Private Client eBriefing

BX v. T : the Court's inherent jurisdiction to grant disclosure of trust documents to non-beneficiaries

Article by Jamie Holmes, 2nd April 2026

1. The 20 August 2025 decision of the Guernsey Court of Appeal in *BX v. T* [2025] GCA 063 is of interest for at least two reasons:
    a. First, what was in issue: the applicant (BX) was not a beneficiary or the object of a power of appointment, but the object of a power to add beneficiaries. BX sought that the trustee (T) disclose documents relating to the trust and its assets.
    b. Second, the way that it was reasoned: in order to determine whether the Court should exercise its inherent jurisdiction to grant that disclosure, the Court held that it was necessary to consider the degree of protection (from a court of equity) that BX required.
    c. The outcome was unsurprising: the application was refused and BX's appeal dismissed.
2. The Court's inherent jurisdiction to supervise trusts applies different tests in different contexts. The leading modern statement of the inherent jurisdiction in this (and probably any) context is that of the Privy Council in *Schmidt v. Rosewood* [2003] 2 AC 709 at [51], [66]. This was also an application for trust information and documents.
3. Guernsey has a statutory jurisdiction for the disclosure of trust documents in the Trusts (Guernsey) Law 2007, Section 26. However, BX was not a beneficiary and so could not rely on this: [28], [30]. Indeed, BX only had standing at all if the Court gave leave to that effect under Section 69.(2).(g): [30], [32]-[33]. The Court acknowledged that these statutory jurisdictions were not considerations under English law (or Manx law, *Schmidt* being a Manx case): [55], [92]-[93]. But because of its facts, *BX v. T* did not turn on the interpretation of a Guernsey statute: [95], [106]. Rather it was reasoned as a matter of the inherent jurisdiction ([19.1], [34]),

which 'filled the gap' left by that legislation, as it typically does. As a result, the reasoning on this point in *BX v. T* is of general application.

4. The point was also a novel one: none of the caselaw was directly on point.

5. The first key takeaway is that the Court did not draw a bright line and decide BX's application simply on the basis that such disclosure should never be ordered in favour of the object of a power to add beneficiaries: [95]-[97]. This (expressly) follows the reasoning in *Schmidt* at [51], [66]-[67]. So such disclosure to such an applicant remains a possibility.

6. Second, the Court held that it was necessary to consider the degree of protection (from a court of equity) that the applicant required: [81], [96] and [168]. Although similar wording can be found in the 2007 Law, s26 (see at [27]), that does not appear to have been the source of the Court's reasoning (see ¶3 above). Rather, the Court appears to have drawn from the reasoning in *Schmidt* at [51] (cited at [51]);[1] the Nevis decision of *Roussev v. Lehman* (Unreported: 24 April 2018) at [29] (cited at [64], [73]; and itself applying *Schmidt*);[2] and *Harvey v. Van Hoorn* [2023] Ch. 500 (EWHC) at [22] (cited at [78], [79]; again itself applying *Schmidt*).

7. Third, that question will be answered on a case-by-case basis, in light of all of the relevant circumstances of the case: [95]-[97]. In particular:

    a. The status of the applicant will be an important factor. In particular, whether the applicant is the object of a dispositive power (such as a beneficiary, or the object of a power of appointment) on the one hand, or of a power to be added as the object of such a power on the other: [96]. To obtain relief of the kind sought in *BX v. T* (disclosure of trust documents) a person who was not the object of a dispositive power would need to show why it is right to treat them as being in as great a need of protection as a person who was in that position; the grant of such relief to such an applicant being "*out of the norm*": [96], [103], [106] and [110]. In particular, see at [96]: "*In ordinary circumstances, that will mean showing, as a minimum, that the object has a strong, if not a very strong, expectation (objectively speaking) of being appointed in due course to the class of objects of the dispositive power.*"; and the related guidance at [87] and [110].

    b. As the above suggests, the relief sought will also be an important factor. Although a person such as BX did not have the status of a beneficiary, there

[1] "*… The object of a discretion (including a mere power) may also be entitled to protection from a court of equity, although the circumstances in which he may seek protection, and the nature of the protection he may expect to obtain, will depend on the court's discretion …*"

[2] "*It seems to me that although, Schmidt was a case involving disclosure of trust documents, that the finding – that the right to seek the court's intervention does not depend on entitlement to a fixed or transmissible beneficial interest and that the object of a mere power may also be entitled to protection from a court of equity – is a principle of broad application and is not limited to cases where disclosure of trust documents is sought. …*"

were nonetheless forms of relief that such a person would more readily be entitled to seek (or 'forms of protection that such an applicant would more readily be found to require'). Most obviously, at [81]: "*such an object has at least the right to apply to the trustee for the power to add to be exercised in his or her favour, and certainly in that event the trustee would at least have to consider it … The object of such a power must be able to apply to the court to vindicate that right if necessary.*" The vindication of such a right might go further. Following consideration at [63]-[77] of *Lehman* (above), the Court held "*that was a case where persons who were objects of a power to add further beneficiaries were held to have standing to apply for and obtain an interlocutory order temporarily removing and replacing a trustee pending the substantive resolution at trial of the applicants' claims of breach of fiduciary duty by the trustee. But that is the obvious interim remedy in a case where the object of a power to add complains of a failure to exercise the power. …*"

c. Other relevant factors in a given case may include (at [97]): "*… the width of the power of addition, the relationship between the object and the settlor, the existence of other provision by the settlor for the object, [and] whether there is anyone else to hold the trustee to account …*". The Court explores some of these factors further elsewhere in the judgment, including at [87]-[90] on the facts of *Schmidt*.

d. Two final detail bear mention. First (at [97]): "*… the expectation of the object may also change over time. For example, if there are existing beneficiaries of the trust (other than, say, a charity with which the settlor had no particular connection), the expectation of another person of addition to the class of beneficiaries will generally be less than it would if those existing beneficiaries later die unexpectedly.*"

e. Second (at [82]): "*in some cases, and especially in the context of offshore trusts, the reality of the situation may not be apparent from the terms of the trust itself*". This is considered further at [35]-[36], [48]-[49] and [86].

8. An important detail on the facts of BX was that the exercise of the power to add was also subject to the consent in writing of the protector, whose view on that matter was not known and who was not a party: [2], [22]-[23], [81], [166]-[167].

9. In summary, *BX v. T* provides a framework that is well-grounded in the authorities and which may assist in future disputes, in Guernsey and elsewhere, in determining applications for disclosure of trust documents by non-beneficiaries, and perhaps other exercises of the inherent jurisdiction.

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