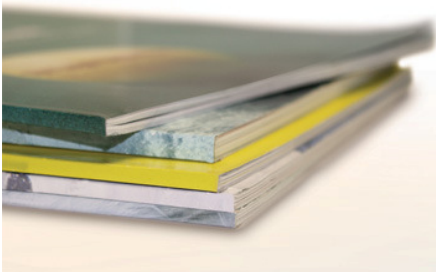


Guardian Limited v Bermuda Trust Company Limited



BY KEITH ROBINSON

In another interesting Bermuda trusts case (**Guardian Limited v. Bermuda Trust Company Limited** [2009] SC (Bda) 54 Civ), the Supreme Court considered the appropriate practice as to the publication of judgments in Chambers applications and privacy in trust cases in general. The substance of the case was an application by the Protector to construe the trust deed as to whether the widow of the Settlor was an “Excluded Person”. The Settlor was an Excluded Person as were “the spouses of persons who are Excluded Persons...”. Thus, the wife of the Settlor was excluded during the Settlor’s lifetime but did this status endure the Settlor’s death? On this point, the Supreme Court, distinguishing the recent unreported English case of **Greenwold v. Greenwold** [2008] EWHC 820 (CH) on the facts, held that as a matter of construction “Excluded Persons” did not apply to a widow and only encompassed a spouse of the Settlor during the latter’s lifetime.

The decision in **Guardian** is probably of most interest as it is the first time that the Supreme Court has considered in a reasoned judgment the practice with regard to the publication of Chambers rulings in trust cases. This is particularly relevant in the Information Age when decisions of the Supreme Court are readily available on the judiciary website. A 2006 Practice Direction was the starting point for the Court’s consideration of this issue. This provides that in general Chambers rulings should be treated in the same way as rulings following hearings in open court and published unless there is some good reason to prohibit publication or edit the ruling. The Practice Direction expressly contemplates editing or

restraint from publication upon specific application if the court considers it necessary and expedient to do so in the interests of justice, commercial confidentiality, defence, public safety, public order, public morality, the welfare of minors or “the protection of the private lives of the persons concerned”. The judge considered in some detail sections 6 and 9 of the Bermuda Constitution which provide for court hearings (subject to limited exceptions) to be held in public and the right to freedom of information. The judge concluded that the Practice Direction was consistent with these constitutional rights. The judge noted that in most trust applications a reasoned written ruling would be unlikely and when in exceptional circumstances such a ruling was necessary, the public interest would be served by publication without revealing the identities of the trust and the beneficiaries concerned. An order restraining publication was therefore refused but the judge drafted the ruling in such a way that the identity of the trust and the beneficiaries was not revealed.

The judge concluded that “having regard to Bermuda’s status as an offshore trust domicile, this Court is bound not just to be sympathetic to the privacy needs of those who establish trusts here, but also to the need to promote the development of Bermuda trust law as well”. It seems likely following **Guardian** that providing that the privacy concerns of parties affected by trust cases are well founded and in the absence of any countervailing public interest in publication, the Supreme Court will be persuaded to provide for anonymity.

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February 2010

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