

Disclosure to discretionary beneficiaries—the latest on Schmidt: Do beneficiaries have absolute rights to trust accounts? What about company documents? *Schmidt V Rosewood* [2004] 1 NZLR 841

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Extract

Introduction

The last reported decision applying *Schmidt v Rosewood* is that of the Auckland High Court in *Foreman v Kingston*.¹ The recent decision of the Bermudian Supreme Court in *Wingate v Butterfield* (as yet unreported) is the latest to apply *Schmidt* principles, and the first Bermudian decision since *Schmidt*. Disclosure was sought by a discretionary beneficiary, against a background of alleged breaches of trust. Bell J followed *Schmidt v Rosewood* and considered the Plaintiff's application to be a matter for the court's inherent jurisdiction to supervise the administration of a trust and where appropriate intervene. The Defendant, Butterfield Trust (Bermuda) Ltd ('Butterfield') argued that disclosure would be a sterile exercise as the beneficiary's breach of trust claims were time barred. Bell J did not rule on this defence, as breach of trust claims were outside the scope of the application. Bell J considered that even if there were good limitation defences, the supervisory discretion to order disclosure would still be available. Butterfield argued that the *Schmidt* discretion did not extend to trust documents relating to the management of a trust and the transactional business of that trust. Bell J rejected any such limitation as being without authority and inconsistent with the policy reasons for the court's inherent supervisory jurisdiction. In exercising its discretion to order wide disclosure, the court took account of the nature of the beneficiary's economic interest under the trust. It considered that his complaints about Butterfield's stewardship of the trust were reasonable, and his questions were ones which Butterfield should be required to answer. The beneficiary also sought an account, relying on the oft cited passage from Millett LJ in *Armitage v Nurse* that suggests beneficiaries have unqualified rights to trust accounts. Bell J interpreted this narrowly, as a right to production of accounts that have already been prepared by the trustee. Accounts had not been prepared in this case. This was one of

the Plaintiff's breach of trust complaints. Bell J approached an account as a matter of discretion, instead of an unqualified right, and suggested that it should only be ordered where it was necessary in the context of the court's inherent jurisdiction to supervise the administration of a trust. It approached an account in the same way as disclosure of information and documentation. It declined to exercise the discretion because it considered an account would add nothing to the order for information and documentation, and would result in significant further expense.

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