

BRITISH VIRGIN ISLANDS HIGH COURT

Royal Fiduciary Group Limited Claim No. BVIHC (COM) 112 of 2013 (November 2013)

TRUSTS - DISCRETIONARY TRUST - NO EXPRESS POWER IN TRUSTEE TO VARY IDENTITY OF BENEFICIARIES OR TERMS OF SETTLEMENT - WHETHER POWER OF APPOINTMENT AVAILABLE TO EXCLUDE BENEFICIARY AND VARY TERMS OF SETTLEMENT

This case concerned an application by the trustee of a discretionary trust (the "Trust") for a declaration that it had the power under the deed of settlement to permanently exclude the settlor from benefitting under the Trust. The settlor, along with his children and remoter issue, were beneficiaries of the Trust and there was no express power under the Trust to vary the identity of the beneficiaries or the terms of settlement. A worldwide freezing order had been previously made in England against the settlor and included assets of the Trust and the trustee by its application sought to ensure that the Trust asset would not be available to settle the obligations of the settlor.

In seeking in effect to exclude the settlor from the Trust, the trustee sought to rely on a decision of the English Court of Appeal in *Blausten -v- Inland Revenue Commissioners* [1972] Ch. 256. There the Court held that it was within the terms of the power of appointment for the trustees to appoint income and to advance or appoint capital to a special class which, for fiscal reasons, specifically excluded the settlor's wife by executing a deed of appointment irrevocably declaring that they would hold the capital of the trust fund on trusts identical to those in the original settlement for the specified class but redefined so as to exclude the settlor's wife during his lifetime. The wife would then be written back into the Trust after his death.

The Commercial Court Judge preferring the Judgment of the first instance judge declined to follow the Court of Appeal in *Blausten* and refused to sanction the execution of a deed varying the

terms of settlement to remove the settlor. In his judgment, this was not a power conferred by the Trust.

Founded in 1928, Conyers Dill & Pearman is an international law firm advising on the laws of Bermuda, the British Virgin Islands, the Cayman Islands and Mauritius. With a global network that includes 130 lawyers spanning eight offices worldwide, Conyers provides responsive, sophisticated, solution-driven legal advice to clients seeking specialised expertise on corporate and commercial, litigation, restructuring and insolvency, and private client and trust matters. Conyers is affiliated with the Codan group of companies, which provide a range of trust, corporate secretarial, accounting and management services.

This article is not intended to be a substitute for legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information.