

Supreme Court considers trustee's responsibility in trust administration

Discretionary trusts are commonly understood to be efficient structures for asset protection and tax minimisation, and are widely used in modern-day business. What isn't so well understood are the obligations of trustees in administering trusts, particularly with regard to providing reasons for their decisions to beneficiaries.

Victorian Courts have previously sought to protect trustees from having to provide reasons for their decisions, unless an allegation of impropriety is brought against the trustee. This protection has extended to decisions regarding whether, and to what extent, to make distributions of income and capital to beneficiaries.

The recent Victorian Supreme Court decision of *Mandie & Mandie v Memart Nominees Pty Ltd* [2014] VSC 290 clearly confirms that trustees remain protected from having to provide reasons for decisions made in administering discretionary trusts.

The plaintiffs, Edward and Nicholas Mandie, were beneficiaries of a trust that had been established by a wealthy uncle, but had not received any distributions from the trust since its inception. The beneficiaries queried the trustee as to why no distributions had been made to them and were informed that the trustee had considered their personal circumstances when they decided not to make any distributions to them.

An application was made by the beneficiaries, requesting the trustee to provide details of the information used in their consideration, when they made the decision to not make any distributions. The beneficiaries asserted there was a distinction between the information on which the reasons were based and the reasons themselves. The beneficiaries argued that if they were found to be seeking reasons, the disclosure by the trustee of the fact that it had considered the beneficiaries' personal circumstances, was enough to make those reasons examinable.

The Court found the distinction sought to be drawn by the beneficiaries between the reasons, and the information upon which the reasons had been based, was illusory. While the Court acknowledged that a trustee's reasons for making a particular decision become examinable when such reasons are provided, the mere assertion that the trustee had considered the beneficiaries' personal circumstances was not sufficient disclosure to support the beneficiaries' application. Accordingly, the beneficiaries' application was dismissed.

While the trustee was entitled to protection from having to disclose its reasons in this case, it reinforces the principle that if a trustee provides reasons for any of its decisions made in administering a discretionary trust, those reasons become examinable by the Court upon the application of an affected beneficiary. Accordingly, this case serves as a reminder that trustees should be careful of providing information in response to requests from beneficiaries.

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