



## HIGH COURT OF AUSTRALIA

7 November 2012

MONTEVENTO HOLDINGS PTY LTD & ANOR v SCAFFIDI & ANOR  
[2012] HCA 48

Today the High Court allowed an appeal from a decision of the Court of Appeal of the Supreme Court of Western Australia concerning the interpretation of a clause in the trust deed for a discretionary trust called The Scaffidi Family Trust ("the trust"). The High Court held that the clause did not prevent the appointment of the first appellant, Montevento Holdings Pty Ltd ("Montevento"), as trustee of the trust.

The clause at issue was cl 11.03 of the trust deed, which provided that "[i]f, and so long as any individual Appointor is a Beneficiary that individual shall not be eligible to be appointed as a Trustee." The second appellant, Eugenio Scaffidi, was both the appointor and a beneficiary of the trust. He was also the sole director and shareholder of Montevento. On 18 February 2009, in his capacity as appointor, Eugenio Scaffidi appointed Montevento as trustee of the trust.

The first respondent, Giuseppe Scaffidi, was also a beneficiary of the trust. On 19 April 2010, he commenced proceedings in the Supreme Court of Western Australia seeking a declaration that the appointment of Montevento as trustee of the trust was invalid because it breached cl 11.03 of the trust deed. The primary judge dismissed Giuseppe Scaffidi's proceedings. However, a majority of the Court of Appeal (Murphy JA and Hall J; Buss JA dissenting) allowed Giuseppe Scaffidi's appeal. By special leave, Montevento and Eugenio Scaffidi appealed to the High Court.

The High Court unanimously allowed the appeal. The Court held that cl 11.03 of the trust deed did not extend to prohibit the appointment of a trustee which was a corporation, and that the construction of cl 11.03 adopted by Buss JA in dissent in the Court of Appeal was plainly correct.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*