

BRITISH VIRGIN ISLANDS COURT OF APPEAL

Yang Hsueh Chi Serena Et Al -v- Equity Trustee Limited et al BVIHCAMP 2013/0012 (September 2014)

COMMERCIAL APPEAL - TRUST FUND - ENTITLEMENTS OF BENEFICIARIES - CONSTRUCTION OF PROVISIONS OF TRUST DEED - WHETHER TRUSTEE HAD POWER TO EFFECT VARIATION OF TRUST DEED IN ACCORDANCE WITH WISHES OF SETTLOR - FIRST APPELLANT REMOVED FROM LIST OF BENEFICIARIES AND ENTITLEMENTS OF REMAINING BENEFICIARIES ALTERED BY SETTLOR - WHETHER 'WORDS OF ENTITLEMENT' IN ANNEXURE OF TRUST DEED BY WHICH APPELLANTS WERE INITIALLY MADE BENEFICIARIES CONVEYED IMMEDIATE, ABSOLUTE AND INDEFEASIBLE INTEREST IN TRUST ASSETS IN FAVOUR OF APPELLANTS - WHETHER ANY POWER GRANTED IN DEED TO TRUSTEE TO CHANGE BENEFICIARIES AND/OR PERCENTAGE ENTITLEMENTS RENDERED OTIOSE

This Appeal related purely to a matter of the interpretation of certain provisions of an *inter vivos* settlement. The first Defendant was the ex-wife and former beneficiary of a trust established by her then husband, the second to sixth Defendants his children. The first Claimant was the trustee of the trust. The Claim turned almost entirely on the constructions of the words 'words of entitlement' in the trust deed. The Defendants sought to argue this meant that in the case of the first Defendant she could not be removed and in the case of the remaining Defendants, their respective percentages could not be changed.

The Court dismissed the Appeal and confirmed the decision of the Commercial Judge and held the 'words of entitlement' fell to be construed by ascertaining what a reasonable person with all the relevant background knowledge at the time of execution of the trust deed, and construing the words in their natural and ordinary meaning within the overall context of the scheme of the trust, would conclude was the intention of the parties.

The Court of Appeal also found that where specific words are shown by evidence to have been inserted into what is otherwise a standard precedent or document, at the request or behest of one or more of the parties, then a court ought, as a means of determining the intention of the parties, to give some weight to the chosen words or provisions of the parties, especially where other 'standard' provisions may conflict with or be inconsistent with the chosen words or provisions, and where appropriate, to accord precedence to those words.

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