

Legal Update: Trustees' momentous decisions

What is a momentous decision?

A momentous decision is the power under a trust deed or statute to make a decision and take into account all relevant factors. Decisions which are complex may require seeking the Court's blessing.

A CHP 16/108

In the private matter of **A CHP 16/108** the High Court of Justice of The Isle of Man provided a significant example of a trustee seeking the blessing of the court for a momentous decision.

The trustee had applied to the Court as a trustee of a settlement created by a deed in 1992 seeking the opinion, advice or direction of the Court in:

1. discharging certain foreign tax liabilities (the "**Liabilities**") of the settlement;
2. approving the claimant's intent to pay the Liabilities;
3. approving the claimant's decision not to retire or to appoint a successor as trustee awaiting settlement of the Liabilities; and
4. guidance as to the terms on which it would be appropriate for the Trustee to appoint a successor and to retire awaiting settlement of the Liabilities.

It has been held that to bless a momentous decision the court must be satisfied that:

- (i) the decision has been formed in good faith;
- (ii) the decision is one which a reasonable trustee properly instructed could have reached; and
- (iii) the decision has not been vitiated by any actual or potential conflict of interest.

In **A CHP 16/108** the Court was satisfied that the trustee had satisfied the legal test to bless this momentous decision. The Court was satisfied that the decision of the Trustee was a rational one. Therefore, the Court was content to give the Trustee's well-informed decision the Court's blessing.

Re the V, W, X and Y Trusts [2021] JRC 208

In contrast in the more recent judgment of the Royal Court of Jersey in ***Re the V, W, X and Y Trusts [2021] JRC 208*** (“***Re the V, W, X and Y Trusts [2021]***”) the Royal Court refused to bless the decision of a trustee based on three factors.

The sole asset of the trust was a property in London held through a company (the “**Property**”). The Property was used predominately by the settlor and his family upon visits to London from Kenya. Unfortunately, the trust did not hold any funds to pay for the Property’s outgoings. Therefore, there was an expectation that the settlor’s family members would pay for the Property’s upkeep. This was not the case allowing the Property to fall in disrepair.

In addition to the Property declining, the trustee had accumulated unpaid fees of £120,000 leaving the trust as 'cash flow insolvent' meaning that the trustee could not discharge its liabilities. On this basis the trustee pointed out to the beneficiaries that the Property might have to be sold. This caused a disagreement between the beneficiaries with the elder son supporting the liquidation of the trust's asset and the younger son strongly resisting the sale.

Given the disagreement between the beneficiaries, the trustee applied to the Jersey Court for a blessing of its decision to sell the Property and to apply the proceeds to: (1) the costs of selling the Property and winding up the trust structure, (2) discharging the outstanding liabilities of the trust and (3) distributing the balance equally amongst the four beneficiaries.

In the case of ***Re the V, W, X and Y Trusts [2021]*** the Royal Court ruled that the sale of the Property was momentous however, the Royal Courts overall decision was to not bless the trustee’s decision on the basis of three factors:

1. Conflict of interest

On the basis of the disagreement between the beneficiaries the Court highlighted that it was “patently obvious that the trustee has a conflict of interest” in relation to its decision to sell the Property”. The Court anticipated that it would be presented with minutes in which, when reaching its decision, the trustee recognised the existence of the conflict.

2. Failure to take tax advice

Due to the trust being illiquid, the trustee did not take tax advice on its proposed sale. As an alternative, the trustees proposed to use the sale proceeds to obtain tax advice prior to the distributions being made. The Court held that the illiquidity of the trust was not a valid explanation as the trust held a substantial asset in the form of the Property. In addition, there was no question that the trustee would at some point be able to obtain reimbursement for its fees and expenses from the Property.

3. Reasonableness

The Court was not satisfied that it was reasonable for the trustee to insist on the sale of the Property at this stage. The Court felt that it had adopted "a rather passive stance" instead of actively trying to establish whether there was any means by which the Property could be retained for the benefit of the younger children, who wished it to be retained.

This case highlights to other trustees that their obligations to beneficiaries do not end with the trust's insolvency. Their obligations may require them to incur costs without immediate recourse to the trust's assets in order to fulfil these obligations.

Our Private Client & Trusts Team have extensive knowledge on all matters associated with trusts. If you require any further information or would like to make an appointment to meet with one of the team, please contact DQ Advocates on 01624 626999.

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