

**MONTEVENTO HOLDINGS PTY LTD AND ANOR v. SCAFFIDI AND ANOR**  
**(P22/2012)**

Court appealed from: Court of Appeal of the Supreme Court of Western Australia [2011] WASCA 146

Date of judgment: 7 July 2011

Special leave granted: 22 June 2012

This matter involves a long-running dispute between certain members of the Scaffidi family over the control of the Scaffidi Family Trust. On different sides of the dispute are two brothers - the second appellant (Eugenio Scaffidi) and the first respondent (Giuseppe Scaffidi). The first appellant (Montevento Holdings Pty Ltd) was incorporated by Eugenio Scaffidi, who is the sole director and shareholder of that company.

In April 2010, the first respondent commenced proceedings seeking a declaration that the appointment of the first appellant was invalid because it breached cl 11.03 of the trust deed which provided that if any individual appointor was a beneficiary that individual would not be eligible to be appointed as a trustee. He sought orders removing the first appellant as trustee. EM Heenan J dismissed the application, finding that the first appellant had been validly appointed; the deed of settlement drew a clear distinction between individuals and corporations.

An appeal to the Court of Appeal was allowed by majority (Buss JA dissented). Murphy JA and Hall J noted that cl 11.03 served three purposes: to ensure that the trustee was seen as wholly separate from the position of an appointor/beneficiary; to maintain an even-handedness in the treatment of beneficiaries; and, to provide for express observance of the salutary rule that an appointor should generally not appoint himself or herself as a trustee. Clause 11.03 had to be read in the context of cl 11.01, which provided that a trustee may be a corporation; the former was designed to operate in circumstances where the trustee was envisaged, by the settlor, to be either an actual person or a corporate entity. The language of cl 11.03 was wide enough to preclude an appointment where an individual who was an appointor and beneficiary appoints as trustee a corporate entity he controlled and of which he was the directing mind and will (by virtue of his position as its sole shareholder and sole director) with the effect that the individual would exclusively exercise the powers and rights exercisable by the office of trustee. Montevento Holdings Pty Ltd was not an eligible appointee on the proper construction of the trust deed.

Buss JA found that there was a consistent pattern in cl 11 and the trust deed as a whole in relation to the use of the "individual". It was used solely and exclusively to denote a natural person. Clause 11.03, according to its ordinary and natural meaning, confined the prohibition to the appointment of a trustee who was an individual/natural person.

Murphy JA and Hall J ordered that a "proper person" be appointed as trustee under s 77(1) of the *Trustees Act* 1962 (WA), subject to confirmation by the Court.



The grounds of appeal include:

- The Court below erred in holding that Heenan J had erred when he dismissed the First Respondent's application for a declaration that the appointment of the First Appellant as trustee by the Second Appellant was invalid.
- The Court below erred in law in holding that the Scaffidi Family Trust Deed (Trust Deed) prohibited the Second Appellant as both appointor and beneficiary of the Scaffidi Family Trust (Trust) from appointing the First Appellant being a corporate entity controlled by the Second Appellant, as Trustee of the Trust when on the proper construction of the Trust Deed there was no prohibition on the appointment of a company controlled by the Second Appellant as Trustee where the Second Appellant was both appointor and beneficiary of the Trust.