



**Supreme Court of New Zealand
Te Kōti Mana Nui**

8 MARCH 2017

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

***IVAN VLADIMIR JOSEPH ERCEG v LYNETTE THERESE ERCEG
AND DARRYL EDWARD GREGORY AS TRUSTEES OF ACORN
FOUNDATION TRUST AND LYNETTE THERESE ERCEG AND
DARRYL EDWARD GREGORY AS TRUSTEES OF INDEPENDENT
GROUP TRUST***

(SC 17/2016) [2017] NZSC 28

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.

The Issues and Court’s ruling

This appeal relates to a dispute between the appellant, Ivan Erceg, and the trustees of two trusts established by his late brother, Michael Erceg.

Ivan Erceg sought access to various documents related to the trusts. The trustees refused this request after which, in September 2014, Mr Erceg began proceedings in the High Court seeking an order directing the trustees to disclose the documents to him. The High Court dismissed his claim, a decision that was subsequently upheld by the Court of Appeal.

In this judgment, the Supreme Court has upheld the decision of the Court of Appeal and dismissed Ivan Erceg’s appeal. The Supreme Court’s judgment does, however, set down some principles in relation to disclosure that differ from those set out in the judgments of the Courts below.

For reasons explained in the judgment this Court concluded that because of the exceptional circumstances of this case disclosure would not be in the interests of the beneficiaries as a whole.

Background

The two trusts to which the proceedings relate are the Acorn Foundation Trust and the Independent Group Trust. These trusts were settled by the late Michael Erceg, in 2004 and 2002 respectively. Michael Erceg died in 2005. Both trusts were wound up in December 2010. Ivan Erceg was not a named beneficiary of either trust, but was one of a class of discretionary and final beneficiaries of both trusts. He did not receive distributions from either trust.

The disclosure sought by Ivan Erceg was extensive. It involved the inevitable disclosure of confidential information about the operation of the trusts, the business transactions they had entered into, the identity of the beneficiaries, what beneficiaries had received by way of distributions from each trust and the trustees' reasons for decisions they had made.

Issues

This Court had to resolve two issues in the appeal. The first and primary issue was whether an order requiring the trustees to disclose to Ivan Erceg some or all of the documents to which he sought access should have been made.

A secondary issue was whether Ivan Erceg had standing to bring the claim, considering that he was an undischarged bankrupt at the time the trusts were wound up. Although he has since been discharged, the bankruptcy has not been annulled.

High Court and Court of Appeal decisions

Courtney J in the High Court dismissed Ivan Erceg's application on the basis that he did not have standing to bring the claim. However, she expressed the view that if he did have standing, she would nevertheless have exercised her discretion against requiring the trustees to disclose the documents sought. The Court of Appeal upheld Courtney J's decision to withhold the documents, but reversed her finding that Ivan Erceg had no standing.

The Appeal to the Supreme Court

This Court granted leave to appeal on the question: Should the conclusion that disclosure not be made/required be set aside?

The trustees supported the decisions of the lower Courts to withhold the trust documents, and sought to restore Courtney J's finding that Ivan Erceg had no standing to bring the claim because of his previous bankruptcy.

Ivan Erceg argued that the trust documents should have been provided to him. He submitted that the lower Courts had erred in overlooking the presumption that core trust documents should be disclosed to beneficiaries in the absence of exceptional circumstances. He supported the Court of Appeal's finding that he had standing to bring the claim.

This Court concluded that disclosure would not be in the interests of the beneficiaries as a whole. The unusual circumstances of this case give rise to real concerns about confidentiality, particularly in relation to the identities of beneficiaries who have received distributions. Those concerns outweigh the general expectation that basic trust information will be disclosed to a close beneficiary.

This Court set out some guidance on the matters that need to be evaluated in relation to an application by a beneficiary for disclosure of trust documents.

These include the nature of the documents sought (in particular, whether confidentiality issues arise and whether disclosure will require disclosure of the reasons of the trustees for decisions made by them); the reason for which the beneficiary seeks disclosure; the nature of the requesting beneficiary's interest; the likely impact of disclosure on the trustees, the other beneficiaries, the settlor and third parties; and whether measures can be taken to protect confidentiality of disclosed documents and to ensure they are used only for the purpose for which they were disclosed.

Despite dismissing the appeal, this Court determined that Ivan Erceg did have standing to bring the claim. The ability to seek trust information is premised on his status as a beneficiary and not on any proprietary right. His bankruptcy did not affect his capacity to seek disclosure.

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