

## BERMUDA SUPREME COURT

***Church Bay Trust Co. Ltd. -v- Her Majesty's  
Attorney General For Bermuda [2017] SC  
(Bda) 34 Civ (1 May 2017)***

TRUST DEED - RECTIFICATION - GOVERNING  
LEGAL PRINCIPLES

The issue in this case concerned a clause in a Trust Deed that conferred a power to add and exclude beneficiaries on the Trustees which, by its terms, could only be exercised during the life of the Settlor. However, the very clear instructions from the Settlor to the Trustees before the settlement was drafted reflected the desire for a chain of beneficiaries who would be appointed from time to time, including appointments being made after the Settlor's death.

The Judge held that the quality of the evidence, supporting the fact that there was a mistake, was high because it derived from prior to the execution of the Deed and was based on communications between the Trustees and the Settlor. Having regard to events as they subsequently evolved it was clear to the Judge that it was not intended by the Settlor that the Trust property should go to charity (the ultimate beneficiary) in circumstances where he had identified alternative persons whom were to be added as beneficiaries.

The Court sought to give effect to the true intentions of the Settlor by granting the application to rectify the Trust Deed in the terms prayed.

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