Information that trustees must give beneficiaries, and some reflections on the need for a specialist judiciary

By Anthony Grant, Trusts & Estates Litigator

Lewis v Tamplin [2018] EWHC 777 (Ch) is another recent case which specifies the types of information that trustees must give to beneficiaries.

The Tamplin Trust owns a farm that is liable to be rezoned for development. Its trustees have entered into an option agreement with a developer and they anticipate that they might have to enter another option.

Some beneficiaries want information that will enable them to hold the trustees to account and sue them for breach of trust if need be (see para [43]). They're concerned that the trustees might not have generated any income from the land, might not have entered into option agreements prudently, and might have distributed income to other beneficiaries.

These are some of the categories of documents that the trustees have been ordered to provide:

- All legal advice that the trustees have received concerning their potential liability for breach of trust – except to the extent that the trustees have paid for the advice from non-trust sources, i.e.: "professional advice obtained by the trustees for the benefit of the trust and at the cost of the trust ... is not protected from production to the beneficiaries." (at para [60])
- Information and documents relating to a conditional fee arrangement that the trustees have entered into with professional advisors, i.e.: beneficiaries are entitled to "information about the trust, its assets and the trustees' stewardship of ... them". (para [61])
- The beneficiaries are "entitled to know what the trustees have done with the land". (para [63])
- The beneficiaries are to be given copies of professional advice that has been provided "for the benefit of the [trust] and at the cost of the trust". (para [64])

The judge criticised the trustees in trenchant terms for their obstructive approach to the provision of relevant trust documentation, saying that they have "taken an extreme and ... indefensible approach to disclosure ... by putting forward a series of hopeless arguments against giving information to the beneficiaries". (at para [71])

The judge referred to the distinction between administrative powers and dispositive powers.

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Trustees are not entitled to withhold information about administrative actions (i.e. actions they have taken to administer trust assets), but they are entitled to withhold some information and documents relating to dispositive powers (i.e. how and why they have distributed trust assets).

From a New Zealand perspective, it can be noted that the judge referred on a number of occasions to the Supreme Court's decision in *Erceg v Erceg* [2017] NZSC 28.

The case is interesting from another perspective. It is obvious from the quality of the decision that the judge is a specialist who knows what he is doing. He is HHJ Paul Matthews, a man who is well known to trust practitioners internationally.

Judge Matthews is essentially a legal academic, having lectured at University College London from 1979 to 1983, and who has held visiting appointments at Oxford University, the City University, the University of Aix-Marseille, the Institute of Law in Jersey and the University of Liechtenstein. He was a solicitor who became a deputy Chancery Master and is one of the authors of the current edition of *Underhill & Hayton on Trusts and Trustees*, and other academic trusts texts.

He currently sits as a "specialist Circuit Judge" but, interestingly, he can be moved around the court system as his expertise is required. For the purposes of the *Tamplin* case, he was moved up to the High Court where the case was decided.

Some years ago I wrote a number of articles about the need for judicial specialisation in New Zealand. I also wrote about the unacceptable delays that were occurring with the delivery of some judgments. For this, I was subjected to public criticism by one of the country's most senior judges.

What I wrote was correct. The lack of a specialist judiciary and the delays of the judgments were blights on our legal system. Parliament has subsequently recognised this and has passed remedial legislation for both deficiencies in the *Senior Courts Act 2016*.

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