

BERMUDA

SUPREME COURT

MERITUS TRUST COMPANY LIMITED -v- BUTTERFIELD TRUST (BERMUDA) LIMITED **[2016] SC (Bda) 82 CIV**

REMOVAL OF TRUSTEE - WHETHER TRUSTEE'S
EQUITABLE RIGHT TO AN INDEMNITY INCLUDES
THE RIGHT TO RETAIN SUFFICIENT ASSETS TO
MEET ACTUAL AND CONTINGENT LIABILITIES AND
THE RIGHT TO A CONTRACTUAL INDEMNITY

On 21 December 2016, Butterfield Trust (Bermuda) Limited ("Butterfield") was removed as the Trustee of the E Trust and the M Trust, and Meritus was appointed in its place. Butterfield asserted that it was entitled to retain sufficient trust assets in relation to the contingent costs liability (estimated at US\$5 million). Butterfield also asserted that it was entitled to a contractual indemnity, particularly in regard to M Trust, while Meritus countered that no such entitlement existed.

The Court found that Butterfield had no right to retain any trust assets as security for its indemnity rights under the E Trust and M Trust. There was no material present that would support a finding that Butterfield was not adequately protected by its equitable lien, in respect of the actual and contingent liabilities. Neither the relevant trust deed nor the *Trustee Act* conferred rights of retention of trust assets nor were there any provisions which would compel Meritus to negotiate and consummate an express contractual indemnity. It was not disputed that the outgoing trustee was entitled to an equitable right to an indemnity.

Therefore, the Court refused Butterfield's application for an Order requiring Meritus to grant them an express contractual indemnity, as no jurisdictional basis for granting such relief was established.

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