



In The Supreme Court of Bermuda

CIVIL JURISDICTION

2025: No. 88

IN THE MATTER OF THE R TRUST

JUDGMENT

(In Chambers)

Application for the court blessing of the proposed exercise of the trustee's powers to make appointments out of the Trust to four new trusts and for an order disapplying the rule against perpetuities under section 4 of the Perpetuities and Accumulations Act 2009 in respect the Trust

Date of Decision **29 July 2025**

Appearances:

Keith Robinson and Laura Kearns of Carey Olsen Bermuda Limited for the Trustee

Fozeia Rana Fahy of MJM Limited for the 1st 4th 5th 9th 10th 18th and 19th Defendants

Sam Riihiluoma of Appleby Bermuda Limited for the 2nd 3rd 6th 7th and 8th Defendants

David Kessaram of Cox Hallet Wilkinson Ltd for Murray North acting as guardian ad litem for the 11th, 12th, 13th, 14th, 15th, 16th, 17th, 20th and 21st Defendants

JUDGMENT of Martin, J

Ex tempore judgment:

1. This is an application for the Court's blessing of the Trustee's decision to distribute the assets of the R Trust to three new dynastic trusts and a purpose trust and an application under section 4 of the Perpetuities and Accumulations Act 2009 to disapply the application of the perpetuity period in respect of the R Trust.
2. The Trustee has set out the factual background to the application in its first affidavit. The affidavit explains that the application concerns an application to divide the accumulated wealth in the R Trust to three new trusts for the benefit of the future generations of the original Settlor and his wife, each new Trust receiving an appropriate share of the wealth held in the R Trust to benefit each of the branches of their descendants.
3. The total amount of wealth involved is beyond substantial and exceeds US\$ 1 billion in value. The intention behind the original Trust that preceded the R Trust was to provide a source of wealth to benefit future generations, and this objective was modified and extended in the terms of the R Trust.
4. The Trustee has decided that the time has come to make further new provision for the next generations of the descendants of the Settlor and his wife, and to divide the assets between three newly created irrevocable discretionary trusts, each one being dedicated to different branches of the family. The value to be divided has been arranged so as to achieve as nearly as possible an equal or at least equitable distribution of those assets between three of the new trusts, taking into account the historic distributions that have been made to the members of those branches or to other trusts established for their benefit.
5. The details of which assets are to be transferred to each new trust and at what values are not relevant to record for the purposes of the Court's decision, and in order to maintain confidentiality, those details are omitted from this record of the Court's decision.
6. The Court notes that the new trusts will be of sufficient size and scale to be regarded as 'dynastic' and capable of providing benefit to the classes of beneficiaries of each trust for many generations to come.
7. The Court accepts that this is a decision which the Trustee rightly regards as a "momentous" decision in the life of the R Trust and that it is appropriate for the Trustee to apply to the court for 'blessing' of the exercise of its powers to achieve the restructuring.

8. In preparing for the application, the Trustee has consulted with the Protectors who have been kept informed of the purpose, structure and steps that the Trustee intends to undertake to implement their decision, and although the Protectors' consent is not required, the Protectors have confirmed their support for the proposed exercise of the Trustee's power to appoint the assets out of the R Trust to each of the new trusts.
9. The Trustee has taken detailed tax advice in the relevant jurisdictions and is satisfied that (i) in relation to the relevant jurisdictions where most of the beneficiaries reside or are domiciled there is no risk of an adverse tax consequence, and (ii) in respect of one jurisdiction, that the risk of an adverse tax consequence is so low that it is reasonable for the Trustee to proceed.
10. In addition, although none of the adult beneficiaries is required to consent to the proposed appointments of assets to the new trusts, the Trustee has consulted with the respective adult beneficiaries of the R Trust and has received confirmation that none of the adult beneficiaries opposes or objects to the proposed re-organisation of the trust assets in the manner proposed by the Trustee.
11. The Trustee has also arranged for the appointment of a guardian *ad litem* to represent the interests of the existing minor beneficiaries, as well as any future or unborn beneficiaries. The guardian *ad litem* has indicated that in his opinion, the proposed exercises of the powers of appointment are in their best interests, taking into account his extensive knowledge of the background, and all the reasons set out in the Trustee's affidavit in support of the application.
12. The Court therefore makes the representation Order appointing the guardian ad litem as a representative of the existing minor beneficiaries and of all future and unborn beneficiaries of the R Trust.
13. Turning to the test for the Court's blessing, it is well established that this Court will apply the conventional test set out in **Public Trustee v Cooper** [2001] WTLR 901 when considering a blessing of the type sought in this case. This requires the Court to be satisfied on the evidence presented that:
 - (i) The proposed exercise of power is within the powers conferred by the Trust instrument;
 - (ii) The Trustee has genuinely come to the view that the decision is in the interests of the beneficiaries;
 - (iii) The Trustee has reasonable grounds for reaching that view;
 - (iv) The Trustee is not suffering from any actual or potential conflict of interests.
14. In **R Trust** [2019] SC Bda 36 Civ, the former Chief Justice (Hargun CJ) applied the approach taken by Vos LJ in the English Court of Appeal in **Cotton v Earl of Cardigan** [2014] EWCA Civ 1312 in which it was explained that the court's role

where the Trustee is not surrendering its discretion is a limited one. Once it appears that the proposed exercise is within the Trustee's powers, the court is concerned with limits of rationality and honesty; the court does not withhold approval merely because it would not itself exercise the power in the way proposed.

15. Having reviewed the evidence produced in this case, which includes evidence from the Trustee and the advisers of the branches of the family, as well as the guardian *ad litem*, the Court is satisfied that the proposed exercises of the power of appointment are within the powers conferred by the R Trust, that the Trustee has genuinely reached the view that the proposed restructuring (achieved by the proposed exercises of those powers) is in the interests of the beneficiaries, and that the Trustee has sound and reasonable grounds for arriving at that view, and that the Trustee is not acting under any actual or potential conflict of interest in reaching those decisions and exercising those powers in the manner proposed.
16. The Court therefore grants the blessing to the exercise of the Trustee's power to make the appointments of assets out of the R Trust in the terms requested.
17. It should be noted that one of the terms of the restructuring involves the distribution of assets to a purpose trust for the purpose of continuing to provide a vehicle for managing the assets by way of a family office, and the Court confirms that this aspect of the application also falls within the same framework of blessing, those arrangements being for the benefit of the beneficiaries as a whole.
18. The Court has also been asked to make an Order in respect of the R Trust to disapply the application of the perpetuities period under the Court's powers in section 4 of the Perpetuities and Accumulations Act 2009.
19. The exercise of the Court's power to do this are well-established and conventional. After the 2009 Act, the legislature considered that the old rules that required distributions of assets to occur within a defined period were out of step with modern trust and wealth management objectives.
20. On the evidence it is uncertain how long it will take and on what terms the Trustee will be able to realise and distribute some of the illiquid assets held by the R Trust to each of the three new trusts, and it is considered prudent to disapply the perpetuity period in respect of the R Trust.
21. A further reason why it is necessary to disapply the perpetuity period of the R Trust is to enable each of the new trusts to receive the assets without being affected by the perpetuity period. This is because the assets which are to be distributed to the new trusts are derived from assets which were in a structure which was subject to the

perpetuity rule. The removal of the perpetuity period in the R Trust therefore also supports and achieves the objectives that underlie the proposed reorganisation.

22. In considering the application, the Court bears in mind the considerations which are to be taken into account when making an order under section 4. These are that the court should not act as a rubber stamp, the court should have regard to the best interests of all parties, broadly defined, and that the fact that an extension or disapplication of the perpetuity period will (potentially) dilute the economic interests of existing beneficiaries is normally an irrelevant consideration. (See **Re G Trusts** [2017] SC Bda 98 Civ and **GA GB and GC Settlements** [2019] SC Bda 38 Civ.)
23. Applying those considerations, and carefully weighing the evidence set out above, the Court is satisfied that it is in the best interests of the beneficiaries of each of the new trusts that the perpetuity period in relation to the R Trust be disappplied. This is (a) to ensure that the dynastic nature of the trusts will not be impeded and (b) to reflect the modern legislative policy not to require a perpetuity period in a settlement created after 1 August 2009.
24. The Court is satisfied that there will be no material adverse impact on any economic interests affected because (i) there is no impending event which might trigger a termination and (ii) the beneficial interests thereunder are in any event discretionary.
25. Accordingly, the Court also makes the orders sought by the Trustee in the terms proposed, including the provisions for the costs of these proceedings.

Dated this 29th July 2025



THE HON. MR. ANDREW MARTIN
PUISNE JUDGE