



# In The Supreme Court of Bermuda

## CIVIL JURISDICTION

2024: No. 362

IN THE MATTER OF RL TRUST<sup>1</sup>

### JUDGMENT (In Chambers)

**Hearing Date** 19 December 2024

**Ruling date** 10 January 2025

**Appearances:** *David Brownhill KC and Laura Kearns of Carey Olsen Bermuda Limited for the Trustee*  
*Lilla Zuill of Cox Hallett Wilkinson Limited for the First to Third Defendants*  
*Richard Horseman of Wakefield Quin Limited for the Fourth Defendant (Protector)*

### RULING AND ORDERS of Martin, J

#### Introduction and background summary

1. These are the reasons for the Court's Order dated 19 December 2024 in this matter.
2. The RL Trust (hereafter "the Trust") was settled on 21 July 2021 as a Bermuda law settlement with a licensed trustee (the "Trustee") registered in Bermuda. The principal asset of the Trust includes the 95% ownership interest in a holding company (the "Principal Asset"), which holds a limited partnership interest in a successful regulated

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<sup>1</sup> The title of the proceedings was anonymized by Order of the Court dated 13 December 2024.

entity engaged in securities trading. The holding company has also made significant investments in life sciences/medical research ventures. The financial success of the regulated entity is due to the efforts of one of the principal beneficiaries of the Trust. I shall refer to that person as the “primary” beneficiary. The economic settlor of the Trust was the primary beneficiary’s sister-in-law.

3. Under the Trust, the primary beneficiary was granted a Special Testamentary Limited Power of Appointment (the “STL power”) which gives the primary beneficiary the power to appoint the assets of the Trust to a third party (i.e. any individual, entity, or another trust excluding himself and his estate or creditors) provided that the appointment takes effect upon his death. A perpetual purpose trust under Bermuda law (the “Purpose Trust”) has been established for the purpose of continuing to invest in the types of medical ventures and research in which the holding company is currently invested. The primary beneficiary has exercised the STL power under the Trust and has appointed the Principal Asset of the Trust to the Purpose Trust, but this appointment will not take effect until the primary beneficiary’s death.
4. The Trustee has since been advised that it would be more efficient and beneficial (for the reasons explained below) if the appointment of the Principal Asset to the Purpose Trust takes place *before* the primary beneficiary dies. Ordinarily the Trustee would have power to make the appointment under its general discretionary powers of appointment to transfer the assets of the Trust to another trust. However, the Trustee has been advised that the exercise of this power would only be possible if the appointment under the exercise of those powers is for the benefit of the beneficiaries of the Trust. An appointment of assets to a philanthropic purpose trust does not therefore fall within the existing discretionary powers of appointment under the Trust. It is in these circumstances that the Trustee has applied to the Court for the Court’s sanction and authorisation to enter into a deed of variation to the Trust to facilitate the appointment of the Trust’s assets to the Purpose Trust during the primary beneficiary’s lifetime.
5. The Trustee has ensured that the elder generation adult beneficiaries of the Trust are aware of its intended application to the Court, and the consequences that will flow from the intended transaction and after full disclosure of the relevant details, they have expressed no objection. The Protector has indicated his full support for the appointment being made during the primary beneficiary’s lifetime, and although the transfer would not require the Protector’s consent, the Trustee gains considerable comfort from the Protector’s independent expression of his agreement.
6. The Trustee intends to make the appointment of the Principal Asset out of the Trust to the Purpose Trust provided the Court grants the present application to authorise the Trustee to enter into the Deed of Variation which will confer the necessary power.

### **The application under section 47 Trustee Act 1974**

7. Under section 47 of the Trustee Act 1974 the Court has power to grant its authority to a trustee to enter into a transaction which the Trustee of a Bermuda Trust does not have power to enter into under the terms of the Deed of Settlement, provided that the Court considers that it is expedient to do so in the interests of the trust as a whole<sup>2</sup>.
8. The Trustee has indicated to the Court that it is satisfied that it is appropriate to proceed to make the appointment of the Principal Asset to the Purpose Trust without delay for the following reasons:
  - (a) Abundant provision for the beneficiaries of the Trust has already been made through other wealth management structures so that the beneficiaries of the Trust will not have any need of the assets of the Trust.
  - (b) The primary beneficiary's wish and intention to be involved with the establishment and initial operations of the Purpose Trust would be particularly beneficial to the Purpose Trust, and this will only be possible if the appointment is made during the primary beneficiary's lifetime, rather than waiting for the appointment to take effect upon his death.
  - (c) The transfer of the ultimate ownership interest in the regulated company requires regulatory approval which will be much simplified if the transfer takes place before 1 January 2025.
  - (d) The tax reporting requirements on the primary beneficiary's death will be greatly simplified if the transfer occurs prior to the primary beneficiary's death.
  - (e) The primary beneficiary is elderly and not in good health and time is of the essence.

### **The Court's assessment**

9. The Court has had regard to all the factors referred to by the Trustee which has been supported by evidence that is thorough and compelling. The Court is satisfied that the Trustee does not have the necessary power under the Trust to make the appointment to the Purpose Trust as the Trust is presently drafted, and that entering into the proposed Deed is, for the purposes of the section, a transaction which the Court has power to authorise the Trustee to enter into based on the authority of **Re H Settlement**<sup>3</sup>. The Court also considers that it is in the interests of the Trust as a whole to grant the

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<sup>2</sup> See **Re H Settlement** [2019] SC (Bda) 27 Com (30 April 2019) and **Re GH and IJ v KL and Others** [2010] Bda LR 86.

<sup>3</sup> See footnote 2 above.

Trustee the power to enter into the Deed of Variation in accordance with the principles set out in **GH and IJ v KL and Others**<sup>4</sup> for the reasons briefly set out below.

10. The beneficiaries of the Trust are all already fully provided for by other means and do not regard the Trust as being necessary for the provision of wealth or resources for themselves or their families.
11. The primary beneficiary's appointment of the Principal Asset has already been made so that the beneficiaries will not have even a remote likelihood of receiving any benefit from the Trust during the primary beneficiary's lifetime, and which for the reasons given, they have no need or expectation of benefit from the Trust. The only issue is one of timing: whether to wait until the primary beneficiary's death or to proceed with the transfer now.
12. There are obvious practical benefits to granting the Trustee power to proceed without waiting for the STL appointment to take effect. First, the primary beneficiary can begin the work in organising the operational requirements and give guidance and instruction to those who will continue the work of the Purpose Trust after his death. The sooner he can commence this work, the better. Second, the regulatory approval process will be much simplified and efficient if this can occur, if possible, before the end of the year. Third, although there is no concern over tax exposure, there are considerable reporting advantages to achieving the transfer during the primary beneficiary's lifetime.
13. In light of the fact that the beneficiaries are not remotely likely to receive any benefit from the Trust, have no need of it, and do not object to the transfer taking place, the Court is satisfied that the variation of the Trust to provide the Trustee with a power to transfer assets to the Purpose Trust so as to fund the Purpose Trust to continue the medical investment and research which is of special interest to the primary beneficiary is expedient and in the interests of the Trust as a whole.

Dated this 10 January 2025



**THE HON. ANDREW MARTIN**  
**PUISNE JUDGE**

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<sup>4</sup> See footnote 2 above.