

GUERNSEY COURT OF APPEAL PROVIDES GUIDANCE ON RIGHTS OF NON-BENEFICIARIES TO SEEK TRUST DOCUMENTS



Authored by: Christopher Edwards (Partner), Benjamin Manchak (Counsel) & Iona Mitchell (Knowledge Counsel) - Mourant Ozannes

Overview

The Guernsey Court of Appeal has delivered an important decision on the rights of individuals who are not beneficiaries of a trust - but who are objects of a power to add beneficiaries - to obtain disclosure of trust documents and information. The judgment in *BX v T Limited & Ors* [2024] GRC 036 provides helpful clarification of the scope of the Court's jurisdiction to order disclosure of trust documents and information, and the principles underpinning applications for disclosure by non-beneficiaries.

The case will be of interest outside of Guernsey because the Court considered and applied principles that are common among England & Wales and other offshore jurisdictions, following the Judicial Committee of the Privy Council's decision in the case of *Schmidt v Rosewood Trust Ltd* [2003] 2 AC 709 (*Schmidt*), which was an appeal from the Courts of the Isle of Man.

Background

The appellant, BX, was the son of the settlor, X, from an earlier marriage. The trust in question, the W Trust, was a Guernsey law irrevocable discretionary trust established in 2005. The only named beneficiaries were AX and JX, two of X's seven children.

BX was not a beneficiary but was an object of a power to add beneficiaries under the trust deed. Following disputes

among different family branches, BX sought disclosure of trust documents, arguing that he had a sufficient interest to request information under section 69 of the Trusts (Guernsey) Law, 2007 (the Trusts Law) and/or the Royal Court's inherent jurisdiction. He relied upon a contention that his father had intended for him to be added to the beneficial class of the W Trust.

At first instance, Lieutenant Bailiff Hazel Marshall KC dismissed BX's application, and BX appealed to the Court of Appeal.

Applications for disclosure

In its judgment, the Court of Appeal gave important guidance about these types of applications (often referred to as trustee-applications). The Court emphasised that section 26 of the Trusts Law, which regulates disclosure of trusts documents and information to specific individuals or classes of individuals, does not apply to trustee disclosure applications brought by third

parties, notwithstanding they may be objects of a power of addition.

In the absence of a statutory test for when a non-beneficiary might be treated similarly to a beneficiary for the purposes of disclosure, the Court confirmed that a non-beneficiary's application must be considered under the Court's inherent jurisdiction, applying equitable principles and guided by previous authorities, notably the decision of the Privy Council in *Schmidt*.

The Court reiterated that while the object of a power of addition may, in exceptional circumstances, be entitled to the Court's protection, disclosure will only be ordered where it facilitates the proper administration of the trust. The requirement for "exceptional circumstances" meant that something out of the ordinary was required before the Court would grant relief to an object of a power of addition. To succeed, an applicant must demonstrate a strong or very strong expectation — objectively assessed — of being added to the beneficial class.

Relevant factors include the scope of the power of addition, the applicant's relationship with the settlor, the existence of any provision made for them, and the extent to which others are able to hold the trustee to account. The strength of the expectation of the object of the power of addition may also change over time. For example, if there

were existing beneficiaries of the trust (other than, say, a charity with which the settlor had no particular connection), the expectation of another person to be added to the class of beneficiaries might reasonably increase if those existing beneficiaries later died unexpectedly.

Decision

The Court of Appeal held that the Lieutenant Bailiff had correctly applied the law and agreed that BX did not meet the threshold for a disclosure order in the present case. There was no letter of wishes or other compelling evidence that the settlor intended BX to become a beneficiary of the W Trust, and BX's expectation of being added was weak. Disclosure would not advance the proper administration of the trust and, given the existing hostility between family members, might instead harm the beneficiaries' interests.

Accordingly, the appeal was dismissed.

Key Takeaway Points

- Objects of a power of addition do not have a statutory right to disclosure under the Trusts (Guernsey) Law, 2007.
- The Court's inherent jurisdiction may, in rare cases, allow such applicants to seek confidential trust information, but only where there is a strong objective expectation of addition to the beneficial class and disclosure would facilitate proper trust administration.
- Trustees (and indeed settlors of Guernsey trusts and their beneficiaries) may take comfort that confidentiality of trust information will generally be maintained against persons with only a theoretical or remote prospect of benefit.
- The decision reinforces the importance of clear letters of wishes and careful management of family expectations, particularly where powers of addition exist.

This decision provides valuable clarity for trustees and their advisors in handling disclosure requests from non-beneficiaries. It confirms that the Courts will adopt a cautious approach, balancing transparency with the need to preserve the confidentiality and integrity of trust administration.

Mourant acted for the trustee in this case.

L