

## TRUST LAW

# Disclosures to beneficiaries: the fine print

By Anthony Grant

In *Addleman v Lambie Trustee Limited* [2019] NZCA 480 the Court of Appeal gives clear guidelines to trustees about their obligations to disclose various documents to beneficiaries.

The plaintiff was a discretionary beneficiary and a final beneficiary of a trust established in 1990. In 2002 she was informed she was a beneficiary of the trust. She received a distribution of \$4.2 million, described as being “the full distribution of funds that will be coming to you” from the trust.

Addleman subsequently wrote to the trustees wanting information about the trust.

She asked for a copy of the trust deed, the trust’s financial statements and other documents, and was given a copy of the trust deed and documents showing changes in the trusteeship of the trust but no financial statements.

The Court of Appeal has ordered the trustee to provide:

- ♦ the trust’s financial statements;
- ♦ minutes of trustee meetings but with reasons for their decisions being redacted; and
- ♦ copies of any legal advice or opinions the trustees have received which were paid for by the trust.

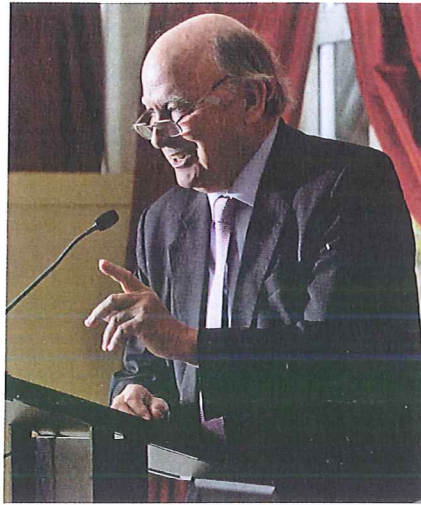
One of the reasons the trial judge gave for withholding disclosure of these documents was because the beneficiary might use the information to sue the trustee. The Court of Appeal was not impressed with this claim, saying:

*“The possibility that [the beneficiary] might pursue a claim against the trustees alleging a failure to discharge their duties cannot justify declining to order disclosure of any trust documents to her, including the minimum necessary to enable her to assess... whether the trust has been administered properly.”* [55]

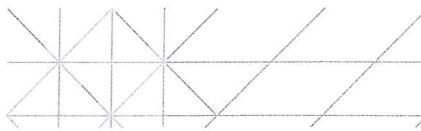
Another reason given for withholding documents was that the information was confidential. This claim was dismissed in strong terms:

*“Trustees cannot escape their obligations to account to beneficiaries... by asserting personal preferences for privacy and confidentiality. There is no confidentiality or other provision in the trust deed to justify such an approach.”* [51]

A third reason given for withholding documents was that the distribution to the beneficiary was accompanied by a statement that it constituted the “full distribution of funds that will be coming to you”, indicating she had no further interest in the trust.



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But the Deed of Trust did not say there were to be no further distributions to her, she was named as a final beneficiary and the trustee’s claim was unverifiable without seeing more documentation.

The trustee’s reasoning was rejected. Trustees should beware of making claims that are unverifiable without giving access to all relevant trust documentation.

The following are some other principles the court has declared. I set them out without any accompanying comment as they are expressed simply and are self-explanatory.

*“Unless basic trust documents are disclosed to [a beneficiary] the trustees’ administration of the trust will remain secret and beyond scrutiny.”* [31]

*“Trustees have fundamental duties to... account to beneficiaries.”* [21]

*“A beneficiary seeking to hold trustees to account may need access to documents to assess whether the trustees have acted in accordance with their obligations. The underlying principle is to identify the course of action most consistent with the proper administration of the trust and the interests of beneficiaries generally, not just the beneficiaries seeking disclosure.”* [21]

*“The strongest case for disclosure [is] a case involving a request from a close beneficiary for disclosure of the trust deed and the trust accounts, which would be the minimum needed to scrutinise the trustees’ actions in order to hold them to account.”* [23]

The requesting beneficiary “has no means of assessing whether the trust has been administered properly if she does not receive any financial information concerning its assets and how they have been dealt with.” [27]

*“One of a trustee’s fundamental duties [is] to maintain proper accounts in respect of trust property and have these available for inspection by beneficiaries. This is a necessary incident of a trustee’s fiduciary duty to account to the beneficiaries. Failure to keep such accounts is a breach of trust.”* [28]

*“While a beneficiary does not have an absolute right to the accounts, the circumstances in which such accounts may properly be withheld from a close beneficiary are likely to be limited.”* [28]

*“Legal advice or opinions obtained by trustees to guide them in the discharge of their duties as trustees and paid for out of trust funds are trust documents created for the benefit of the beneficiaries. The privilege attaching to such communications may be asserted against third parties but not by the trustees against the beneficiaries.”* [30]

*“Trustees are fiduciaries and beneficiaries are entitled to hold them to account. Without basic trust documents including the accounts, they cannot do so.”* [33]

It is surprising that such a case reached the Court of Appeal since the principles set out above are well known and orthodox.

The principles expressed in the *Addleman* case also accord with the pending requirements of the Trusts Act 2019.

Section 51 of the Act creates a presumption that a trustee must notify beneficiaries of “basic trust information”.

The term “basic trust information” is defined in s 49 as being “any information that it is reasonably necessary for the beneficiary to have to enable the trust to be enforced”.

The Court of Appeal’s statement that “the strongest case for disclosure” is an application for copies of the trust’s financial statements since they “would be the minimum needed to scrutinise the trustees’ actions in order to hold them to account” is a principle as applicable today as it will be when the Trusts Act comes into force.

Trustees should be prepared to disclose copies of financial information to beneficiaries and other documents necessary to assess whether trustees have been complying with the fiduciary obligations they owe to their beneficiaries.

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