

## BRITISH VIRGIN ISLANDS COURT OF APPEAL

**Re: Royal Fiduciary Group Limited Claim  
No. BVIHCMAP 2013/0022**

CIVIL APPEAL - TRUST DEED - DISCRETIONARY TRUSTS - DEED OF APPOINTMENT - POWER OF APPOINTMENT UNDER TRUST - WHETHER POWER OF APPOINTMENT IN TRUST DEED PERMITS TRUSTEE TO EXCLUDE A NAMED BENEFICIARY FROM THE OBJECTS OF A DISCRETIONARY TRUST IN ADVANCE OF APPOINTING CAPITAL TO OTHER NAMED BENEFICIARIES

This is an Appeal against the Learned Judge's refusal to sanction the terms of a draft deed of appointment, the effect of which would be to disentitle the Settlor from benefiting under the trust deed, on the basis, inter alia, that the Trustee had no power to vary the Trust deed as contemplated by the draft deed of appointment and would be a nullity.

In allowing the Appeal and granting the declarations sought in the Court below, the Court held applying *Muir -v- Inland Revenue Commissioners* [1966] 1 WLR 1269 and *Blausten -v- Inland Revenue Commissioners* [1972] Ch. 256 that a trustee, in the absence of any contrary indication and in the face of a power of appointment in the Trust deed authorising the Trustee to appoint property among beneficiaries could validly appoint property among two or more objects of the Trust while excluding altogether one or more objects. The Court, after examining the facts of the case, primarily the justification for the intended variation, found that it could "*see no reason based on principle, in terms of the powers of trustees in the exercise of powers of appointment under a trust deed, why the trustee in this case could not properly exercise the power of appointment conferred on him by the trust instrument in excluding the settlor from benefiting under the trust, with the resulting increase in the property interests available for distribution to the children and remoter issue of the settlor, who are obviously the intended beneficiaries of the settlor's benefaction*".

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