



Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa

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MEDIA RELEASE

LAMBIE TRUSTEE LTD v PRUDENCE ANNE ADDLEMAN

(SC 118/2019) [2021] NZSC 54

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest: www.courtsofnz.govt.nz.

Background

The appeal arises out of a dispute between two sisters, Annette Jamieson and Prudence Addleman. Both are beneficiaries of the Lambie Trust, which was established in 1990. Lambie Trustee Ltd (the appellant) has been the Trust’s sole trustee since 2006. Ms Jamieson controls this company. In issue is the extent to which legal advice obtained by the Trust should be disclosed to Mrs Addleman (the respondent).

Mrs Addleman did not become aware of the Trust’s existence until late 2001 and she did not learn that she was a beneficiary until November 2002, when she received a letter from one of its then trustees, Mr Kemps, informing her that she was to receive a distribution from the Trust.

In March 2003, Mrs Addleman’s solicitors wrote to Mr Kemps requesting extensive further information about the Trust. This put in train a process which resulted eventually in Mr Kemps, by letter of 19 April 2004, providing Mrs Addleman’s solicitors with copies of the trust deed and documents showing the appointment and removal of trustees.

The matter then rested until September 2014, when Mrs Addleman’s solicitors again wrote asking for comprehensive information about the Trust. They noted that Mrs Addleman was prepared to apply to the High Court to obtain the information requested. In the course of the correspondence which followed, Mr Kemps:

- (a) advised that he and other trustees had been replaced some years earlier;
- (b) said that specialist advice was being obtained; and

- (c) claimed that the Trust had been seeded exclusively from damages paid to Ms Jamieson in respect of catastrophic injuries she had suffered in a swimming pool accident.

The last letters in this correspondence were from Mrs Addleman's solicitors of 7 November 2014 (which threatened imminent litigation) and Mr Kemps' response of 19 November 2014, in which he confirmed that he had authority to accept service of proceedings, but also provided a statement as to funding of the Trust and indicated that inquiries were being made to ascertain what other trust records existed.

Mrs Addleman commenced proceedings in the High Court on 16 June 2015 seeking the disclosure.

Lower Court judgments

Woolford J dismissed Mrs Addleman's disclosure claim in its entirety. He held that the Trust had been settled for the primary purpose of ensuring Ms Jamieson's welfare and financial security and was a "sole purpose trust in effect". He also concluded that it had been funded exclusively from the damages she received. He noted that the Trust had always been administered on a strictly confidential basis and, in the absence of any evidence of a breach of trust or fiduciary duty, there was no reason to disclose its private dealings to Mrs Addleman, who was not, in his view, a close beneficiary.

The Court of Appeal reversed the High Court judgment. It was highly sceptical of the sole funding argument and rejected the sole purpose argument. It ordered Lambie Trustee Ltd to provide Mrs Addleman with all documents in its possession or power relating to the Trust in three categories: financial statements, minutes of meetings, and any legal opinions and other advice obtained by the trustees and funded by the Trust.

Leave decision

Lambie Trustee Ltd obtained leave to appeal to the Supreme Court from the Court of Appeal judgment, but only on whether the Court of Appeal was correct to reject its claims of legal advice privilege and litigation privilege.

Decision

The Supreme Court has unanimously dismissed the appeal. This is with:

- (a) the clarification that the orders for disclosure that were made by the Court of Appeal do not extend to legal advice given from June 2015 in connection with this litigation; and
- (b) a reservation of leave to Lambie Trustee Ltd to revert to the Court in relation to advice received after 7 November 2014 and before the June 2015 commencement of proceedings.

All of the advice in issue in the appeal is covered by legal professional privilege in the sense that, as against non-beneficiaries, Lambie Trustee Ltd is entitled to privilege. But a trustee is not entitled to privilege against a beneficiary in respect of advice on issues in which the trustee and beneficiary have a joint interest. This is referred to in the judgment as "the joint interest exception". Mrs Addleman and the trustees share a joint interest in the due administration of

the Trust and therefore in legal advice as to that administration. The joint interest exception means that Lambie Trustee Ltd is not entitled to claim privilege against Mrs Addleman in respect of such advice.

The real controversy in the appeal came down to distinguishing between advice as to the due administration of the Trust (in respect of which the joint interest exception applies) and advice in respect of issues on which Mrs Addleman and Lambie Trustee Ltd are sufficiently in conflict as not to be subject to a joint interest, with the result that privilege applies.

Despite threats of litigation from Mrs Addleman's solicitors, the primary subject matter of the correspondence and thus of the advice obtained was whether the proper administration of the Trust warranted the disclosure which was sought. As late as 19 November 2014, Mr Kemps was speaking of more inquiries as to what records were in existence. The implication was of possible further disclosure being made by Lambie Trustee Ltd as part of the due administration of the Trust.

The Court has held that the joint interest exception applied to all advice received up to 7 November 2014. Although inclined to the view that this is also the case in respect of advice received prior to the commencement of litigation, the Court has reserved leave for Lambie Trustee Ltd to file a memorandum in relation to advice received after 7 November 2014 and before the commencement of litigation.

The Court considered that advice received after the commencement of litigation was not encompassed in the Court of Appeal's order for disclosure. It was, in any event, of the view that once the litigation was underway, Lambie Trustee Ltd and Mrs Addleman had positions which were competing to such an extent as to be inconsistent with the persistence of a joint interest. This means that Lambie Trustee Ltd was entitled to claim privilege against Mrs Addleman in respect of advice directed to this litigation.

The Court has reserved its decision on costs and invited further submissions from the parties.

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