

**IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY**

**CIV-2015-404-001359  
[2017] NZHC 2054**

UNDER	Part 18 of the High Court Rules
BETWEEN	PRUDENCE ANNE ADDLEMAN Plaintiff
AND	LAMBIE TRUSTEE LIMITED Defendant

Hearing: 31 July 2017; 1 and 11 August 2017

Appearances: R Rose and Y Karbhari for Plaintiff  
D Chambers QC and I Williams for Defendant

Judgment: 25 August 2017

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**JUDGMENT OF WOOLFORD J**

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This judgment was delivered by me on 25 August 2017 at 4:00 pm  
pursuant to Rule 11.5 of the High Court Rules.

Registrar/ Deputy Registrar

Date:

*Solicitors/Counsel:*  
Bell Auckland, Auckland  
Ms Chambers QC, Auckland  
Mr Williams, Auckland

## **Introduction**

[1] This is an unfortunate dispute between sisters as to what level of disclosure is appropriate for the affairs of the Lambie Trust (the Trust) which was settled by their cousin in 1990. Both sisters are beneficiaries of the Trust. The plaintiff and older sister, Prudence Addleman (Prudence), has received a copy of the Trust deed, documents evidencing various changes of trustees, a statement of the settlor as to the source of funds introduced into the Trust and a memorandum of wishes but nothing more. She wants to see the financial accounts and other material relating to the Trust's operation in order to satisfy herself that the Trust has been managed properly.

[2] The younger sister, Annette Jamieson (Annette), is the sole director and shareholder of the defendant company, Lambie Trustee Limited, which is the sole trustee of the Trust. She has resisted requests for further disclosure from her sister on the basis that it is in effect her trust which she wants to keep confidential. She says that her sister is not entitled to more than what she has already received.

## **Factual background**

[3] Prudence and Annette are two of four children of Alexander and Merryl Jamieson (Mr and Mrs Jamieson). The other two children are Anthony Jamieson (Anthony) and Meredith Strang (Meredith). The children grew up in Sydney where they lived with their parents. Mr Jamieson was a businessman with many and varied interests in businesses in Australia and abroad.

[4] On 30 December 1972, Annette dived into a tidal pool at Paradise Beach, one of the Northern Beaches of Sydney, and broke her spinal cord. She became a quadriplegic needing constant nursing care. She was just 19. She is now 63 and gave evidence in a wheelchair, having travelled from Sydney.

[5] Prudence is four years older than Annette. She moved to England about the time of her sister's accident where she married her husband, Martin Addleman, in 1976. She has lived in England ever since and gave evidence by way of AVL from Madeira where she and her husband have a holiday home.

[6] Following her accident, Annette sued the local council for negligence and after a two week trial in the New South Wales Supreme Court in October 1979 was awarded record damages of A\$981,333. In 1981 the council paid Annette A\$1,029,084 which included interest on the judgment sum awarded by the Supreme Court (accident funds).

[7] Annette entrusted the accident funds to her father to hold for her benefit. There was no formal trust document but Annette says that her father always acted consistently with the role he assumed as trustee for those funds and consulted her regularly.

[8] In the mid-1980s Mr Jamieson's nephew, Robert Palmer, introduced Mr Jamieson to a business opportunity in Auckland which involved the purchase of farmland in Howick for subdivision. On 19 September 1986, Howick Parklands Limited (HPL) was incorporated to acquire this property. After discussions with her father Annette agreed that the accident funds could be used by HPL to help to meet the cost of acquiring the farmland. Mr Palmer was initially the sole director and held 99 per cent of the shares in HPL. Four months later, on 14 January 1987, Annette was also appointed a director of HPL. The subdivision was very successful.

[9] On 19 March 1990 the Lambie Trust was settled at the instigation of Mr Jamieson with the primary purpose of ensuring Annette's welfare and financial security. The settlor named in the deed was, however, not Mr Jamieson but Mr Palmer, presumably because he held 99 per cent of the shares in HPL into which the accident funds had been introduced. In 1991 Mr Palmer's shares in HPL were transferred to the Trust. Counsel for Annette submits that Mr Palmer was only the nominal settlor of the Trust and that the de facto settlors of the Trust were in fact Mr Jamieson and Annette. Counsel for Prudence submits that the concept of de facto settlors does not apply outside of the tax context, and in any event is not borne out by the evidence here. This is not an argument I need to resolve in the present case.

[10] Four final beneficiaries were named in the Trust deed – Annette, Prudence and two overseas companies, Edmonton Company Limited and Mercadeo E Inversiones Gil SA. Annette is a director and effective owner of the two overseas

companies which were included as final beneficiaries on the advice of lawyers to provide flexibility for the investment and distribution of funds. Annette says that at her insistence and against her father's advice, Prudence was added as a final beneficiary of the Trust to provide for the contingency of her early death. At the time, for various reasons, her other siblings, Anthony and Meredith, were not seen as suitable options.

[11] The discretionary beneficiaries were named as:

- (a) the final beneficiaries;
- (b) any child or remoter issue of the final beneficiaries;
- (c) any wife, husband, widow or widower of any final beneficiary; and
- (d) any lawful charitable object.

[12] The original trustees were Mr Jamieson, Anthony, Mr Palmer and an accountant, Wayne Hanna. On 4 August 1992 Mr Hanna resigned as a trustee and on 22 September 1992 Mr Palmer also ceased to be a trustee. Then on 13 September 1993 Anthony ceased to be a trustee and an accountant, Donald Hargrave, and solicitor, Peter Kemps, were appointed as trustees by Mr Jamieson who held the power of appointment of new trustees under the Trust.

[13] In around April 2000 Mr Hargrave and Mr Kemps flew from New Zealand to Sydney to meet with Mr Jamieson and Annette. On return to New Zealand Mr Kemps wrote to Mr and Mrs Jamieson by letter dated 9 May 2000 recording "Mr Jamieson's wishes for ultimate distribution of Lambie Trust funds". It was recorded that Mr Jamieson wished that 25 per cent of the balance of Trust funds be paid to Prudence. Annette says she was consulted and agreed with her father's wishes. Counsel for Annette refers to the letter as a memorandum of wishes. Counsel for Prudence questions this characterisation because she submits Mr Jamieson was not the settlor of the Trust. Again this argument need not be resolved in the present case.

[14] At around the same time, on 1 May 2000, Annette was appointed a trustee of the Lambie Trust by her father at her request. Mr Jamieson then retired as a trustee. He was aged 82. Mr Jamieson died 18 months later, in November 2001.

[15] On 8 November 2002 the Trust distributed NZ\$4,257,000 to Prudence with the three trustees, being Mr Hargrave, Mr Kemps and Annette, signing the resolution. Annette says that the distribution was made in an attempt to retain or rebuild a good relationship with Prudence who had threatened legal proceedings against their father's estate. Mr Kemps wrote to Prudence stating that the sum distributed to her represented a full distribution of funds that would be coming to her from the Trust. Mr Kemps wrote:

While it had been intended that this distribution would not take place until the passing of your mother, the Trustees have decided to bring the distribution forward so you can be in a position to make your own financial decisions regarding these funds and can use the funds to meet your own expenditure.

[16] Prudence was not aware of the existence of the Trust prior to receiving advice of the distribution. In her letter of response, Prudence thanked Mr Kemps for the final distribution but did not request any information about the Trust. Counsel for Annette submitted that in accepting the distribution which was expressed to be final, Prudence had in effect disclaimed her right to be considered for further distributions. Counsel for Prudence argued to the contrary and submits that her acceptance of the distribution does not change the scope of her interests as either a discretionary or final beneficiary. This is another argument I need not resolve in the present case.

[17] Five months later, on 26 March 2003, Prudence's lawyers sent a letter to the trustees requesting information to satisfy the UK authorities regarding money laundering and tax issues. The Trust lawyers responded advising that if the UK authorities did raise questions then the Trust would be happy to verify that the funds were a genuine distribution.

[18] Later that year by letter dated 13 November 2003 Prudence's lawyers again requested information regarding the money laundering issue and sought "to verify that the distribution [was] her proper entitlement". The Trust lawyers replied by

letter dated 19 April 2004 confirming that the distribution that had been made was proper and the trustees had at all times acted honestly and fulfilled their duties. Furthermore, the question of entitlement was a matter for the discretion of the trustees given that it was a discretionary trust. The letter enclosed a copy of the Trust deed and documents evidencing various changes of trustees.

[19] Two years later, on 3 November 2005, the defendant company, Lambie Trustee Limited, was incorporated and on 20 April 2006 it became the sole trustee of the Trust.

[20] Then, more than 10 years after the last correspondence about the Trust, on 24 September 2014, Prudence's lawyers wrote to the trustees requesting further information over a 24 year period "in order to ensure that the Trust property is being properly managed and there is proper accountability of the trustees in terms of the Trust deed." The Trust lawyers replied by letter dated 3 October 2014 stating that the Trust was seeded exclusively from the accident funds and that a request for 24 years of trust information was surprising and unreasonable. Nonetheless in a further letter dated 19 November 2014 the Trust lawyers provided Prudence's lawyer with a signed statement from Mr Palmer dated 14 November 2014 as to the source of funds introduced into the Trust but did not provide any further information.

[21] These proceedings were issued on 16 June 2015.

### **Proceedings**

[22] In the statement of claim dated 16 June 2015, Prudence alleges that since late 2001, she has made at least nine requests for information about the Trust which have largely been refused except for the provision of the Trust deed itself, documents evidencing various changes of trustees, a statement of the settlor as to the source of the funds introduced into the Trust and a memorandum of wishes. She alleges that as both a discretionary beneficiary and a final beneficiary of the Trust she is entitled to copies of the Trust documents and other information previously requested and seeks orders for its provision.

[23] She lists the information to which she alleges she is entitled as:

***Finances and accounts***

- (a) full disclosure of the amount, state and other relevant details of the Lambie Trust's property, including but not limited to:
  - (i) full financial statements, including:
    - (1) statements of financial performance;
    - (2) statements of financial position;
    - (3) statements of cash flows;
    - (4) all notes to the accounts;
    - (5) any auditor's report; and
    - (6) a list of all trustees' fees and expenses;
  - (ii) all gift statements;
  - (iii) all books of account;
  - (iv) all agreements for the sale and purchase of assets entered into by the Trust or its subsidiaries;
  - (v) full details of all past and current investments;
  - (vi) full financial statements of all companies and other entities into which Trust funds have been invested, including but not limited to HPL; and
  - (vii) all other relevant details about HPL, its transactions, how such transactions were treated by the Lambie Trust, and its ultimate sale;
- (b) full disclosure of all other documents or information giving full details of the Lambie Trust's:
  - (i) income;
  - (ii) capital;
  - (iii) distributions of capital or income; and
  - (iv) settlements or resettlements from the Lambie Trust;

***Trustees of and documents constituting the Lambie Trust***

- (c) any deeds or other documents varying the Trust's terms in any way;
- (d) any memorandum of wishes or like communication outside the Lambie Trust deed of:
  - (i) Mr Jamieson (as said "principal trustee" from the time of the Trust's establishment); or
  - (ii) Mr Palmer (as settlor);
- (e) All documents (excluding those already supplied) regarding current and past trustee:
  - (i) appointments;
  - (ii) retirements;
  - (iii) removals or resignations; and
  - (iv) releases and indemnities;

***Trustee resolutions, minutes of meetings and memoranda***

- (f) all resolutions of the trustees of the Lambie Trust;
- (g) all trustee memoranda and minutes of meetings (redacted if necessary to exclude information about the trustees' reasons for the exercise of any discretion);

***Information informing exercise of discretions***

- (h) all information received by the trustees to inform their exercises of discretion (but not advice directed to the trustees' reasons for the exercise of discretions);

***Legal opinions and other advice or communications funded from Trust Fund***

- (i) all legal opinions and other advice obtained by the trustees for the purposes of the Trust Fund and funded from the Trust Fund, including all those that might be privileged as against third parties;

- (j) all other communications between the trustees and their legal advisers (but not advice directed to the trustees' reasons for the exercise of discretions);

***Other materials***

- (k) full details about the scope of the Lambie Trust's relationship with the AJ Trust;
- (l) all other information not listed above which is the property of the Lambie Trust and which relates to the Trust's property, administration, management and distributions, whether created during or relating to the period of 19 March 1990 to present; and

***Affidavit***

- (m) if for any reason LTL (Lambie Trustee Limited) cannot supply a copy of any document identified, LTL will cause an appropriate person to file and serve an affidavit from an appropriate person setting out:
  - (i) why the particular document is not available; and
  - (ii) disclosing the relevant information.

[24] A two day fixture to hear the case was set down for hearing on 5 and 6 September 2016. On 20 July 2016 the fixture was vacated to await the decision of the Supreme Court in *Erceg v Erceg*.<sup>1</sup> The Supreme Court decision was released on 8 March 2017 and this case was then set down for hearing on 31 July and 1 August 2017. Closing submissions were heard on 11 August 2017.

***Erceg v Erceg***

[25] *Erceg v Erceg* addressed the approach the court should take to an application by a beneficiary for an order directing trustees to disclose trust information to the beneficiary.

[26] As a preliminary matter, the Supreme Court considered that the court's jurisdiction on an application for the exercise of the supervisory jurisdiction is not limited to review of a discretionary decision by the trustees. Rather, "the Court must

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<sup>1</sup> *Erceg v Erceg* [2017] NZSC 28, [2015] 1 NZLR 320.

exercise its jurisdiction as a court of equity, exercising its own judgement as to whether disclosure ought to be made at all and, if so, to what extent and on what conditions”.<sup>2</sup>

[27] The starting point is the obligation of a trustee to administer the trust in accordance with the trust deed and the duty to account to beneficiaries. That is the basis for disclosure of trust information to beneficiaries. The beneficiary who seeks such an account may seek access to documentation necessary to assess whether the trustees have acted in accordance with their obligation.<sup>3</sup>

[28] However, the Supreme Court also emphasised the need to ensure the course of action most consistent with the proper administration of the trust and the interests of the beneficiaries. It is therefore important to note that the court is required to consider the interests of all beneficiaries, not just the beneficiary seeking disclosure. This is the “underlying principle” in deciding whether disclosure is warranted.<sup>4</sup>

[29] The Supreme Court said it was hard to articulate any hard and fast rules given the wide variety of situations that may call for the court to exercise its supervisory jurisdiction. However, it listed a number of matters that need to be evaluated in relation to an application for disclosure of trust documents.<sup>5</sup> These included:

- (a) the documents that are sought;
- (b) the context for the request and the objective of the beneficiary in making the request;
- (c) the nature of the interests held by the beneficiary seeking access;
- (d) whether they are issues of personal or commercial confidentiality;
- (e) whether there is any practical difficulty in providing the information;

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<sup>2</sup> At [18].

<sup>3</sup> At [51].

<sup>4</sup> At [53].

<sup>5</sup> At [56].

- (f) whether the documents sought disclose the trustees' reasons for decisions made by the trustees;
- (g) the likely impact on the trustee and the other beneficiaries if disclosure is made;
- (h) the likely impact on a settlor and third parties if disclosure is made;
- (i) whether disclosure can be made while still protecting confidentiality; and
- (j) whether safeguards can be imposed on the use of the trust documentation.

***Erceg v Erceg principles***

[30] Counsel agreed that this case essentially involves a fact specific application of the principles identified by the Supreme Court in *Erceg v Erceg*.

***(a) Documents sought***

[31] Prudence requests in effect all Trust documents since settlement of the Trust on 19 March 1990. She also seeks full financial statements of all companies and other entities in which Trust funds have been invested including HPL and furthermore all other relevant details about HPL and its transactions.

[32] The request goes far beyond basic documents such as the Trust deed, for which different considerations may apply. The Trust deed, documents evidencing various changes of trustees, a statement of the settlor as to the source of funds introduced into the Trust and a memorandum of wishes have all already been disclosed.

[33] Some of the documents sought may also be subject to solicitor-client privilege because Prudence has specifically requested legal opinions, advice and other communication between the trustees and their legal advisers. There may also

be documentation relating to Annette's private life because the Trust is essentially her trust.

[34] While Prudence says that she is prepared to take a practical approach to disclosure, her application does not bear out this assertion. There has been no attempt to confine the request. To the contrary, the catch-all request for "all other information not listed above which is the property of the Lambie Trust and which relates to the Trust's property, administration, management and distributions, whether created during or relating to the period of 19 March 1990 to present" demonstrates the enormity and lack of specificity of the request.

[35] I am of the view that disclosure of all the documents sought would be unnecessarily burdensome and far beyond the minimum necessary for Prudence to confirm the proper administration of the Trust.

*(b) Context for request and Prudence's objective in making the request*

[36] It is accepted that a discretionary beneficiary is entitled to have a trust administered lawfully and properly and an order may be necessary to enforce that right. In the present case, however, there is no suggestion of any breach of trust or fiduciary duty.

[37] Prudence gives two reasons for wanting disclosure. The first is to ascertain her father's wishes for her. She believes that he must have wished to look after her financially because her name was listed before Annette's in the list of final beneficiaries in the Trust deed.

[38] I am, however, of the view that Prudence already knows her father's financial wishes for her because in cross-examination she accepted that she had talked with him about them. She said that she and her husband did not need any financial assistance from him and that she and her husband would never have accepted financial assistance even if it was offered. Prudence also knows the effect of her parents' wills. Mr Jamieson left all his property to his wife and Mrs Jamieson's will left the family home to Annette in recognition of the fact that Annette was extraordinarily vulnerable physically and financially. Prudence also had the letter

written by Mr Kemps to Mr Jamieson recording his wishes for distribution from the Trust and accepts that the distribution of \$4.257 million in 2002 was the equivalent of 25 per cent of the Trust funds at the time. The documents now sought by Prudence would not in my view explain her father's wishes any more than what she already knows.

[39] The second reason Prudence gives is that she wants to know whether the Trust has been properly administered. Although Prudence maintains that she is acting for altruistic reasons, I am of the view that in reality she is looking at the possibility of making a further claim against the Trust. Prudence is unclear in her mind whether or not her father may have contributed funds to the Trust. She said:

I think my father may have settled property on the Lambie Trust and I would like to know more.

[40] Implicit in her evidence was a sense of entitlement to a further distribution if she was able to establish her father did in fact contribute funds to the Trust. When asked why she was not looking for information from the AJ Trust, which is the family trust of which all the family are beneficiaries, the following exchange took place:

Q. Aren't you knocking at the wrong door, why are you pursuing disclosure? Why are you not pursuing disclosure in regard to the family trust?

A. Because there was only \$3 million in it anyway.

[41] The disclosure request by Prudence is also against the background of previous complaints and legal proceedings. According to Annette, Prudence plagued her and their mother, Mrs Jamieson, with complaints about Mr and Mrs Jamieson's financial affairs after Mr Jamieson's death. Annette says that Prudence wanted money from her father's estate and threatened proceedings in relation to the estate. Prudence says she did not pursue proceedings despite her concerns about the integrity of the administration of her father's estate because her mother was an executrix and "she and I both would have found proceedings distasteful. I did not want her or my memories of my father blighted by such activity."

[42] After Mrs Jamieson died, however, Prudence brought proceedings against her mother's estate in Australia in 2014. Annette was one of three executors. Prudence complained that the inventory of property attached to probate did not properly represent the true value of her mother's estate. Prudence settled her claims on payment of \$40,000 from the estate.

[43] Four months after consent orders were made in the Australian proceedings, Prudence's lawyers renewed their inquiries about the Trust documents.

[44] Prudence does not accept that the Trust was established solely or principally for Annette's benefit nor does she accept that the \$4.257 million distribution to her was or should be regarded as a final distribution. She also expressed opinions about Annette's accident funds and her expenses, questioning Annette's stated costs of care as a quadriplegic.

[45] I regret to say that I have come to the conclusion that Prudence's previous complaints and proceedings are an indication for me that if extensive disclosure of the Trust's affairs was made to Prudence she would not rest but in all likelihood would undertake further litigation.

*(c) Nature of interests held by Prudence*

[46] Although Prudence is one of two living final beneficiaries and one of three living discretionary beneficiaries (the third living discretionary beneficiary is her husband), I accept the evidence of the Trust's settlor, Mr Palmer, and Annette that the Trust was settled with the primary purpose of ensuring Annette's welfare and financial security. This is supported by the insertion of two non-living final beneficiaries being overseas companies controlled by Annette.

[47] I also accept Annette's evidence that Prudence was only added as a "back stop". Prudence knew nothing of the Trust until she received the distribution of \$4.257 million, 12 years after the Trust had been settled. I do not accept that just because her name was listed ahead of Annette's in the Trust deed, Mr Jamieson intended that Prudence was to be a close beneficiary.

(d) *Issues of personal or commercial confidentiality*

[48] There is no doubt that Mr Jamieson was a very private man and did not publicise his affairs to the world. He kept things close to his chest and was selective to whom he spoke. Likewise Annette has become a very private individual following the extensive media attention at the time of her accident and the record award of damages, which in turn led to numerous requests from money-seeking acquaintances. She describes herself as fiercely private and reclusive.

[49] The Trust has operated since its inception with absolute confidentiality reflecting the wishes of both Mr Jamieson and Annette. Mr Jamieson treated Annette quite differently to Prudence. Annette was an insider to all that went on in the Trust. Annette controlled the two overseas companies that were final beneficiaries from the outset, was a director of HPL from 1987 and also became a trustee in 2000 when her father retired as a trustee. Mr Jamieson never told Prudence that the Trust even existed and after his death Prudence only learned of the Trust when she received a distribution of \$4.257 million from it.

[50] A settlor's desire for confidentiality of information relating to the trust itself will not ordinarily warrant a refusal to disclose basic information about the trust itself.<sup>6</sup> However, the Supreme Court in *Erceg v Erceg* recognised the importance of protection of personal information. The nature of the Trust's creation, and its use to support Annette financially since her accident, means that disclosure of the information sought will result in disclosure of information personal to Annette. Prudence seeks disclosure of, and speculates as to, distributions from the Trust to Annette. She queries Annette's expenses. Annette is entitled to some privacy as to her financial affairs and information. The nature of the Trust and the breadth of the information sought by Prudence means that disclosure will considerably expose Annette's personal information to Prudence. The extent to which the Trust was kept absolutely confidential prior to 2002 demonstrates that Annette and Mr Jamieson did not wish this personal information to be shared.

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<sup>6</sup> At [88].

[51] I am of the view that the absolute confidentiality of the Trust weighs against disclosure of Trust information.

*(e) Practical difficulty in providing the information*

[52] Annette says that her father was primarily responsible for managing his Trust records until he retired as a trustee in 2000. After his death the following year she ascertained that the records were incomplete and many documents were on a type of thermal facsimile paper that fades and deteriorates in a relatively short time. Annette and her mother disposed of these illegible records some time after Mr Jamieson's death. As a result, Annette says that apart from the Trust deed itself and some documents evidencing the various changes of trustees, the earliest records of the Trust are the financial statements for the year ended 31 March 1999 which had been held by the Trust accountants. All of the categories of documents requested by Prudence include information predating this time.

[53] Annette confirmed that she and Mr Kemps had contacted all previous trustees, all previous accountants and the Trust's lawyers and no one had any earlier documentation. The order sought by Prudence would require all former trustees to file and serve affidavits setting out why a particular document is not available and "disclosing the relevant information" which would presumably require the former trustees to recall events which happened over 20 years ago.

[54] HPL was incorporated 31 years ago in 1986. It was liquidated and then removed from the companies register altogether eight years ago in 2009. Any order that required Lambie Trust Limited to provide information about how HPL transactions were treated by the Trust would not be able to be complied with.

*(f) Trustees' reasons for decisions made by trustees*

[55] Prudence does not seek disclosure of trustees' reasons for the exercise of any dispositive power or discretion. This factor is therefore neutral.

(g) *Likely impact on trustee and other beneficiaries*

[56] Closely tied with the desire for confidentiality is the likely result of a loss of confidentiality and that is the real possibility of a further embittering of familial relationships. I am of the view that Prudence is dissatisfied with what she speculates is different treatment and may well seek a further distribution from the Trust. Prudence sees the fact that she is listed before Annette as a final beneficiary as having a real significance. For myself, I do not see any significance in the order of listing except that Mr Jamieson was in the habit of naming his children from oldest to youngest.

[57] Prudence threatened proceedings against their father's estate and did in fact institute proceedings against their mother's estate. Given that history there is a real danger that providing further information, however innocuous, may provide the basis for further litigation and associated disintegration of familial relationships.

[58] I am of the view that the impact of further litigation on Annette would be considerable. She is a highly vulnerable woman. The Trust is her support and the vehicle for the investment of her accident funds. Disclosure of the information sought, in particular in the first category entitled "Finances and accounts" but also in many of the other categories listed, would in effect lay her whole life bare. Annette is in my view entitled to privacy in order to cope with the burden of quadriplegia and her everyday struggles.

[59] Non-disclosure may also have a negative impact.<sup>7</sup> In this case, however, disclosure would have a far larger effect than non-disclosure. It would damage family relationships further and impact Annette's life. By contrast, I do not consider that non-disclosure will damage family relationships any more than they already have, unfortunately, deteriorated.

(h) *Likely impact on settlor and third parties*

[60] Disclosure of the comprehensive documentation now sought would be of limited impact on the settlor, Mr Palmer and third parties. Although he was the

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<sup>7</sup> *Erceg v Erceg*, above n 1, at [56].

settlor of the Trust, Mr Palmer introduced no funds of his own into the Trust. He did not hold the shares in HPL beneficially. They were held in trust for Annette before being transferred to the Trust.

[61] There is, however, the possibility that Mr Palmer and third parties such as former trustees could be drawn into litigation about events up to 27 years ago, but the impact on them would be much less than the considerable burden which would be imposed on Annette.

*(i) Possibility of making disclosure while protecting confidentiality*

[62] Given the all encompassing nature of the disclosure request, it is difficult to see how disclosure could be made while protecting confidentiality. There is, however, no risk in the present case of Prudence sharing any information that she received through disclosure with the media or of her taking any of the actions that Mr Ivan Erceg threatened in *Erceg v Erceg*. There may be, however, some risk that Prudence could share information with other family members. That risk could be ameliorated by confidentiality undertakings relating to both the commercial activities of the Trust and Annette's personal affairs.

*(j) Imposition of safeguards on use of Trust documentation*

[63] No additional matters apply under this heading. The court's expectation is that any need for safeguards properly identified ought to be able to be managed practically and sensibly. This factor is therefore neutral.

**Analysis**

[64] There are in my mind seven major factors which are to be weighed in the balance together with other minor factors in order to reach a principled decision as to whether further disclosure is appropriate.

[65] The first is that the Trust was settled for the primary purpose of ensuring Annette's welfare and financial security. Her needs are extraordinary. The cost of her care is currently AUD\$250,000 per annum but will increase over time and continue for her entire life. By contrast, all four children, Prudence, Annette,

Anthony and Meredith are beneficiaries of a separate family trust, the AJ Trust. The AJ Trust was settled in 1978, six years after Annette's accident, and is not connected with the Lambie Trust in any way.

[66] The second is that Prudence was only included as a beneficiary in the Trust deed on a contingent basis in case Annette died at an early age. Her inclusion was at Annette's insistence. She was the eldest child and Anthony and Meredith were, for various reasons, not considered suitable. Prudence knew nothing of the Trust from its inception until she received a distribution of \$4.257 million in 2002.

[67] The third is that the Trust was settled with Annette's accident funds and earnings thereon. The accident funds had been entrusted by Annette to her father since receipt in 1981 before being utilised to purchase farmland in Howick for subdivision. The shares in the development company, HPL, were transferred to the Trust in 1991, the year after the Trust's inception. There is no evidence that Mr Jamieson introduced any funds into the Trust. He was, in fact, bankrupted in 1982 following an unsuccessful business venture of his own. Prudence's belief that it is likely that the Trust acquired property from a range of sources is without any factual foundation.

[68] The fourth is that Prudence has already received what was said to be a final distribution of \$4.257 million in 2002. This was calculated as 25 per cent of the Trust's net funds at the time in accordance with a memorandum of wishes recorded by one of the trustees in a letter to Mr Jamieson in 2000, the year before his death.

[69] The fifth is the extent of disclosure already provided to Prudence. She has a copy of the Trust deed and documents evidencing changes of various trustees and, crucially, two further documents. The first is a statement of the settlor, Mr Palmer, dated 14 November 2014 in which he confirmed that the accident funds and earnings thereon were the monies used to fund HPL and that he held the shares in HPL on trust before they were in fact transferred to the Trust. He had no personal ownership interest in the HPL business nor did he personally settle assets or funds on the Trust. The second is a letter written by one of the trustees to Mr Jamieson in 2000 in which he records Mr Jamieson's wishes as to the distribution of funds from the Trust. A

memorandum of wishes is often regarded as highly confidential and yet in this case, the defendant trustee company has chosen to disclose this letter to Prudence.

[70] The sixth is the real prospect of further intra-familial discord and litigation. Although Prudence professes to act for altruistic motives and says she is only concerned to see that the Trust has been properly administered, her lawyers made it plain in a letter dated as long ago as 13 November 2003 that Prudence would like to verify that the \$4.257 million distribution “is her proper entitlement”. These proceedings follow threats by Prudence to commence proceedings in respect of her father’s estate, and commencement of proceedings in respect of her mother’s estate. Annette also says that after their mother’s death Prudence took property from the family home to which she was not entitled such as a Steinway piano which Annette had brought with her own money.

[71] The seventh and final major factor is that there is no suggestion of a breach of trust or fiduciary duty in the administration of the Trust. The Trust deed was drafted by lawyers and not Mr Jamieson as Prudence seems to believe. Lawyers and accountants are regularly involved in its affairs and tax returns are filed on an annual basis with the Inland Revenue Department. In *Erceg v Erceg* the Supreme Court was sceptical of applications which are not based on a particular concern about the administration of the Trust, but which instead seek to try to find a basis for challenging the actions of trustees that the applicant considers not in his or her favour.<sup>8</sup> In my view the current application falls within that category.

[72] There are some minor factors to be weighed in the balance as well. There are no financial records earlier than the year ending 31 March 1999 so that there would be any either no or incomplete documentation relating to HPL and the subdivision in Howick which had been completed years earlier.

[73] Further, as a sole purpose trust in effect, the Trust has always been administered on a strictly confidential basis. In the absence of any evidence of a breach of trust or fiduciary duty, there is no reason to disclose its private dealings.

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<sup>8</sup> At [77].

[74] In conclusion, I do not think it is appropriate for the court to exercise its supervisory jurisdiction to order disclosure to Prudence of all or any of the information sought by her. The Trust deed is not to be interpreted in isolation from its context.<sup>9</sup> The Trust was settled with the primary purpose of ensuring Annette's welfare and financial security. Her needs are great. Prudence has already received a generous distribution from the Trust. She has no need for further provision. I accept there is no real prospect of her receiving any further distribution. Prudence claims to be only after information but I am of the view that the provision of that information may well lead to further intra-familial discord. Annette's privacy should be respected. The application for further and extensive disclosure is dismissed.

### **Costs**

[75] Costs on a 2B basis are to follow the event. If counsel are unable to agree, memoranda should be filed within **28 days of the date of this judgment**.

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**Woolford J**

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<sup>9</sup> *Powell v Powell* [2015] NZCA 133, [2015] NZAR 1886 at [53]–[54].