



What does Grand View v Wong mean for us in Cayman?

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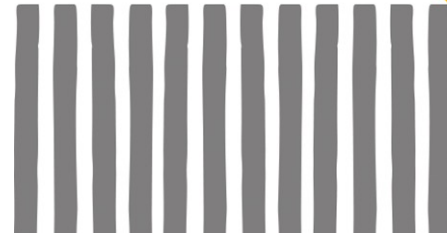


Facts of the case

- Global Resource Trust – for children and remoter issue of settlors
 - Wang Family Trust – for charitable and non charitable purposes
 - Grand View, trustee of the GRT:
 - added the trustee of the WFT as a beneficiary
 - excluded the children and remoter issue of the settlors, and
 - appointed the whole trust fund to the WFT
 - Reasons for decision:
 - settlors originally intended that the family would benefit from the shares transferred to the GRT
 - later decided to hold onto more shares personally (so the family would benefit under their wills)
 - therefore the trustee was free to transfer to the WFT
 - Some of the beneficiaries challenged the decision
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What are the rules controlling discretionary powers?

1. A power must be exercised within its scope (the "**Scope of Power Rule**")
2. The trustee must give adequate deliberation to the exercise of the power (the "**Adequate Deliberation Rule**")
3. The power must be exercised for a proper purpose (the "**Proper Purpose Rule**")



Arguments made

1. the power of addition was fiduciary power – the terms of the power didn't qualify or restrict the fiduciary obligations attaching to it;
2. as a fiduciary power, the power of addition had to be exercised for a proper purpose;
3. the purpose for which the power had to be exercised was advancing the interests of the identified beneficiaries / objects;
4. the purpose for which the GRT trustee exercised the power was destroying, not advancing the interests of the identified beneficiaries – therefore it was contrary to the proper purpose;
5. as a consequence the exercise was impermissible and void





Proper Purpose Rule

- Formerly known as fraud on a power
- What is the settlor's purpose of giving the trustee the power?
- How do you work it out?
 - objective test
 - terms of the trust
 - contemporaneous letter of wishes



How should trustees approach the exercise of discretionary powers?

- Duty of consideration
 - Review express terms of power (whether statutory or in trust deed) – Scope of Power Rule
 - Adequate Deliberation Rule:
 - Duty to act responsibly and in good faith
 - Duty to take only relevant matters in account
 - Duty to act impartially (except where disapplied)
 - Proper Purpose Rule
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Has the scope of power to add beneficiaries been reduced?

"The Trustees may... declare that any person or class or description of persons shall... be included as a Beneficiary..."

Previously

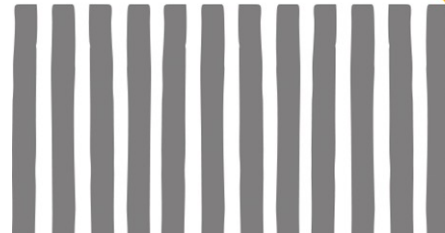
Matters for consideration include:

- Present beneficiaries
- Their relationship to settlor
- Settlor's wishes
- General purposes of creating trust
- Sources of trust assets

Post Grand View

More focus on Proper Purpose Rule
In trust with a "*family character*",
examples:

- Existing beneficiaries' spouses
- Other dependants
- Unmarried partners
- Stepchildren
- Other individuals to whom a moral duty is owed
- Charities to which a moral duty is owed



Are letters of wishes more important than ever?

- Settlor's intention
- Helpful example – *I would like my son, X, to be added as a beneficiary if he ceases to be resident in the US*
- Timing
 - Adequate Consideration Rule – settlor's wishes from time to time
 - Proper Purpose Rule – at the time of the settlement
- Broad power doesn't give any assistance in determining the purpose



Thanks



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