to court files by the public to be restricted.

Confidentiality, however, is increasingly hard to find in modern courts. The courts continually trend towards ever greater transparency. While non-contentious trust actions were, in the past, heard in chambers (which meant members of the public and the press were in practice, left outside), chambers hearings are now held in court rooms to which the public have ready access. Further, due to recent procedural reforms in Bermuda, court papers held in the Registry are increasingly open to public and media scrutiny.

Thus, confidentiality orders are in increasing demand. They can, however, be hard to obtain. In England for example, such orders, even in non-contentious matters, are treated as exceptional and only granted on the basis of cogent evidence of need (*V-v- T* [2014] EWHC 3432 (Ch) Civ). This effectively means that trustees must show evidence of a security risk or dangers such as 'false friends' latching on to minor beneficiaries.

In *BCD Trust* [2015] SC (Bda) 83 Civ, Kawaley CJ in an *ex tempore* ruling adopted a liberal and pragmatic approach. The Chief Justice emphasised that the Bermuda Constitution specifically permits the Courts to hold hearings in private if it considers it necessary or expedient for the protection of the private lives of the persons concerned in the proceedings. He also commented that, in the absence of any obvious public interest in knowing about internal trust administration, it was in the public interest to deal with noncontentious trust applications as private hearings.

Trustees who wish to obtain the Court's guidance, while protecting the privacy of the beneficiaries, can be confident that their privacy will be protected.

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