COLLAS CRILL

In the matter of the K Trust

MAY 2016

K Trust facts

In the years following the death of the settlor and the retirement of the original trustee (who were close friends), the protector (who was also a close friend of the settlor and the principal beneficiary, his widow) started to act in a way akin to a trustee. For example, the protector attended trustee meetings with her own advisers and picked over everything the trustee did with a fine-tooth comb. A significant breakdown in the relationship between the protector and the principal beneficiary led to the beneficiaries bringing an application for the removal of the protector and for the protector to hand over all her documents relating to the trust.

The K Trust decision

The court found that the behaviour of the protector was "something going beyond mere mutual hostility and distrust" and that there was good evidence that the breakdown in the relationship between the protector and the principal beneficiary (which was described as "more than personal hostility") had a negative impact on the smooth and competent administration of the trust and the welfare of the beneficiaries. The court held that the protector had hung on to her office for longer than was wise (despite requests by the adult beneficiaries of the trust for her to retire) and ordered her removal. However, the court did not order for her to hand over all trust documents relating to her term as protector, noting that the protector was a professional woman who had not threatened to disclose confidential documents and fully appreciated the consequences of doing so.

Interesting comments

The court emphasised that it will not order removal of a protector lightly. Anyone applying for such an order must establish that the protector continuing in office would adversely impact on the welfare of the beneficiaries and the competent administration of the trust. Also, unless there is evidence of a real possibility of the protector breaching confidentially, then there is no need for the protector to hand over every document relating to their office. The court noted that there may be perfectly legitimate reasons why protectors should be entitled to retain records and unless an applicant for a court order to make a protector hand over documents can show that no such reasons exist or that affording the protector access to the documents elsewhere will suffice, then allowing protectors to retain some trust documents (whilst acknowledging the protector's promise to keep matters confidential) is satisfactory. In this matter, the protector had also asked for a general "blanket" indemnity in respect of all her previous acts as protector. Whilst the court confirmed that there is a general principle that a fiduciary acting properly has the benefit of being indemnified in respect of costs and expenses incurred exercising its role, it is not the general approach that a protector be given a

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general indemnity in respect of their entire term as protector. This is something that can only be given on a specific basis.

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