



In The Supreme Court of Bermuda

COMMERCIAL COURT

2024: No. 242

**IN THE MATTER OF AN APPLICATION UNDER SECTION 4 OF THE
PERPETUITY AND ACCUMULATIONS ACT 2009 (AS AMENDED)**

AND IN THE MATTER OF THE PERPETUITY PERIODS OF TWO TRUST

RULING AND ORDER

(In Chambers)

Date of Hearing: 17 December 2024

Date of Ruling 17 December 2024

Appearances: *S Pearman* of Conyers Dill & Pearman Limited, for the Trustee

RULING of Martin, J

Introduction

1. This is an application made by Originating Summons dated 17 September 2024 by the Trustee of a settlement dated 4 January 1991 (hereafter the “NP Trust”) to disapply the

rule against perpetuities in relation to the NP Trust under section 4 of the Perpetuities and Accumulations Act 2009 (the “P&A Act”) together with various consequential amendments to the trust deed following the disapplication of the rule against perpetuities. The second Trust involved in this matter (the G Trust) is not involved in this application, and will be re-listed at a future date.

2. The NP Trust has substantial assets and the Trustee considers that it is appropriate to disapply the perpetuity period and to alter the duration of the NP Trust to 26 April 2112 to align it with other related family wealth trust structures. This is 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.
3. The NP Trust has a relatively short likely duration and could come to an end as soon as twenty years from the present date which would force the distribution of vast wealth to the beneficiaries at a relatively young age which may result in significant tax liabilities and would likely not be in the best interests of young adults to receive in one lump. It would also frustrate the Settlor’s original intention to create a dynastic source of wealth for future generations.

Summary and Disposition

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

Reasons

5. 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 NP Trust does not presently hold land in Bermuda and because the beneficial class is not Bermudian, it is never likely to do so.
6. The NP Trust was established before the rule against perpetuities was repealed, but the statute allows the Court to disapply the rule² on application by the Trustee.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

¹ Section 3 of the Perpetuities and Accumulations Act 2009.

² Under Section 4 of the 2009 Act

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. It would also be desirable for tax planning and other administrative reasons to align the duration of the NP Trust with other family wealth structures under administration by the same Trustee.

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

7. 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 public policy of Bermuda is therefore that modern trusts do not need to have such a limitation.
8. In cases where dynastic wealth is concerned, where it is expected the trust 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.
9. 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.
10. 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.

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

11. Applying those tests to the present circumstances, I am satisfied that the removal of the perpetuity period, and alignment of the Trust Period of that of other family structures, 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, the adult beneficiaries and future generations of beneficiaries.
12. The adult beneficiaries under the Trust have been notified and have not expressed any objections and the Protector has expressed its views in respect of the application.
13. I am satisfied that it is not necessary 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 NP 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

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

Dated this 17th day of December 2024



THE HON. JUSTICE MR. ANDREW MARTIN
PUISNE JUDGE