



In The Supreme Court of Bermuda

CIVIL JURISDICTION

2023: No. 400

IN THE MATTER OF THE N TRUST

AND

IN THE MATTER OF SECTION 4 OF THE PERPETUITY AND
ACCUMULATIONS ACT 2009

RULING AND ORDER (In Chambers)

Hearing Date: 17 December 2024

Ruling Date: 17 December 2024

Appearances: *K. Robinson* of Carey Olsen Bermuda Limited for the Trustee
S. Pearman of Conyers Dill & Pearman Limited for the Protector

RULING of Martin, J

Introduction

1. This is an application made by Originating Summons dated 18 March 2024 by the Trustee of a settlement dated 21 March 1996 (hereafter the “N Trust”) to disapply the

rule against perpetuities in relation to the N Trust under section 4 of the Perpetuities and Accumulations Act 2009 (the “P&A Act”).

2. This trust has a relatively short perpetuity period by reason of the vesting day provision which sets the vesting date at sixty years from the date of the establishment of the trust. This trust has substantial assets and the Trustee considers that because the number of beneficiaries is small and they are otherwise well provided for, it is appropriate to remove the vesting requirement and make the Trust a perpetual trust to facilitate long term wealth planning for the future descendants of the Settlor’s family to fulfil the Settlor’s intention of establishing what is in reality a ‘dynastic’ family trust.

Summary and Disposition

3. The Court granted the application in terms for the reasons briefly stated below.

Reasons

4. The Bermuda legislature has done away with the rule against perpetuities in relation to trusts and settlements, except insofar as they govern trusts of land in Bermuda¹. The N Trust does not presently hold land in Bermuda and because the beneficial class is not Bermudian, it is never likely to do so.
5. The N Trust was established before the rule against perpetuities was repealed, but the statute allows the Court to disapply the rule² on application by the Trustee. In this case the Trustee considers removing the restriction on the vesting date and making the trust a “perpetual” trust (i.e. without a defined vesting date) would be beneficial for the purposes of long-term investment and trust management planning of this dynastic family trust. The Protector has also expressed its full agreement and support to the application.

The removal of the perpetuity period under section 4 of the P&A Act

6. The P& A Act removed the requirement for settlements settled after August 2009 to include a perpetuity period, except where the Trust holds Bermuda real property. The

¹ Section 3 of the Perpetuities and Accumulations Act 2009.

² Under Section 4 of the 2009 Act

public policy of Bermuda is therefore that modern trusts do not need to have such a limitation.

7. In cases where dynastic wealth is concerned, where it is expected they will last for the full perpetuity period that would otherwise have applied, or in older trusts which had to have such a period included, this means that at some point in the future there will be a forced distribution of the assets to the then beneficial class of objects of the trust.
8. It is generally regarded as being unsatisfactory to force the distribution on beneficiaries who may be young adults and for whom it may not be in their wider best interests to receive large distributions of wealth at one time. There are also tax and estate planning considerations that make such an event both unwise and potentially punitive. Therefore, the conventional wisdom is that it is better to extend the trust period to minimise the impact or get rid of a fixed term of duration altogether, depending on the tax consequences that may be involved.
9. The legal tests for the removal of the perpetuity period are described in earlier cases which say that the Court must not act as a rubber stamp, must have regard to the interests of the parties, broadly defined and looked at as a whole, remembering that the dilution of the economic interests of existing beneficiaries is (normally) irrelevant³.
10. Applying those tests to the present circumstances, I am satisfied that the removal of the perpetuity period is in the interests of the beneficiaries looked at as a whole, and taking into account the factors that have been mentioned by the Trustee and the Protector.,
11. The adult beneficiaries under the Trust have been notified and have not expressed any objections. One young adult beneficiary has not been notified because they have not been made aware of the trust structure and it is not intended to make them aware until they reach a more mature age.

³ See **Re C Trust** [2016] SC (Bda) 5 Civ (16 May 2016) and **Re G Trusts** [2017] SC (Bda) Civ (15 November 2017)

12. I am satisfied that it is not necessary to notify that particular beneficiary of the application or to make representation orders for the minor or unborn beneficiaries in the circumstances of this case because (i) all the beneficiaries are otherwise well provided for and the removal of the perpetuity period will not in any practical way adversely affect them and (ii) the trust is a discretionary trust so that none of the beneficiaries have any vested interest or entitlement under the Trust that will or could be affected by the removal of the perpetuity period.

Conclusion

13. Therefore, the Court made the Order in terms prayed in the Originating Summons.

Date this 17 December 2024





THE HON. ANDREW MARTIN
PUISNE JUDGE