

**IN THE SUPREME COURT OF BELIZE, A.D. 2015**

**CLAIM NO. 553 OF 2015**

**In the Matter of Public Sector Workers Trust**

**and**

**In the matter of the Trust Act and Part 66  
of the Supreme Court (Civil Procedures) Rules, 2005**

**SHEILA GENITTY**

**RUTH WHITE**

**DARREL GARDINER**

**(Beneficiaries and Representatives of**

**(Beneficiaries of the Public Sector Workers Trust)**

**CLAIMANTS**

**AND**

**RAYMOND DAVIS**

**NADIA CALIZ**

**PHILLIP CASTILLO**

**ENRIQUE IGLESIAS**

**SIMON ARANA (Trustees of the Public Sector  
Workers Trust)**

**MINISTER OF FINANCE**

**ATTORNEY GENERAL OF BELIZE**

**PUBLIC SERVICE UNION**

**BELIZE NATIONAL TEACHERS UNION**

**DEFENDANTS**

**Keywords:** Trusts; Formation, Declaration of Trust; Creation and Establishment of Trusts; Capability and Capacity of Establishing a Trust; Deed of Trust; Validity and Enforceability of Trusts; Settlor of a Trust; Beneficial Interest in Trusts; Public Sector Workers Trust; Trustee; Beneficiaries under Deed of Trust; Protectors under Deed of Trust; Trust for Sale; Investment of Trust Property; Court's jurisdiction over a Trust; Court's Declaration on Validity or Enforceability of a Trust;

Trusts Property and Assets; Ordinary Shares in the Belize Telecommunications Limited (BTL); Special Savings Account (No. 2780); Dividend Payments;

Belize Unions of Public Sector Workers: Public Service Union of Belize; Belize National Teachers Union; Nurses Association of Belize; Belize

Police Association; the Belize Defence Force; Increment Freeze; Salary & Wage Adjustment;

Government of Belize; Ministry of Finance Circular No. 9 of 1996;  
Ministry of Finance issued Circular No. 10 of 1996; Press Release;

**Before the Honourable Mr. Justice Courtney A. Abel**

**Hearing Dates:** 15<sup>th</sup> July 2016  
27<sup>th</sup> July 2016  
13<sup>th</sup> December 2016  
14<sup>th</sup> February 2017  
03<sup>rd</sup> March 2017  
28<sup>th</sup> April 2017.

**Appearances:**

Mrs. Magali Marin Young, SC, for the Claimants

Mr. Michael C. Young S.C. and Mr. Yohhahnseh Cave and Ms. Stacy Grinage Counsel for the 1<sup>st</sup> to 5<sup>th</sup> and 8<sup>th</sup> & 9<sup>th</sup> Defendants.

Mr. Nigel Hawke and Ms. Samantha Matute-Tucker for the Minister of Finance and AG the 6<sup>th</sup> and 7<sup>th</sup> Defendants.

**JUDGMENT**

**Delivered Orally on the 3<sup>rd</sup> day of March 2017**

**Introduction**

- [1] The present claim was brought by the Claimants representing more than 600 public officers.
- [2] The Claimants originally brought this claim against the first seven named Defendants, being representatives, Trustees, Officers and some beneficiaries (“the Trustees”) of a formally established and written trust deed executed on 29<sup>th</sup> August 2013, known as the Public Sector Workers Trust (“the Trust”) and the Government of Belize (“GOB”). The other two Unions, with an interest in the claim, were later added.

- [3] This case raises for the parties the consideration of certain aspects of the law of contract and important questions of the law of trust.
- [4] Apart from the terms of any Agreement between GOB and the Unions and the validity of the Trust, questions arise as to the terms of other less formally created trusts which may have existed between the parties, as well as questions of who were the beneficiaries of any such trusts.
- [5] All of the trusts arise initially out of a situation involving monies, or increments, due and payable in 1995 by GOB to certain public sector workers.
- [6] Negotiations then followed in or about 1996 resulting in an alleged agreement and/or trusts under which GOB made an adjustment in relation to such increments, and also offered shares in the Belize Telecommunications Limited (BTL). These shares were used by GOB as a bargaining chip in such negotiations and subsequently, along with dividends derived therefrom, became the subject of the present dispute in the hands of the Unions, and also of various trusts which are being considered in the present claim.
- [7] The Claimants are essentially asking this court to declare as invalid and unenforceable the trust deed establishing the Trust.
- [8] The central argument of the present claim is that the unions named in the Trust, as the Settlers of the Trust, were legally not the Settlers (not having a beneficial interest in the subject of the Trust), and was therefore incapable in law of settling or creating the Trust.
- [9] The factual background of the present dispute will first have to be fully explored in order to make sense of the issues which arise.

### **The Issues**

- [10] Whether the Ministry of Finance Circulars Nos 9 & 10 of 1996 and other documents from the Unions and/or the GOB, set out the terms and otherwise evidences a concluded Agreement between them?
- [11] If there was any such agreement did the Defendants breach it?
- [12] If there is no such Agreement do Circulars Nos 9 & 10 of 1996 and other documents of the Unions and/or the GOB set out the objects, purpose and beneficiaries of any of the various trusts created by GOB?

- [13] Who settled the various trusts, GOB or the Unions (as the transferees and/or trustees of the BTL shares, the subject matter of such trusts)?
- [14] What are the true objects or purpose of the various trusts, including the Trust, and who are the true beneficiaries? Critically whether the beneficiaries are persons affected by the increment freeze or are all public officers?
- [15] Whether the Unions should be ordered to properly account for their handling of the Trust Assets or should be ordered to recover monies all funds “invested” in loans?

### **Background**

#### **The Parties**

- [16] All of the named Claimants are now retired public officers in the service of the GOB.
- [17] The 1<sup>st</sup> Claimant, served as a first class clerk from 1969 through to 1977 and from 1993 through to 2007, in which later year she then retired.
- [18] The 2<sup>nd</sup> Claimant served as a head nurse.
- [19] The 3<sup>rd</sup> Claimant served as an accountant.
- [20] The Claimants are all represented under the umbrellas of some of the Defendants being various unions or bodies of public sector workers including the Public Service Union of Belize (“PSU”), the Belize National Teachers Union (“BNTU”), the Nurses Association of Belize (“NAB”), the Belize Police Association (“BPA”) and the Belize Defence Force (“BDF”) (all herein collectively referred to as the “Unions”).
- [21] Apart from the Trustees of the Trust, being Defendants, the claim has also been brought by the Claimants against the 6<sup>th</sup> and 7<sup>th</sup> Defendants, respectively the Minister of Finance (“M of F”) and the Attorney General of Belize (“AG”), representing the Government of Belize (“GOB”), which had originally declared and was the original settlor of the Trust.

#### **The Early History**

- [22] In about early 1995, GOB was experiencing financial difficulties, and as a result, decided that annual increments which were due and payable to public officers, would be suspended or frozen.

- [23] GOB's decision, as publicly explained to such public service workers, was that it was necessary, in the national interest, for there to be a suspension or freeze of the national increment then due to them. GOB's explanation was that this was so as not to jeopardize the gains the Government had made towards eliminating the fiscal deficit of the country. This increment freeze then took effect from the 1<sup>st</sup> April, 1995 through to the 31<sup>st</sup> March, 1997 ("**increment freeze**").
- [24] The Claimants and the persons they represent were affected by the increment freeze.
- [25] Subsequent to the commencement of the increment freeze, the PSU the BNTU began negotiations with the GOB for a salary adjustment for the fiscal years 1994/1995 through to 1998/1999 and also for a compensation package for its members affected by the increment freeze.
- [26] Arising from these negotiations, in 1996, proposals were made by GOB to the Unions concerning the Wage Adjustment and also concerning certain BTL shares to be settled for the benefit of public officers.
- [27] A position was thereafter arrived at on the 21<sup>st</sup> October, 1996, between GOB and such unions in relation to the increment freeze. This position was set out in two Ministry of Finance Circulars, a Press Release and certain communications passing between GOB and a particular union.

#### The GOB Circulars

- [28] On the 21<sup>st</sup> October, 1996, the Financial Secretary in the Ministry of Finance issued to the Cabinet Secretary, Solicitor General, Permanent Secretaries, Heads of Departments, and all other Accounting Officers, **Ministry of Finance Circular No. 9 of 1996**. This Circular is set out in full as follows:

*“ MINISTRY OF FINANC CIRCULAR NO. 9 OF 1996*

*REF: 1000/C/63/96*

*FROM: Financial Secretary*

*TO: Cabinet Secretary, Solicitor General, Permanent Secretaries, Heads of Departments, and all other Accounting Officers*

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*SUBJECT: GOB Wage Adjustment Proposal Issued September, 1996*

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*In view of the number of queries being received in the Ministry of Finance on the Wage Adjustment proposal made by the Government of Belize las month, the Ministry of Finance has decided to reproduce below and circulate the text of the Proposal which is currently being considered by the members of the public service and teachers*

*Begins:*

*Elements of a New Gob Wage Adjustment and Compensation Proposal – September, 1996*

1. *After a reassessment of its current fiscal positon and after detailed costing of various proposals and wage demands, Government has approved that a new wage adjustment and compensation package covering the period 1994/95 to 1998/99 be proposed as described below.*
2. *This package has been formulated on the twin principles of affordability and sustainability and is considered the maximum that government can reasonably offer without jeopardizing the gains made over the past three years toward eliminating the fiscal deficit.*
3. *This package replaces all earlier proposals including the offer of bonds and is intended to address the issues of compensation and restoration of the suspended salary increases.*
4. *The components of the package are viewed as a single integrated unit and therefore are not divisible.*
5. *Components of the Wage Adjustment and Compensation Package*
  - (i) *A One-time, Lump sum Payment equal to three percent (3%) of Annual Salary to all existing person on staff including grant-aided teachers and open vote workers. This payment would be free from Income Taxes.*
  - (ii) *Annual Salary increases over three fiscal years as follows:*
    - a) *Fiscal Year 1996/97 - 2% Increase.*
    - b) *Fiscal Year 1997/98 - 2% Increase.*
    - c) *Fiscal Year 1998/99 - 2% Increase.*

(iii) *Recommencement of the Granting of Annual Increments with effect from 1<sup>st</sup> April, 1997.*

Ends

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*In addition to this wage proposal, the Government of Belize has also made an offer to the Unions of 480,000 “B” Ordinary Shares in the Belize Telecommunications Limited to be held in trust for all government paid workers. It is proposed that the income from these shares be used to fund various projects for the benefit all government employees. This offer was made in compensation for the suspension of the award of increments to public officers and teachers in April, 1995.*

*At the estimated current market value of \$4.00 per share, the total value of shares to be held in trust would amount to \$1,920, 000 while the income from the shares based on last years earnings of BTL would have been approximately \$200, 000.*

*Both Unions have accepted this offer in principle, and Government is currently awaiting the establishment of the Trust and for project proposals to be funded from the future income of the Trust so that the transfer shares may be effected.*

*The Ministry of Finance would be grateful if Accounting Officers would make available this Circular to those members of staff who may be interested*

*[signature]*

*Joseph Waight  
For Financial Secretary”*

- [29] It is to be noted that the contents of this Circular was not the model of clarity, and may even be considered to have been rather carelessly drafted, by creating certain ambiguities, uncertainties and/or conditions for doubt as to which class or workers it was intended to compensate or benefit i.e. “*all government employees*” or public workers and teachers affected by “*the suspension of the award of increments*”.
- [30] In one passage is stated: “*It is proposed that the income from these shares be used to fund various projects for the benefit all government employees.*” And then it immediately states: “*This offer was made in compensation for the suspension of the award of increments to public officers and teachers in April, 1995.*”

[31] Subsequent to Ministry of Finance's **Circular No. 9 of 1996**, the Ministry of Finance issued **Circular No. 10 of 1996**, which was headed as its subject: "Salary Adjustment and compensation Package"; and it was dated 11 November 1996. It stated as follows:

*"Following discussions held between the representatives of the Government of Belize on the one part, and the Belize National Teachers and Public services Unions on the other part, ending with a meeting on Friday, November 8<sup>th</sup>, 1996, a salary adjustment and compensation package covering the period FY 1994/95 to FY 1998/99 was agreed to between the two parties [as set out]"*

[32] It is alleged that the above circulars amount to an agreement between GOB and the Unions representing the Claimants, which also embodied and memorialised important aspects about the objects, purpose and beneficiaries of trusts which were established for the benefit of the Claimants.

#### The Establishment by GOB of Trust Funds

[33] Following the publication of these circulars, in relation to the Salary Adjustment and Compensation Package, the Government established a special Savings Account (No. 2780) at the Government Treasury into which dividend payments accruing from the designated BTL shares were paid.

[34] This account was a trust account held by GOB for the public officers and teachers affected by the suspension and the subject of the agreement.

[35] It is common ground between the parties that a trust had been declared by GOB and therefore had existed in respect of the designated BTL shares and all monies which were in this special Savings Account (No. 2780) ("the Original Trust"); and that GOB was the original Settler of this trust.

[36] Undoubtedly between 1<sup>st</sup> November 1996 and May 2007 the dividend funds accumulated and in due course amounted to approximately BZ\$1.7 million.

[37] Communications and negotiations then took place between GOB and the Unions on the conditions and terms of the trust which was to be established in consequence of the offer to the Unions of 480,000 "B" Ordinary Shares in BTL.

- [38] A Draft of a trust document, proposed as a Deed, was prepared by the Unions with the consent of GOB, and was supplied to GOB for review.
- [39] A meeting was then held in Belmopan on the 14<sup>th</sup> of October 2005 between representatives of the Government and the Unions at which discussions took place. This meeting was attended by Mr. Gian Gandhi, Legal Adviser to the Minister of Finance and Ms. Lois Young, Attorney-at-Law for the Unions.
- [40] Subsequent to this meeting the BNTU set out a report of the meeting in a letter to GOB dated the 24<sup>th</sup> of October 2005. This letter recorded: the Unions' request for an indication about receipt of "*some 1.7 million dollars in dividend money accrued for the 480,000 "B" shares in Belize Telecommunications Limited from 1<sup>st</sup> November 1996 to May 2004*" and which was in the "*Savings Bank Account #2780 at the Government Treasury*".
- [41] In this letter the Trust Deed, which had been supplied to GOB, was also discussed, and the Unions repeated and expressed their position on the accrued dividend as follows:
- “
- (a) *The Unions are legal entities. The money held by the Government represents accrued dividends on 480 "B" shares and 87, 666 "C" shares the property of the Public Service Union and the Belize national Teachers Union.*
  - (b) *A trust for these shares will be established by the Unions for the benefit of public officers and teachers, and the income will be used to fund various projects for the benefit of public officers and teachers.*
  - (c) *The establishment of the trust is a matter for the Unions and the administration of this trust is a matter for the Trustees.*
  - (d) *The Trust Deed prepared by the Unions will provide for seven (7) trustees as follows: three (3) representing the PSU, three (3) representing the BNTU, one (1) jointly representing the police, nurses and Belize Defence Force. There will be a Protector of the Trust who will be appointed by the Unions.”*

[42] In this letter the Unions further stated what they understood to be GOB's response to this position, as well as the Union's response to GOB's position, which was stated as follows:

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- (e) *The initial 480,000 “B” shares and 87,666 “C” shares, were given to the Unions as compensation for the suspension of increments to public officers and teachers during the fiscal period 1995 to 1997 inclusive. As such, the Government has no basis to believe that it has an interest in the shares or the dividends generated.*
- (f) *GOB is not entitled to appoint any of the trustees. The Trust Deed will provide for seven trustees as set out above. In this regard, the Unions also wish to inform you, as a matter of courtesy, that paragraph of the Administrative Powers in the draft Trust Deed will be amended to allow the trustees to make decisions by a majority of at least five (5).*
- (g) *The Creation of a trust does not by law require the appointment of a Protector. However the Unions, as the Settlers, intend to name a Protector in order to promote confidence and ensure good management of the trust. The Unions are in no way obliged to consult with GOB in the choice of the Protector.*
- (h) *The Unions will ensure that the Trust Deed is registered at the General Registry and that GOB receives a copy.*
- (i) *Accordingly, the Unions hereby request that all moneys in Treasury Savings Bank account # 2780 at the Government Treasury, (verified by the Union) be handed over to the Unions, immediately.”*

[43] It was also recorded, in this letter that the Unions requested of GOB that it procure in the names of the Unions and delivers to them share certificates for the 480,000 “B” shares in BTL, in substitution for 480,000 of the “C” shares then in the name of the Unions.

[44] In a letter from the Government to the Unions dated the 30<sup>th</sup> of November 2005, the GOB advised:

*“We refer to your letter of 24<sup>th</sup> October 2005 on the matter of the establishment and administration of the trust to hold certain assets for the benefit of all Public Officers, Police Officers, Belize Defence Force members, Nurses and Teachers.*

*While we are disappointed that none of the proposals put forward by the Government of Belize in our meeting of 14 October 2005 has been accepted, we do not wish to prolong this matter any further.*

*Accordingly we agree that the Unions will establish a Trust and will appoint the Trustees as set out in Paragraph 3(d) of your letter under reference.*

*Once we receive a copy of the duly registered Trust Deed, we will be in a position to hand over the balances held in Treasury Savings Bank Account #2780 without having to engage in any other process.*

*We therefore look forward to receiving a copy of the registered Trust Deed as soon as it is available*

*With regards to the BTL shares, we can only repeat the advice given during our meeting of the 14<sup>th</sup> October, 2005; and, that, is that the Government of Belize has no “B” shares in its possession and therefore is unable to accommodate your request”*

- [45] The critical question which arises is who are the true beneficiaries of the Original Trust, whether persons affected by the freeze or all public officers? Also arising in relation to the Original Trust are what were its true purpose, objectives and terms? Could the latter be inferred from the GOB’s Circulars Nos 9 & 10 of 1996 and the communications passing between the GOB and any of the Unions?
- [46] On or around 2007, the dividends being held by GOB were then transferred into an account in the joint names of the PSU and the BNTU.
- [47] It is also common ground between the parties that the dividends transferred into an account in the joint names of the PSU and the BNTU thereby also constituted a trust of some kind which thereby existed (“the Second Trust”) and that GOB was also, thereby, the Settlor of this trust.
- [48] Again a critical question which arises is who are the true beneficiaries of the Second Trust, whether persons affected by the freeze or all public officers? Also arising in

relation to the Second Trust are what were its true purpose, objectives and terms? Again could the latter be inferred from the GOB's Circulars Nos 9 & 10 of 1996 and the communications passing between the GOB and any of the Unions?

- [49] However, the dividends which had accrued up to 2007, continued to be held under the Original Trust in the Government's Savings Account pending the creation of a Trust Deed by the PSU and BNTU: "*for the purpose of funding various projects for the benefit of the affected public officers and teachers and their families*"<sup>1</sup>.
- [50] In 2007, the "C" Shares were transferred by GOB to the PSU and BNTU jointly as trustees for the benefit of the public officers. Again there appears to be common ground between the parties that these "C" Shares, together with the dividends previously transferred also constituted a trust and merged with and into the Second Trust of which GOB was the Settlor.
- [51] At the time of the transfer of the "C" Shares, there was no trust deed setting out the terms of The Trust. Thus the question remains as to the true beneficiaries, objectives and purpose of the Second Trust as increased by the "C" Shares.
- [52] Even after the BTL shares were transferred to the PSU and BNTU in 2007, the income derived thereafter from the dividends continued to be deposited into another savings account held at Scotiabank (Belize) Limited.
- [53] Before agreeing to transfer the accrued income from the dividends derived from the BTL shares, GOB had requested that the Unions formalize the trust in writing (along the terms of the agreement) by setting up a proper trust deed.
- [54] Thus though GOB had transferred in trust the BTL shares to the stated Unions in 2007, the accrued income earned from the dividends from 1996 up until 2007 was not handed over to the Unions, and, was instead held in a Government Savings Account at the Central Bank of Belize.

#### The Creation of a Formal Trust

- [55] In 2013, the PSU and BNTU then purported to establish the Trust (alternatively "the Third Trust"), and, on the 29<sup>th</sup> August, 2013, indeed duly executed and

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<sup>1</sup> See below at \* the GOB Press Release, from the Office of the Prime Minister, Belmopan, dated 23<sup>rd</sup> July 2014

produced a document entitled “**Deed of Trust**” which was lodged for recordation at the Land Titles Unit.

[56] This Deed of Trust, or the Third Trust, is a 31 paged, 22 paragraphed document, with two Schedules, duly signed by the PSU and the BNTU, as Settlor on the one hand, and on the other hand, NAB, BPA and the BDF, as Trustees of the trust. These persons are the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> named Defendants herein, respectively. The 5<sup>th</sup> Defendant has recently been appointed as trustee in the place of the 4<sup>th</sup> Defendant.

[57] The Beneficiaries under the Deed of Trust, or the Third Trust, at page 4 was stated as being:

*“(i) Those public officers as defined by section 2 of the Services Commission Regulations S.I. 159 of 2001, (as amended) open vote workers as defined in section 2 of the Government Workers Regulations S.I. 145 of 1992, teachers as defined by the Education Rules, S.I. 92 of 2000, (as amended) whose salaries were affected by the increment freeze which came into effect on 1<sup>st</sup> April, 1995 and ended 31<sup>st</sup> March, 1997.*

*(ii) Any other persons deemed to be Beneficiaries by the Trustees hereof.”*

[58] The Protectors under the Deed of Trust, or the Third Trust, at page 4 is stated to be the President of the PSU, BNTU, and Belize Police Association.

[59] The Trustees in the Deed of Trust, the Third Trust, the Trust, are said to hold the Trust Fund upon a Trust for Sale meaning:

*“upon trust as to investments or property other than money in their absolute discretion to sell, call in or convert into money all or any of such investments or property but with power to postpone such sale, calling in or to convert and to permit the same to remain as invested and upon trust as to money with the like discretion to invest the same in the names of the Trust in any of the investments authorised by this Trust*

*or by law with power at the like discretion from time to time to vary or transpose any such investments for others so authorized”<sup>2</sup>.*

- [60] The Trustees in the Deed of Trust, the Third Trust, were expressly empowered to add beneficiaries *“with the consent of the Protector (if any) at any time during the Trust Period as to the Beneficiaries...”<sup>3</sup>*
- [61] In the Deed of Trust, the Third Trust, the Trustees have also made provision for the granting of loans to the beneficiaries, to be approved by the Trustees in their absolute discretion.
- [62] Within the First Schedule to the Deed of Trust<sup>4</sup>, is set out the additional powers of the Trustees.
- [63] The initial Trust Fund, as set out in the Second Schedule in the Deed of Trust, the Third Trust, at page 31, is said to include:
- (a) 794,732 “C” ordinary shares in BTL held jointly in the names of PSU and BNTU under specified and dated Certificate numbers;
  - (b) Principal plus interest in Savings Account No. 2780 at the Government Treasury to the benefit of the settlors;
  - (c) Term Deposit at Scotiabank (Belize) Ltd. Account Nos. 692109, 692350 and 692379;
  - (d) Savings Account at Scotiabank (Belize) Ltd. Account No. 9138833;  
and
  - (e) Checking Account at Scotiabank (Belize) Ltd. Account No. 9140086.
- [64] Essentially, the Deed of Trust, the Third Trust, as drawn, gives the Trustees unlimited authority to decide how, when, and where the Fund is to be invested, and to *“deem”* persons who may be beneficiaries and who may be added as beneficiaries, all, as alleged by the Claimants, contrary to the agreement with GOB and, it follows in breach of the Original and the Second Trust.

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<sup>2</sup> At page 4 to 5.

<sup>3</sup> At page 5

<sup>4</sup> At page 16 to 29

- [65] Sometime in 2013 the PSU and the BNTU submitted to the Government a copy of the executed Trust Deed, by which, at the time, four (4) Trustees, namely, Raymond Davis, Nadia Caliz, Dr. Philip Castillo and Enrique Iglesias as representatives of the PSU, the BNTU, the NAB, the BDF and the BPA, for its review and subsequent approval.
- [66] There was only one such Trust Deed drafted by the Unions and submitted to GOB for the transfer of funds held in the Government's saving Accounts to the named Trustees.
- [67] The GOB had no input in the framing, drafting and construction of the Trust Deed, the Third Trust, and the only obligation which GOB considered it had was to ensure that this Trust Deed met the requirements under the Laws of Belize before the funds were transferred to the named Trustees which the GOB was so advised and as a consequence, any disbursement made by the GOB to the named Trustees – so, claims GOB, discharges its obligation under the agreements.
- [68] GOB has not advised the Unions nor have the Defendants advised anyone of any objections to this Trust Deed nor any part of it.
- [69] It was not until 23<sup>rd</sup> July of 2014 that GOB authorized the transfer of the balance of moneys held in GOB's Savings Account to the Trustees of the Third Trust allegedly having regard to the fact that the Trustees of the Third Trust had crafted a Trust Deed creating the Third Trust.

#### The GOB Press Release

- [70] Then the GOB, on the same day, 23<sup>rd</sup> July 2014, issued a Press Release confirming that it had authorized the Accountant General to transfer the balance of some \$3.06 million held in a Government Savings Account to the Trustees of The Third Trust. The terms of the Press Release is as follows:

*“The Ministry of Finance is pleased to announce that it has today authorised the Accountant General to transfer the balance of some \$3.06 million held in a Government Savings Account to the Trustees of the Public Sector Workers’ Trust, which has been established to hold funds in trust for all public officers and teachers whose annual*

*increments were frozen during the period 1<sup>st</sup> April 1995 to 31<sup>st</sup> march 1997.*

*It may be recalled that in 1995, the Government of Belize has agreed to give the Public Service Union and the Belize National Teachers Union some 794,732 shares in Belize Telecommunications Limited (now Belize Telemedia Limited) as compensation for the suspension of annual increments of public officers and teachers during the fiscal period 1995 to 1997. These shares continued earning dividends which were kept in a separate Government Savings Account in trust for the affected public officers and teachers.*

*In 2007, the said shares were transferred into the joint names of the Public Service Union and the Belize National Teachers Union, but the dividends earned up to that time continued to be held in the Government Savings Account pending the establishment by the Unions of a Trust for the purpose of funding various projects for the benefit of the affected public officers and teachers and their families. The Unions have now submitted a Trust Deed for the said purpose, which appointed four Trustees, namely, Raymond Davis, Nadia Caliz, Philip Castillo and Enrique Iglesias, representing the Public Service Union, Belize National Teachers Union, Nurses Association of Belize, Belize Defence Force and the Belize Police Association. After some review, approval has been granted for the control of the said Savings Account to be transferred to the named Trustees.*

*It should also be mentioned that the dividends earned on these shares since 2007 when the shares were transferred to the Unions, have been placed directly in a commercial bank account under the full control of the Unions. It is understood that the dividends earned on the shares during the period 2008 to 2013 amounted to some \$2.04 million.*

*With the Trust now established and fully funded, it is expected that the Trust will become operational in the very near future. All public*

*officers, teachers and open vote workers (including those who have since retired) whose increments were frozen during the period 1995 to 1997 may contact the Trustees for further information about the benefits payable to them.”*

[71] The Prime Minister and Minister of Finance at the time of the Press Release has apparently since confirmed what was the true reason for the trust which is expressed to have been as follows:

*“the Shares were given to the Unions to be held in trust for the benefit of all public officers, teachers, and open vote workers (including those who have since retired) whose increments were frozen during the period 1995 to 1997.”<sup>5</sup>*

Transfer by GOB of All Trust Property

[72] GOB then handed over to the Trustees of The Trust the funds that were held in:

- (a) The Government Savings Account in the sum of \$3.06 million at the Central Bank of Belize; and
- (b) A savings account at Scotiabank (Belize) Ltd. in the sum of \$2.04 million to the named Trustees, being the total sum of \$5.1 million.

[73] The Government has thus now transferred to the Trustees all the property subject of the Trust, by which transfer, it considers that it has discharged its obligation to the intended beneficiaries and the Unions and as a consequence has no further role in the administration of the Trust.

Questions for Determination

[74] It is common ground between the Defendants that GOB by transferring to the Defendant Trustees all the property the subject of the Original, First and Second Trusts has thereby discharged its obligation to the Unions and the intended beneficiaries to transfer all of the trust properties.

[75] It is not accepted by the parties, certainly not the Claimants, and possibly the Trustees and the Unions, that as a consequence GOB has no further role in relation to the administration of the Trust.

- [76] There obviously remains matters in dispute which GOB has to answer and in which it cannot escape having a role to play.
- [77] Specifically the Claimants are alleging that a Deed of Trust, which was created and arose out of the agreement, is void as against the stated beneficiaries of the Trust. That the Unions and/or Trustees of the Trust acted in breach of agreement, and the Trust, by the doing of certain acts which it undertook (to allow persons who were not entitled to enjoy the transfer of certain assets vested in the Trust). That the Trust should now be cancelled; the Trust be substituted to a correct certain errors in it; and that the Claimants are now entitled to consequential reliefs and costs.
- [78] As a summary matter, and within the context of the present case, possibly at a trivial level, this Court can certainly state that by the due execution of the terms of the Deed of Trust, and in its entirety a valid and potentially enforceable trust has been created, in the sense that its terms in its entirety so satisfy the legal requirements for the existence of a trust.
- [79] But a more profound and difficult question remains, which is whether on the facts and circumstances of the present case, this court ought to declare it invalid and unenforceable as to its terms as drafted?
- [80] The question also arises whether the Unions as the transferees and/or trustees of the BTL shares could legally be the Settlers of the Third or any Trust? In this context an important distinction may legally be required and noted in relation to the Unions 'capability' and their 'capacity' in law to be the Settlor of any of the trusts which have arisen in the context of the present case.

#### Actions of the Unions in furtherance of the Trust

- [81] A Trust Office has been set up and employees hired after an exhaustive dual interview process.
- [82] The Third Trust then proceeded on a countrywide tour to hear concerns from beneficiaries.
- [83] District Committees were set up by the Third Trust in all districts to facilitate access to the Third Trust by all of its beneficiaries in all areas of the country.
- [84] On its countrywide tour, it was noted by the Trustees of the Third Trust that substantial numbers of retired public officers were facing numerous health

challenges; and such Trustees are hoping to undertake projects in the area of health and assistance to the aged. The Trustees are also in discussions with KHMH and with Helpage Belize at this time.

[85] The Third Trust has also set up a loan scheme and over 300 public officers and teachers have borrowed loans.

[86] The Trust Fund of the Third Trust and operations have been audited by a Chartered Accountant, Ernesto Castro, and a copy of which audited financial statements for calendar year 2015, dated 24<sup>th</sup> March, 2016, acknowledged by the Defendants, discloses that a significant portion of the assets of the Third Trust have been “invested” in third party loans, to individuals and to Unions and Associations.

[87] The Trustees have since established a loan program, where loans are being offered to all public officers, and, not limited to the person considered by the Claimants to be the real beneficiaries, being those public officers who were affected by the increment freeze.

[88] Also alleged is that the Third Trust has also been paying for meetings and tours which it is alleged it ought not to be paying for.

[89] Further it is alleged that the loan program is not a project beneficial to the intended beneficiaries and the Claimants, who would now like a full accounting of all monies disbursed by way of loans under this alleged unlawful Trust Deed and in breach of the agreement.

[90] The Claimants allege that they have requested information from the Trustees in regards to the loan program, and their requests have been ignored.

[91] To date the Trust is valued in excess of \$9 million with the shares valued at around \$3 million, and dividends in excess of \$6 million.

### **The Court Proceedings**

[92] The Claimants, on the 9<sup>th</sup> October 2015, as Officers and beneficiaries of the Trust, filed a Claim Form against the first four named persons as Trustees of the Trust.

[93] The Claimants originally in its claim complained that the Trustees failed to carry out their Trust and in particular they:

*“(i) failed to identify all the beneficiaries of the Trust (ii) failed to declare the rights and interests of each beneficiary under the Trust (iii) failed to*

*pay over to each beneficiary his or her right or interest under the said Trust”.*

[94] The original claim was for Declarations and Orders under and in relation to the Trust.

[95] The Claimants also originally claimed to be entitled to the following reliefs:

- (a) Declaration that they are beneficiaries under the trust;
- (b) Declaration of their rights or interest under the trust;
- (c) An order that the Trustee pay to them their rights and or interests under the Trust.

[96] On the 14<sup>th</sup> January 2016 the Defendants, in response to and in defence of the original claim, filed an extensive Defence.

[97] In the Defence the original (4) Defendants pleaded the factual background and more fully stated as follows:

*“The Defendants say further that they are advised that the extent of the class of beneficiaries (including whether former public officers and teachers are also beneficiaries) is determined by the language of the Trust document itself and not the Government’s Press Release.*

*The Defendants are willing to administer the Trust lawfully and welcome the interpretation of the Court in respect of the claims made and the issues raised by the Claimants.”*

[98] On the 18<sup>th</sup> February, 2016, the original Counsel for the Claimant was changed; and later, the Claimants on the 24<sup>th</sup> March 2016, with the permission of this Court, significantly amended the Claim Form and the basis of its claim.

[99] In the Amended Claim the Claimants alleges that they bring the present claim as three beneficiaries, and as representatives of in excess of 600 beneficiaries of the Trust.

[100] The Claimants in the Amended Claim then added the fifth named Defendant as a further Trustee of the Trust and the M of F and AG as Interested Parties and therein alleges that the first five Defendants are former and present Trustees of the Trust,

representing the BNTU, the NAB, the BPA, and the BDF; and that the Interested Parties, representing the GOB, are the actual settlors of the Trust, not the Unions as stated in the Trust Deed.

[101] The Claimants, on the 26 April 2016, with the permission of the Court, further amended the Claim, to add the M of F and AG as full Defendants (and not merely as Interested Parties in which capacity they had previously appeared).

[102] The Claimants on their behalf and on behalf of the persons they represent, in the Further Amended Claim Form is therefore now asking this Court to grant the following reliefs:

- (1) A Declaration that the Deed of Trust dated the 29<sup>th</sup> August, 2013 between the PSU and the BNTU purportedly as “settlers” of the first part and Raymond Davis (PSU), Nadia Caliz (BNTU), Phillip Castillo (NAB), and Enrique Iglesias (BPA & BDF), purportedly as “Trustees” of the second part (“**Deed of Trust**”), is void as against the Claimants and the other beneficiaries of the Public Sector Workers’ Trust in that:
  - (a) The said Deed of Trust is inconsistent and in breach of the agreement made between the GOB and the PSU and the BNTU (collectively “**Unions**”) in 1996 (“**agreement**”), which was memorialized in a Ministry of Finance Circular No. 9 of 1996 (Ref. 1000/C/63/96 dated 21<sup>st</sup> October, 1996), in that the Deed of Trust expressly states that the Trustees may deem as Beneficiaries persons other than those public officers affected by the increment freeze effective from the 1<sup>st</sup> April, 1995 to the 31<sup>st</sup> March, 1997;
  - (b) The Unions and the Trustees were totally mistaken as to the Deed of Trust’s true content and effect in that it names the Unions as the “settlers” thereof when, at all material times the said assets that make up the trust assets were not beneficially owned by the Unions and were in fact transferred by the GOB to them in trust for those public officers affected by the increment freeze per the agreement, and the purported settlors named in the Deed of Trust could not therefore be settlors of the said trust;

- (2) Alternatively, a Declaration that the Unions and/or Trustees are in breach of the agreement and the trust created when the shares were transferred to the Trustees, when they executed the Deed of Trust purportedly as “settlor” and “trustees” to settle upon trust the trust assets named therein in that at all material times the said trust assets were not beneficially owned by them and they could not therefore “settle” those shares pursuant to the Deed of Trust;
- (3) An Order that the Defendants do deliver up the Deed of Trust dated 29<sup>th</sup> August, 2013 to the Claimants for Cancellation;
- (4) An Order that the Unions or the present Trustees of the Public Sector Workers’ Trust do cause a proper trust deed to be drawn to include the GOB as settlor upon the terms agreed to with the GOB in 1996 per the agreement, to:
  - (i) settle the BTL shares for the benefit of those public officers who suffered an increment freeze as aforesaid; and
  - (ii) apply the income derived from those shares to fund projects for the benefit of public officers who were affected by the increment freeze;
- (5) An Order that the Unions and/or the Trustees of the Public Sector Workers’ Trust do account for all funds that they have received from the GOB being the income derived from BTL shares from 1996 to 2013 and that has been paid to them since 2014;
- (6) That subject to any reasonable cost, charges and expenses, that the Unions and/or the Trustees of the Public Sector Workers’ Trust pay the income and the trust assets and deliver any certificates of ownership thereto into Court until such time that a proper trust has been created;
- (7) Cost; and
- (8) Further or other relief.

[103] Counsel for the first five Defendants has been arguing that the Amended Claim is an entirely different claim, which ought to have been discontinued and a new claim commenced. The basis of this argument is that the original claim was a trusts administration claim whereas the Amended Claim sounds in contract for breach of an Agreement, that the complaint is that there has been a breach of an Agreement

for a certain consideration to be delivered in return for the increment freeze imposed in respect of fiscal years 1995 to 1997, that the Claimants' cause of action is that a trust was to be created wherein the beneficiaries would be limited to those persons who were affected by the increment freeze. Counsel for the Claimant opposes this argument on the basis that the Amended Claim, if only in the alternative, sought reliefs based on breach of the Trust as well as for breach of contract.

- [104] On the 24<sup>th</sup> May 2016 the Trustees filed an Affidavit in Defence on behalf of the Defendants.
- [105] On the 9<sup>th</sup> June 2016 the Claimants filed the Fourth Affidavit of Sheila Genitty (in response to Defendants' Affidavit in Defence).
- [106] The sixth and seventh Defendants on the 23<sup>rd</sup> June 2016 filed the Affidavit of Mr. Joseph Waight, the Financial Secretary of GOB. A Second Affidavit of Joseph Waight was later filed on the 4<sup>th</sup> July 2016.
- [107] Counsel for the Claimants, pursuant to directions given by this Court, filed written Skeleton Arguments on the 8<sup>th</sup> July 2016.
- [108] Written Submissions were filed separately by Counsel for the Trustees and the GOB on the 13<sup>th</sup> July 2016.
- [109] Supplemental Skeleton Arguments on Behalf of the Claimants were filed on the 22<sup>nd</sup> July 2016.
- [110] Supplemental Submissions were also filed by the Trustee Defendants dated 25<sup>th</sup> July 2016.

## **The Law**

### **The Trust Act**

[111] The relevant statute is the *Trust Act*<sup>6</sup>, (“the Act”).

[112] Under Section 2 of the Act a trust is defined as follows:

“2. *A trust exists where a person (known as “a trustee”) holds or has vested in him, or is deemed to hold or have vested in him, property which does not form, or which has ceased to form, part of his own estate:-*

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<sup>6</sup> Chapter 202 of the Laws of Belize

- (a) *for the benefit of any person (known as “a beneficiary”) whether or not yet ascertained or in existence; or*
- (b) *for any valid charitable or non-charitable purpose which is not for the benefit only of the trustee; or*
- (c) *for such benefit as is mentioned in paragraph (a) and also for any such purpose as is mentioned in paragraph (b).”*

[113] Section 5(1) of the Act, states that:

*“A trust, other than a unit trust, may be created by oral declaration, or by an instrument in writing (including a will or codicil), by conduct, by operation of law, or in any other manner whatsoever.”<sup>7</sup>*

[114] Section 5(3) of the said Act explicitly prescribes that:

*“No formalities or technical expressions are required for the creation of a trust provided that the intention of the settlor to create a trust is clearly manifested.”*

[115] Section 7 of the Act sets out circumstances under which a trust would be declared invalid:

*“7.-(1) Subject to the provisions of this Act, a trust shall be valid and enforceable in accordance with its terms.*

*(2) A trust shall be invalid and unenforceable-*

*(a) ....*

*(b) to the extent that the Court declares that-*

*(i) ..., or*

*(ii) ...; or*

*(iii) ...; or*

*(iv) the settlor was, at the time of its creation, incapable under the law in force in Belize of creating such a trust.”*

[116] Section 8(4) of the Act which provides:

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<sup>7</sup> See Chapter 202 of the Laws of Belize.

*“Where a settlor declares a trust respecting property he does not own at the time of the declaration, then-*

*(a) the trust is incompletely constituted at the time of the declaration and no rights or duties arise thereunder; but*

*(b) if the settlor subsequently receives property which was the intended subject matter of the declaration of trust, the Court shall at the instance of the beneficiary or the trustee (and whether the beneficiary has given consideration for the declaration of trust or not) compel the settlor to transfer that property to the trustee or to hold that property on the terms of the trust.”*

[117] Section 9 of the Act states who may be a settlor of a trust, as follows:

*“9.-(1) Any person who has under the law of Belize the capacity to own and transfer property may be the settlor of a trust.*

*(2) The settlor may also be a trustee, a beneficiary or a protector of the trust.”*

[118] It is accepted that although the Act does not define “*settlor*,” that section 9(1) of the Act nevertheless does state that a settlor is “*any person who has under the laws of Belize the capacity to own and transfer property may be the settler of a trust.*” Also it is accepted that Section 9 (2) also provides that the settlor may be a trustee, a beneficiary or a protector of a trust.

[119] Section 27 (1), (2), (3), (4), (6), (7), (8) of the Act goes on to set out the duties of the trustees as follows:

*“27.-(1) A trustee shall in the execution of his functions-*

*(a) act with due diligence; and*

*(b) observe utmost good faith; and*

*(c) act to the best of his skills and abilities; and*

*(d) exercise the standard of care of a reasonable and prudent man of business.*

*(2) A trustee shall carry out and administer the trust in accordance with this Act and, subject thereto, in accordance with the terms of the trust.*

*(3) A trustee shall owe a fiduciary duty to the beneficiaries of the trust, the members of a class for whose benefit the trust was established, or the purpose for which the trust was established.*

*(4) Where a fiduciary duty is owed to a purpose for which a trust was established, that duty may be enforced by the protector of the trust or (in the case of a trust established for a charitable purpose) by the Attorney General.*

*(5).....*

*(6) Except with the approval of the Court or in accordance with the terms of the trust or the provisions of this Act, a trustee shall not-*

*(a) derive, directly or indirectly, any profit from his*

*(b) cause or permit any other person directly or indirectly to derive any profit from his trusteeship;  
or*

*(c) on his own account enter into any transaction with his co-trustees or relating to the trust property which may result in any such profit.*

*(7) The trustee of a trust shall keep accurate accounts and records of his trusteeship.*

*(8) A trustee shall keep trust property separate from his own property and separately identifiable from any other property of which he is a trustee.”*

[120] Section 57 of the Act makes provision for this Court’s jurisdiction over any trust, including the Trust, of property in Belize and the administration of any trust administered in Belize, as follows:

*“57. The Court has jurisdiction in respect of any matters concerning a trust where,*

- (a) the property law of the trust is the law of Belize;*
- (b) a trustee of the trust is resident in Belize;*
- (c) any property of the trust is situated in Belize;*
- (d) any part of the administration of the trust is carried on in Belize.*

[121] Section 58 (1) of the Act sets out the general powers of the Court as follows:

*“58.-(1) On the application of a trustee, a beneficiary, a settlor or his personal representatives, a protector, (in the case of a trust established for a charitable purpose) the Attorney General or, with the leave of the Court, any other person, the Court may-*

- (a) make an order in respect of-*
  - (i) the execution, administration or enforcement of a trust;*
  - (ii) a trustee, including an order as to the exercise by a trustee of his functions, the removal of a trustee, the appointment, remuneration or conduct of a trustee, the keeping and submission of accounts, and the making of payments, whether into Court or otherwise;*
  - (iii) a protector, including an order appointing a protector;*
  - (iv) a beneficiary, or any person connected with a trust;*
  - (v) any trust property, including an order as to the vesting, preservation, application, surrender or recovery thereof;*

*(b) make a declaration as to the validity or enforceability of a trust;*

*(c) direct the trustee to distribute, or not to distribute, the trust property;*

*(d) make such order in respect of the termination of the trust and the distribution of the property as it thinks fit;*

*(e) rescind or vary an order or declaration under this Act, or make a new or further order or declaration.*

[122] Section 66(2) of the Act makes provision for the time that a trust is created and provides:

*“66. (2) For the purpose of this Act, a trust shall be regarded as created at the time at which property is first received by or vested in the trustee to be held by him in accordance with the terms of the trust.”*

[123] Section 67 of the Trust Act is as follows:

*“Settlor means a person who provides trust property or makes a testamentary disposition on trust or to a trust.”*

#### Other Common Law Definitions

[124] The common law, or equity, supplements the Act where there are no express provisions to the contrary in the Act.

[125] The meaning of “*trust*”, apart from the definition contained within the Act has also be usefully defined as follows:

*“Where a person has property or rights which he holds or is bound to exercise for or on behalf of another or others, or for the accomplishment of some particular purpose or particular purposes, he is said to hold the property or rights in trust for that other or those others, or for that purpose or those purposes, and he is called a trustee. A trust is purely equitable obligation and is enforceable only in a court in which equity is administered.*

*The trustee holds the property or must exercise his rights of property in a fiduciary capacity, and stands in a fiduciary relationship to the beneficiary.*

*The property affected by a trust (the ‘trust property’ or ‘trust estate’) must be vested in the trustee, whether the property is a legal estate, a legal right or an equitable interest where the legal title is vested in some other person.<sup>8</sup>”*

[126] A settlor, apart from as set out in the Act, has also been described as a person who creates a trust of a particular property by transferring title to the trustees, as follows:

*“any person or corporation capable at law or in equity of alienating to any extent property or an interest in property, either inter vivos or, in the case of an individual, by a testamentary instrument, is to the same extent capable of creating a trust in that property or interest, or of disposing of it in trust, either inter vivos or, in the case of an individual, by a testamentary instrument.”*

[127] ***Snell’s Equity***<sup>9</sup>, also describes a settlor as:

*“(c) Settlor or testator. The settlor or the testator is the person who creates the trust. He defines the terms of the trustee’s powers and duties and constitute the trust by vesting the trust assets in the trustee. The word ‘settlor’ is used for a person who creates a trust in an inter vivos transaction. It is not used of a person who creates a trust by will. The usual term ‘testatrix’ is used for such a person.”*

[128] ***Snell’s Equity***<sup>10</sup> also describes segregation of the absolute ownership from the beneficial ownership when a trust is created as follows:

*“The beneficiary has an equitable proprietary interest in the trust property. The effect is to segregate the property that the trustee holds for the trust from other property that he holds beneficially for himself. The trust property operates as a separate patrimony which*

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<sup>8</sup> See 4<sup>th</sup> Edition of ***Halsbury’s Laws of England 4<sup>th</sup> Ed.*** Vol. 48 para 601.

<sup>9</sup> See ***Halsbury’s Laws of England; 33<sup>rd</sup> Edition Part V***, at paragraph 21-010.

<sup>10</sup> ***33<sup>rd</sup> Edition Part V*** paragraph 21-006

*are not liable to the debts incurred by the trustee in his personal capacity.”*

[129] The duties of a trustee have been formulated as follows:

*“(1) A trustee:*

- (a) must keep clear and accurate accounts of the trust property; and*
- (b) may be ordered by a court, at the request of a beneficiary or of a successor trustee, to give him full and accurate information as to the amount and state of the trust property, and to permit him or his solicitor or accountants to inspect the accounts and vouchers, and other documents (including legal advice) relating to the trust, so long as the documents do not reveal the reasons or the reasoning process for the exercise of the trustees’ discretions and so long as supplying the documents in an exceptional case would not prejudice the interests of the beneficiaries as a whole and the ability of the trustee to discharge its obligations under the trust, particularly management of a business...<sup>11</sup>”*

[130] It has long been established, and may be considered settled law that legally, the person who is enabled to declare a trust is the beneficial owner<sup>12</sup>.

**Whether the Ministry of Finance Circulars Nos 9 & 10 of 1996 and other documents from the Unions and/or the GOB set out the terms and otherwise evidences a concluded Agreement between them?**

[131] The Claimants submit that there was an agreement between the GOB and the Unions, acting on behalf of their members affected by the increment freeze, that the

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<sup>11</sup> See the authors of Underhill and Hayton Law of Trust and Trustees 19th Ed, at \*.

<sup>12</sup> See the UK case of Tierney v. Wood; 19 BEAV. 330 per Sir John Romilly Master of the Rolls.

transfer of the BTL shares was to be for the benefit of those public officers who were so affected.

- [132] It is submitted by the Claimants that the terms of an agreement between GOB and the Unions representing the Claimants (public sector workers affected by the increment freeze) is set out in Circulars Nos 9 and 10.
- [133] The Claimants also submit that critically the facts and circumstances of the case points to the offer of the BTL shares arising from the increment freeze and as a concession to the affected public sector workers being accepted. Moreover the Claimant's submit that the expressed words of the Circulars, Press Release and other documents statements and words from GOB and its representatives point to a concluded agreement arising from negotiations between the Unions on behalf of such affected workers and GOB benefiting (such workers consideration as it were) from the BTL shares.
- [134] The Claimants submit that the facts and circumstances of the case, particularly the transfer by GOB of the shares and dividends to the Unions, also point to a clearly concluded contractual intention not to benefit the Unions as beneficiaries; but to an intention that such shares should be held in trust for the affected workers as beneficiaries. The Claimants submit also that a trust was thereafter created by such transfer of shares subject to and on the terms of the Agreement as contained in the GOB Circulars, Press Release and other documents and evidence in the case.
- [135] The Claimants are also submitting that the Defendants later breached the agreement arrived at between the unions and GOB in relation to the increment freeze and, incidentally, also breached certain trusts which had been declared in relation to certain property which had been entrusted to those represented by the Claimants.
- [136] The Claimants also submit that the Trust Deed formalized by the named Unions, naming the Unions as Settlers, was in breach of the agreement, and was untrue and misrepresented the true position. It is submitted that such true position was not that the Unions should be the beneficiaries of the shares but that they should hold such shares as trustees for the benefit of the workers affected by the increment freeze.

- [137] The Claimants submit that the Unions, whether because of the agreement and/or trust, were not therefore free to create the Trust on the terms that it did, but only on the terms of the agreement and/or pre-existing declarations of trust, with GOB being the Settlers and with the affected workers only being the beneficiaries.
- [138] The Unions however submit that the claim as formulated and filed by the Claimants is not a trust case but a contract case, that such a case is fatal to the Claimants position in that all the facts and circumstances do not support the existence of any such contract existing, and that there is no evidence that there is either a single document or any documentary or other evidence suggesting that there is a legally enforceable agreement between the parties (GOB of the one part and the PSU and the BNTU of the other part).
- [139] GOB have, however, submitted that having discharged its obligations to the Unions and the intended beneficiaries, by transferring all sums due and owing to them as Trustees, the GOB has no role to play and has no part to play in the present claim.

#### Determination

- [140] This court considers that upon a careful reading of the amended claim, the Claimants claim has straddled both breach of agreement and breach of trust.
- [141] This court also considers that the failure of the contract claim, although critically relying on the central term of the contract to establish the basis of the trust, and its alleged breach, would not be fatal to the claim; that the alleged terms of the contract, dealing with the alleged beneficiaries of contract, simultaneously provide the basis for not only the alleged declaration of trust, but also the basis for establishing who the proper beneficiaries of the trust are.
- [142] It has already been observed, from the perspective of contract and trust, that the content of Circular No. 9 is not a model of clarity, and may even be considered to have been rather carelessly drafted, that such drafting has created certain, if not significant, ambiguities, uncertainties and/or conditions for doubt as to its intent.
- [143] Specifically in one passage it is stated: *“It is proposed that the income from these shares be used to fund various projects for the benefit all government employees.”* This is followed immediately by the following statement: *“This offer was made in*

*compensation for the suspension of the award of increments to public officers and teachers in April, 1995.”*

- [144] It will be readily observed that again the letter by the Unions to GOB dated the 24<sup>th</sup> of October 2005, in the context of the present proceedings, also created some conditions for doubt as to the beneficiaries of the intended Trust.
- [145] Such doubt arises from the statement that such trust is: *“for the benefit of public officers and teachers, and the income will be used to fund various projects for the benefit of public officers and teachers”*, and then further states: *“The establishment of the trust is a matter for the Unions and the administration of this trust is a matter for the Trustees”*. It also, somewhat confusingly, then states that: *“The initial 480,000 “” shares and 87,666 “C” shares, were given to the Unions as compensation for the suspension of increments to public officers and teachers during the fiscal period 1995 to 1997 inclusive.”*
- [146] This court having carefully considered all the facts and circumstances of the case is, on the balance of probabilities, unable to conclude that there is sufficient evidence establishing the existence of any agreement between GOB and the Unions, as submitted by the Claimants. This court considers that the evidence in the case is too incomplete and otherwise equivocal to find the existence of any such agreement.
- [147] In addition, this court is satisfied, on balance, that there is too much uncertainty about the terms of the central aspect of any such agreement: specifically concerning on whose behalf the Unions were negotiating in relation to the BTL shares and whether it was on behalf of the public servants who had suffered from and in relation to the increment freeze, or all other workers.
- [148] All of these terms touch and concern who were to be the beneficiaries of the negotiations dealing with the BTL shares, whether the workers affected by the increment freeze, and who were intended, on the one hand, to provide, as their consideration for any such agreement, the concession of a right to an increment; and on the other hand, that GOB as its consideration for any such concession, agreeing to benefit workers affected by the increment freeze, by the BTL shares.

- [149] It is however undeniable that the Original Trust had been declared by GOB and existed in relation to the designated BTL shares and also of all monies which were in the special Savings Account No. 2780; and that GOB was the original Settlor of this trust.
- [150] Further, it is also clear, it essentially being common ground, and this court is in any event satisfied, that the dividends transferred into an account in the joint names of the PSU and the BNTU constituted the Second Trust of which GOB was also the Settlor.
- [151] This court has carefully considered all the facts and circumstances of the case and has concluded, for reasons which will be more fully explained later, that the GOB Press Release, of the 23<sup>rd</sup> July 2014, confirmed that the Third Trust, was indeed established to hold funds in trust for all public officers and teachers “*whose annual increments were frozen during the period 1<sup>st</sup> April, 1995 to 31<sup>st</sup> March, 1997*”.

**If there was any such agreement did the Defendants breach it?**

Submissions

- [152] This Court having determined that there is no agreement between GOB and the Unions, as submitted by the Claimants, due to incomplete and otherwise equivocal evidence of any such an agreement, and of essential terms for such an agreement, this Court will nevertheless consider, in case this Court is later found to be wrong, whether there was a breach of any such agreement.
- [153] The Claimants submit that the Unions breached the agreement by creating a deed of trust, the Trust, with beneficiaries other than persons who were affected by the increment freeze, namely all other public workers.
- [154] The Claimants therefore submit that the Trust is invalid and unenforceable.
- [155] The Unions submit that fatal to the Claimants case, in relation to breach of an Agreement, is that there is no allegation of a breach of agreement made by a party to any such agreement (the Unions and GOB), and that by the doctrine of privity of contract, such an allegation would have had to be made by one of the parties to the agreement (which is not the case) as the Claimants are not such a party.

### Determination

- [156] This Court has determined that if the Claimants had been able to establish its premise, that there was an enforceable agreement between GOB and the Unions, that the Claimants would indeed have had some considerable difficulty proving a breach of agreement, on the basis of privity of contract.
- [157] That unless the Claimants were able to prove that the agreement was between GOB and the Claimants individually, and not with the Unions as entities, representing their members, and that there was not a term in the Agreement that the Unions had an absolute discretion to nominate from its membership to be the beneficiaries of the BTL shares, the Claimants would have had serious difficulty proving breach of contract.
- [158] This Court but for its finding of no agreement, would therefore have found for the Unions that there was no breach of agreement.

### **Whether Circulars Nos 9 & 10 of 1996 and other documents of the Unions and/or the GOB set out the objects, purpose and beneficiaries of any of the various trusts created by GOB?**

### Submissions

- [159] The Claimants submit, by a roundabout, and not necessarily an explicit route, that the documentary evidence in the case points to the creation of a trust, upon the transfer of the BTL shares to the Unions, and that this Court ought to make a declaration to this effect. The Claimants submit also that there has been a breach of trust, since the Trust Deed is contrary to the declaration of trust by GOB and the Laws of Belize, and that this Court should give all and any consequential reliefs following from such declaration.
- [160] The Unions point to the expressed words of the Circulars, Press Release and other documents, statements and words from GOB and its representatives, which words, they claim, conflict with the intent on which the Claimants rely. The Unions also submit that such language does not limit the class of beneficiaries to public officers affected by the increment freeze, but that GOB expressly gave the Unions a free

reign, an unbridled discretion, to create a trust deed as it deems fit, including as to its objects, purposes and of its beneficiaries.

[161] The Unions also submit that, acting on the discretion given to them, they did establish the Trust, by the deed of trust, which trust deed was presented to GOB; and its terms were neither disputed nor in any way challenged by GOB, and as such the trust deed is therefore valid, effective and enforceable.

#### Determination

[162] This Court, based on the facts and circumstances already found in the background, has no hesitation in holding the objectives, purpose and beneficiaries of the trusts in the Original trust, the Second Trust and the Third Trust, are, or ought to be, one and the same.

[163] This Court does not consider that the chain, as it were, of the objectives, purpose and beneficiaries of the such trusts, were broken by the failure of GOB to object or indeed to comment in any way, on the Trust Deed which was presented to GOB by the Unions.

[164] Neither does this Court consider that it should infer by any such inaction, or failure, by GOB, and the subsequent transfer of shares to the Unions, that GOB was consenting to the terms of the draft Trust Deed.

[165] Indeed this Court considers that there is no evidence that GOB even actively considered or critically examined such Trust Deed. This Court considers, on the other hand that from the comments of representatives of GOB subsequently, the contrary may indeed more likely be assumed or be taken to have arisen.

[166] This Court therefore has no hesitation in holding that GOB has a critical role to play in attempting to unravel the doubt or confusion which has to a significant degree been created by the mixed messaging and signals which have emanated from, by, and in the various communications of GOB, relating to the validity and enforceability of the Deed of Trust, the Third Trust.

[167] This Court therefore cannot find, as a consequence, that GOB has no further role in relation to such matters; even the administration of the Trust, as GOB contends.

[168] This Court has concluded that GOB is indeed the only party or entity which can, and ought to be able to assist in unraveling, and ultimately resolving some, if not

all, of the significant, contractual and declaratory doubt and confusion which has arisen.

[169] This Court considers that GOB, as the Settlor is uniquely in a position to answer the critical questions about the questions arising in this case relating to the object, purpose and beneficiaries of the trusts which have been declared by GOB, and thereby created by them, and cannot escape from such a critical role which it has attempted to do in the present proceedings.

[170] This Court considers that, critically, GOB has indeed done so.

[171] It is in this context that the statements of the Prime Minister and Minister of Finance at the time of the Press Release, if they are to be believed, are not insignificant when he stated that the true reason for the shares being given to the Unions was: *“to be held in trust for the benefit of all public officers, teachers, and open vote workers (including those who have since retired) whose increments were frozen during the period 1995 to 1997.”*<sup>13</sup>

[172] This statement of the Prime Minister is some evidence of GOB’s position and has been reinforced by the position taken by GOB in the present proceedings of not supporting the case for the Unions: that there was an unbridled discretion granted by GOB to name any or all of its members as beneficiaries of the Deed of Trust, the Third Trust, which GOB required the Unions to establish.

[173] Moreover, and most importantly, this Court has carefully reviewed all the facts and circumstances of the present claim, including the overall context of the whole discussion which took place between the Unions and GOB.

[174] This context was undoubtedly the increment freeze and negotiations with workers affected by it, and this Court, based on such context has concluded that the declarations made by GOB in the Circulars, the Press Release, are significantly to be viewed in the context of such negotiations with the Unions, and as relating to and consistent with, and as constituting a series of declaration arising from such negotiations; and not in relation to workers unaffected by the freeze.

[175] This Court also considers as important, the fact that GOB remained at all times the Settlor of the original trust, the second trust and the third trust, and the

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determination reached by this Court that the objectives, purpose and beneficiaries of the trusts in the Original trust, the Second Trust and the Third Trust, remain at all times one and the same.

[176] Also, this Court considers as significant that the chain of the objectives, purpose and beneficiaries of such trusts, which were not unbroken by the failure of GOB to object or indeed to comment in any way, on the Trust Deed which was presented to GOB by the Unions.

[177] This court has concluded that GOB never intended to benefit the Unions, as distinct to certain of its members, with the BTL Shares; and indeed never intended for the Unions to dispose of such shares in its absolute discretion. For this Court to come to a conclusion that GOB intended to benefit the Unions, qua Unions, this Court considers that the evidence would have had to be somewhat clearer than, and not as equivocal, as it is. This Court has therefore unhesitatingly determined, that in all the circumstances of the case, the evidence more points to GOB intending to benefit only the public servants affected by the increment freeze.

[178] This Court has also concluded that, consistent with the clear and settled law as it has determined it to be, that unless and until the workers affected by the increment freeze, indicate that they are prepared to share the BTL shares with other workers unaffected by the increment freeze, it does not lie in the power of the Unions, GOB, or indeed this Court, to extend such benefits to such unaffected workers.

**Who settled the various trusts, GOB or the Unions (as the transferees and/or trustees of the BTL shares, the subject matter of such trusts)?**

**Submissions**

[179] The Claimants submit that on the facts and circumstances of the case, GOB, and not the Unions, are the true Settlers of the original trust and remain such Settlers, including of the Third Trust.

[180] The Claimants also submit that the question which arises is not whether the Unions have the capacity to own and transfer the trust property (the BTL shares and dividends derived therefrom), which the Unions clearly have the legal capacity to

do, but whether they have the legal capability of creating the trust by the Trust Deed.

[181] The Unions submit that on the facts and circumstances of the case it was GOB which effectively created the Trust Deed, through the agency of the Unions, alternatively that the Unions were granted by GOB the discretion of establishing the terms of the trust, and that such discretion includes the objects, terms and the beneficiaries of such trust. The Unions submit also that the Unions did establish a valid and enforceable trust, with the approval of GOB, with the Unions as Settlers, with all public workers (including those affected by the increment freeze) as beneficiaries, and with which discretion this court ought not to interfere.

#### Determination

[182] This Court notes as significant that it is undeniable that the Original Trust had been declared by GOB and existed of the designated BTL shares and all monies which were in the special Savings Account No. 2780; and that GOB was the original Settlor of this trust.

[183] Further it is clear to this Court, and this Court is satisfied, that the dividends transferred into an account in the joint names of the PSU and the BNTU constituted the Second Trust of which GOB was also the Settler.

[184] This court has carefully considered all the facts and circumstances of the case and has concluded that the GOB Press Release, of the 23<sup>rd</sup> July 2014, confirmed that the Trust was established to hold funds in trust for all public officers and teachers *“whose annual increments were frozen during the period 1<sup>st</sup> April, 1995 to 31<sup>st</sup> March, 1997”*.

[185] Indeed this Court has concluded that as Settlor, which this Court undoubtedly finds GOB to be, was originally, and continued to be, also the Settlor of the Second and Third Trusts.

[186] This court agrees with the submissions of the Claimants that indeed the Unions, as legally existing bodies, had the capacity to own and to legally transfer the BTL shares and the dividends derived from it, but, not being the beneficial owners of

such shares and dividends, the Unions did not have the legal capability of creating a trust of these shares and dividends. The public servants affected by the increment freeze, being the beneficial owners of such shares and dividends, remain the beneficial owners at all times of such shares and as such and are the persons capable of creating a further trust of such shares and dividends.

**What are the true objects or purpose of the various trusts, including the Trust, and who are the true beneficiaries?**

[187] It follows from the determination which this Court has reached above that this Court has concluded that the true objects or purpose of the various trusts, including the Trust, was to compensate and to benefit the public sector workers who had been affected by the increment freeze, and not any other public sector workers.

[188] It also follows from the determination which this Court has reached that the true beneficiaries of the various trusts, including the Trust, were the public sector workers who had been affected by the increment freeze, and not any other, or indeed all public sector workers.

[189] This conclusion has been reached from a consideration of all the evidence in the case including based on the context of the negotiations between GOB and the Unions, the GOB's Circulars Nos 9 & 10 of 1996 and all the communications passing between the GOB and any of the Unions.

**Whether the Unions should be ordered to properly account for their handling of the Trust Assets or should be ordered to recover monies or funds "invested" in loans?**

**Determination**

[190] It follows from the determinations reached above and the conclusions arrived at to the various questions which have been answered, that the Unions should be ordered to account to the Claimants for their handling of the BTL shares and the dividends arising therefrom and be ordered to recover any monies or funds invested.

**Costs**

[191] That the costs incurred by the Claimants and Defendants of the present claim be met out of the Trust on an indemnity basis.

**Disposition**

[192] This Court therefore declares that the Deed of Trust dated the 29<sup>th</sup> August, 2013 between the PSU and the BNTU purportedly as “settlers” of the first part and Raymond Davis (PSU), Nadia Caliz (BNTU), Phillip Castillo (NAB), and Enrique Iglesias (BPA & BDF), purportedly as “Trustees” of the second part of the Public Sector Workers’ Trust (“**the Trust**”), is invalid and unenforceable in that:

- (a) The Trust is inconsistent and in breach of the declaration of trust by GOB in 1996 which was memorialized in a Ministry of Finance Circular No. 9 of 1996 (Ref. 1000/C/63/96 dated 21<sup>st</sup> October, 1996), in that the Deed of Trust expressly states that the Trustees may deem as Beneficiaries persons other than those public officers affected by the increment freeze effective from the 1<sup>st</sup> April, 1995 to the 31<sup>st</sup> March, 1997;
- (b) The Unions and the Trustees were totally mistaken as to the Deed of Trust’s true content and effect in that it names the Unions as the “settlers” thereof when, at all material times the property of the Trust were not beneficially owned by the Unions and were in fact transferred by the GOB to them in trust for those public officers affected by the increment freeze and the purported settlers named in the Deed of Trust could not therefore be settlers of the said trust;

[193] This Court further Orders that the Unions or the present Trustees of the Public Sector Workers’ Trust, in consultation with the Claimants and GOB cause a proper trust deed to be drawn to include the GOB as settlor upon the terms to be agreed, including the following:

- (i) settle the BTL shares for the benefit of those public officers who suffered an increment freeze as aforesaid; and
- (ii) apply the income derived from those shares to fund projects for the benefit of public officers who were affected by the increment freeze;

[194] This Court further orders that the Defendants Unions and/or the Trustees of the Public Sector Workers’ Trust, do account for all funds that they have received from

the GOB being the income derived from BTL shares from 1996 to 2013 and that has been paid to them since 2014;

[195] This court further orders that the costs incurred by the Claimants and Defendants of the present claim be met out of the Trust on an indemnity basis.

[196] Liberty is granted to the parties to apply to give effect to the terms of this order.

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**The Hon Mr. Justice Courtney A. Abel**