

ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



OKANAGAN EQUESTRIAN SOCIETY V NORTH OKANAGAN REGIONAL DISTRICT, 2018 BCSC 800 (CANLII)

Supreme Court of British Columbia, Tammen J, 15 May 2018

Where a gift is made, one cannot rely on an Agreement to retrospectively establish a charitable purpose trust.

Key words: Charitable Trust, Supreme Court of British Columbia, Certainty of Intention, Horse Racing, Gift, Fourth Head

1. This Canadian case concerned land which was owned in 1964 by the predecessor Jockey Club of the plaintiff, Okanagan Equestrian Society (the Society). In 1964, the Jockey Club transferred title to the land to the City of Vernon, with conditions as to future use in a later agreement known as the 1965 Agreement. The parties to the 1965 Agreement were the City of Vernon (the City), the Jockey Club and a group known as the Kinsmen Club of Vernon which owned the shares in the Jockey Club.
2. The characterisation of these transactions was of fundamental importance to this litigation. The plaintiffs contended that a charitable trust was created, requiring the City to maintain the racetrack and permit horse racing in perpetuity. The City argued that the transfer was a gift, and no charitable trust was created.
3. There had been intervening agreements concerning the land, particularly an agreement signed on 31 May 2000 and executed by the North Okanagan Regional District (NORD), the City and the Society, which covered use, maintenance and other mutual obligations of the parties for five years, and contained a clause which stipulated that the agreement 'will be renewed' for successive five-year terms upon its expiration, subject to certain prerequisites (the 2000 Agreement). The validity of the 'five-year' clause, as well as the issue of its alleged breach by the NORD, were also central to the outcome of this case.
4. Amongst other remedies, the Society sought declaratory relief in support of the two Agreements, damages for breach and a permanent injunction restraining both defendants from altering the land at issue in any way that would interfere with the activities of horse racing and racehorse training.
5. On the issue of whether a trust was created by the 1965 Agreement, the court found that there was not. There were no indicia of a trust in the 1965 Agreement – no certainty of intention, of subject matter, or of objects. Certainty of intention was lacking because the wording of the Agreement was not clear-cut as to scope or nature of any subsequent development by the City (at [194]). Certainty of subject matter was not present because the

size, shape and land occupied by the race-track had altered over time (at [199]), and certainty of objects was unable to discerned because the language of the Agreement made it impossible to say for whom the City would have been holding the land in trust (at [200]).

6. As to the existence of a charitable purpose trust, the only possible head of charity available to support that argument was the fourth head in *Pemsel's case*. Was the preservation of the Jockey Club's charter reasonably analogous to other charitable objects that fell under the fourth head of charity (other purposes beneficial to the community)? The court held that the language of the 1965 Agreement did not demonstrate an intention to create a charitable purpose trust, particularly because the language did not prohibit the City from using the Land to generate income, for example through a lease. Further, it found that the aspirational, non-mandatory nature of the wording merely set out a recognition of the City's intention to develop the lands into a general recreation area and left the purposes of the development to the City's sole discretion. Therefore, the preservation of the Jockey Club's charter was not an object that benefited the community or the public good, and no charitable purpose trust was created (at [219]):

Read together, those paragraphs cannot create a charitable purpose trust. The preservation of the charter of the Jockey Club is not an object which benefits the community at large, nor an appreciably important class of the community. It certainly benefits the Jockey Club, and may benefit those interested in horse racing, but serves no greater purpose for the public good.

7. Thus, the 1964 transfer was held to have been a gift. Since this was the finding, the court said that the question of breach of trust did not arise. This was particularly so because the court held that, whatever the outcome, the 1965 Agreement had been replaced by later Agreements, especially by the 2000 Agreement. This meant that the 1965 Agreement would not have been the operative one in any event (at [238]). The court then held that the defendants had not breached the 2000 Agreement.
8. The plaintiffs' claims were dismissed with costs.

IMPLICATIONS



This case upholds the principle that a trust cannot be retroactively created where a valid gift has already been made. In this case, the gift of land was made in 1964, and the subsequent 1965 Agreement did not create any kind of trust. The case also shows the importance of the proper drafting of gift agreements and trust documentation to accurately reflect the intentions of a donor, particularly where the subject matter of the gift or trust is high in value, as was the land in this case. If the donor's intention is to create a charitable purpose trust, the applicable inter vivos or testamentary documentation should be carefully drafted to reflect this intention.

VIEW THE CASE



This case may be viewed at: <https://www.canlii.org/en/bc/bcsc/doc/2018/2018bcsc800/2018bcsc800.html>

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