

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **HOLDEN AT GEORGE TOWN, GRAND CAYMAN**

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6 **CAUSE NO. 246 OF 2011**
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10 **IN THE MATTER OF: THE CONFIDENTIAL RELATIONSHIPS**
11 **(PRESERVATION) LAW (2009 REVISION)**
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14 **AND IN THE MATTER OF: SECTION 48 OF THE TRUSTS LAW**
15 **(2009 REVISION)**
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18 **AND IN THE MATTER OF: THE POLYMER PURPOSE TRUST**
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22 **Appearances: Ms. Sandie Corbett of Walkers**
23 **for the Applicant**
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25 **Mr. Neil Timms Q.C. instructed by Colin**
26 **Shaw & Company for Southern Protector**
27 **Services Limited, the Respondent**
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30 **Before: Hon. Justice Henderson**
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33 **Heard: July 19, 2011**
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37 **JUDGMENT**
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41 1. The Applicant Alexandria Bancorp Limited (“the Trustee”) is a trust company
42 licensed as such in the Cayman Islands and doing business here. It is the sole
43 Trustee of the Polymer Purpose Trust (“the Trust”) which is a Cayman Islands
44 trust established under the *Special Trust (Alternative Regime) Law* of 1997

1 (and referred to as a “STAR Trust”). The Trustee is an ultimate subsidiary of
2 a Canadian Company, Guardian Capital Group Limited (“Guardian”).

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4 2. On May 19, 2011 Guardian received from the Canada Revenue Agency (“the
5 CRA”) a demand for disclosure of documentation about the Trust, including a
6 request for the Deed of Settlement. The Chief Compliance Officer of
7 Guardian then wrote to the Trustee advising it of the demand and asking the
8 Trustee to provide the sought-after documents to Guardian for onward
9 transmission to the CRA.

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11 3. The Trustee, being of the view that it would be contrary to the law of the
12 Cayman Islands to comply with the demand but wishing to have the assurance
13 of this Court that its opinion is correct, has presented me with two alternate
14 applications. (The Attorney General has been given notice of these
15 applications but has not appeared at the hearing.)

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17 4. First the Trustee has asked for a direction under section 4 (1) of the
18 *Confidential Relationships (Preservation) Law* (2009 Revision) (“the Law”)
19 permitting it to make the requested disclosure. Section 4 (1):

20 “Whenever a person intends or is required to give in evidence
21 in, or in connection with, any proceeding being tried, inquired
22 into or determined by any court, tribunal or other authority
23 (whether within or without the Islands) any confidential
24 information within the meaning of this Law, he shall before
25 so doing apply for directions and any adjournment necessary
26 for that purpose may be granted.”

1 5. An authorization to make disclosure is available under the *Law* only where the
2 applicant intends to make the disclosure by giving evidence in or in
3 connection with a “proceeding” before a “court, tribunal or other authority”.
4 The demand from the CRA makes no reference to any extant proceeding. Its
5 letter says that it wishes to obtain the information “for purposes related to the
6 administration or enforcement of the *Income Tax Act ...*”. The recipient is
7 asked to contact a named officer of the CRA within ninety-two days to make
8 the “arrangements” for disclosure. Alternatively, the recipient is advised that
9 “compliance with this requirement may be achieved” by sending the requested
10 documentation by registered mail to that party. Clearly, the CRA is
11 conducting an investigation but there is no proceeding in existence before
12 which an officer of Guardian could be compelled to give evidence. The
13 consequence, given that the Deed of Settlement is “confidential information”
14 within the meaning of the *Law*, is that this Court has no jurisdiction to grant
15 the requested order. That branch of the application is dismissed.

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17 6. In the alternative, the Trustee asks for the opinion of this Court on the question
18 of whether its decision that the general law of the Cayman Islands prohibits
19 disclosure of the Deed of Settlement is correct. Such questions may be, and
20 often are, posed to this Court pursuant to section 48 of the *Trusts Law* (2009
21 Revision) which reads:

22 “Any trustee or personal representative shall be at liberty,
23 without the institution of suit, to apply to the Court for an
24 opinion, advice or direction on any question respecting the
25 management or administration of the trust money or the
26 assets of any testator or intestate, such application to be served
27 upon, or the hearing thereof to be attended by, all persons
28 interested in such application, or such of them as the Court
29 shall think expedient; and the trustee or personal representative

1 acting upon the opinion, advice or direction given by the Court
2 shall be deemed so far as regards his own responsibility,
3 to have discharged his duty as such trustee or personal
4 representative in the subject matter of the said application:
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6 Provided, that this shall not indemnify any trustee or
7 personal representative in respect of any act done in
8 accordance with such opinion, advice or direction as
9 aforesaid, if such trustee or personal representative shall
10 have been guilty of any fraud, willful concealment or
11 misrepresentation in obtaining such opinion, advice or
12 direction, and the costs of such application as aforesaid
13 shall be in the discretion of the Court.”
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15 7. Inherent in the role of a trustee is a positive obligation to protect the financial
16 privacy of those concerned with the trust by maintaining confidentiality over
17 trust documentation and information. Moreover, another fundamental duty of
18 a trustee, the duty to safeguard the trust property, also implies an obligation of
19 confidentiality. The trustee can be relieved of these obligations if all those
20 persons having an interest in the enforcement of the trust have given their
21 consent.
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23 8. The Trust has two Enforcers. The Enforcers are appointed under section 100
24 of the *Trusts Law* (2009 Revision). The Trustee has asked each Enforcer for
25 his or its consent but one of them has refused to give it. As the name implies,
26 the primary obligation of an Enforcer is to enforce the terms of a STAR Trust;
27 an Enforcer is deemed to have a fiduciary duty to do so: *Trusts Law*, section
28 101 (2).
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30 9. The Trustee has concluded that, in the absence of express permission from
31 each of the two Enforcers, it is prohibited by the general law of the Cayman

1 Islands from acceding to the demand of its parent corporation. It is the
2 opinion of this Court that the Trustee has reached the right conclusion.

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4 Dated this 19th day of July, 2011

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Henderson, J.
Judge of the Grand Court