

Article Information

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A “Special” Trust Deed variation and lessons for estate planning

Staley v Hill Family Holdings Pty Ltd [2025] QCA 95

The Queensland Court of Appeal considered whether a trustee validly amended a trust deed to remove and replace the Appointor, highlighting key risks in trust control and estate planning.

Overview

The Queensland Court of Appeal was asked to declare whether a variation to a discretionary trust deed allowing the Trustee (Hill Family Holdings Pty Ltd) to remove and replace the Appointor (Mrs Staley), was valid under the general power of amendment in clause 14.01 of the Trust Deed.

But there is more to take away from this case than simply interpreting a deed variation clause.

Key Facts

The Hill Family Trust was settled in 2002, with Mr Hill as the Appointor. Mr Hill died in 2009. Although the trust deed clause that regulated how the office of Appointor then devolved was not without ambiguity, it was not disputed at trial that Mr Hill’s daughters, Mrs Porter and Mrs Staley as his executors jointly assumed the role of the Appointor.

While the daughters assumed the role of Appointor by virtue as being the legal personal representatives of Mr Hill’s estate, Mr Hill’s wife, Shirley became the sole director and shareholder of the Trustee. Subsequently, in October 2013 Shirley appointed Mrs Porter as a co-director of the Trustee company and thereafter in July 2019 Mrs Porter appointed her own daughter, Ms Mitchelmore as an additional director. Mrs Porter died in September 2019 following which Mrs Staley was the surviving Appointor and Mrs Mitchelmore was a co-director with Shirley until Shirley’s death in September 2022.

As the surviving sole director of the Trustee, in March 2024 Mrs Mitchelmore exercised the Trustee’s power in clause 14.01 of the trust deed to amend the deed to specifically provide for the “Special Removal of Appointor” (Special Variation). Its effect was that Mrs Staley could be removed as Appointor by the Trustee in its absolute discretion provided the Trustee nominated another person, other than the Trustee, to be the replacement Appointor.

Pursuant to the Special Variation and without informing Mrs Staley, Mrs Mitchelmore by further deed caused the Trustee to remove Mrs Staley as Appointor and appointed her father, Mr Porter as the Appointor of the trust. In June 2024, Mrs Staley, without knowledge of the Special Variation and subsequent deed removing her as Appointor, purported to appoint Staley Management Pty Ltd as the new trustee of the trust.

Upon learning of her removal as Appointor Mrs Staley then sought declaratory relief asserting the invalidity of the Special Variation and the validity of her own actions in appointing a new trustee.

Trial Decision

Muir J. held the Deed of Variation was valid under the Trustee’s broad amendment power and dismissed the application.

Appeal Arguments

Paragraph [30] of the judgement discloses that on appeal, any submissions that the Special Variation was in breach of the

Trustee's duty to act honestly and in good faith and was a fraud on the power given to the Trustee under the trust deed, was unavailable given that fraud was denied by Mrs Mitchelmore and it had not been alleged in the pleadings.

Instead, the appeal argument focused on two themes: namely that the Special Variation altered the substratum of the Trust; and as a matter of interpretation, that the power of amendment conferred by clause 14 of the trust deed was inconsistent with other clauses of the trust deed that implicitly precluded the removal and replacement of the Appointor by the Trustee.

Absent a plea of fraud on the power, neither the substratum theme or the interpretation theme submissions for an implied exclusion of a power to vary the provisions of the trust deed for the removal of the main person as Appointor, could be discerned by the Court.

Conclusion

It is not just what "Staley" discloses by the reasoning of the judgment that is of interest. Perhaps more importantly is what it reveals of the need for solid and sound estate planning upon the death of an Appointor and other officeholders of the corporate trustee. In this case, the testamentary affairs of Mr Hill and Shirley. It also informs legal personal representatives of the need to undertake a thorough due diligence of family trust deeds upon death of an important officeholder such as the Appointor, director and shareholder of the corporate trustee.

The end result for Mrs Staley was that her brother-in-law, Mr Porter and niece, Ms Mitchelmore became controllers of the trust and could proceed with the vesting of the deed should they choose to do so in their own favour, both being within the class of beneficiaries of the trust.

As part of the Hills' estate planning, a thorough analysis and review of the operation of the terms of the discretionary trust deed and the trustee officeholder's Will could have been undertaken to avoid these, most likely, unintended consequences.