

## TROUBLE WITH THE PRISCILLA TRUST

### Position Statement on behalf of Whitely (Enforcer)

There are three basic points to be borne in mind:-

- (1) The duty of the enforcer is (Art 13) “to enforce the trust in relation to its non-charitable purposes”. Even accepting that the duty is fiduciary, the Trusts Law says nothing more about the components of that duty and the obligations that it entails.
- (2) The Trusts Law is entirely silent as to the powers that the enforcer has in the discharge of his duty.
- (3) The enforcer is not there to enforce the trust on behalf of real “non-purpose” beneficiaries (such as Bob, who is perfectly capable of looking after his own beneficial interests).

Against that unpromising background:-

#### Jollybadfellow

1. W’s duties as director are owed to the company, not to the trust or its beneficiaries.
2. It would in any event be particularly inappropriate to “roll up” the duties of director and enforcer when the former are governed by Cayman law and the latter by Jersey law.
3. The reality is that the Company has no money with which to pursue an action against Donovan, even if it thought such an action worthwhile. That money could only come from the Trust, but neither commonsense nor the law either require or enable W (whether as director or as enforcer) to compel the trustees to provide funds for such a speculative purpose.
4. Any action against W as director for having permitted this sorry state of affairs ought to be brought in Cayman. Quite apart from the fact that there is no negligence shown, W was merely acting as required to do by his shareholders. It is quite ludicrous that an action against W should be brought by or on behalf of the trustees when it was they who were the authors of their own misfortune.

5. Nor (even supposing that the enforcer has the requisite power) can it be said that the trustees were so obviously at fault that W as enforcer ought to bring proceedings against them. Quite apart from that, who would fund any such proceedings: there is no reason why W as fiduciary should hazard his own money on that?
6. In any event, any duty owed by W is to the non-charitable purposes, not to Bob.

### Jollygoodfellow

1. It is entirely unclear what W as enforcer either could or should do about this situation.
2. In a flight of fantasy one might dream of W pursuing Bassenger for having failed as trustee to keep a proper eye on the Company and Belrose, but again with what funds was he supposed to pursue that action?
3. In any event any duty to act would not have been owed to Bob, to whom W owes no duties of any kind.

### The Proposed Foundation

1. This illustrates nothing more than that W is seeing to the fulfilment of the purpose trust in faithful discharge of his duties. It is no part of W's duties as enforcer to subordinate the interests of the purpose to the interests of the class of which Bob is a member.
2. It might be pointed out also that for so long as Belrose remains disappeared and no new trustee has been appointed in his place, no appointment out to the new foundation is likely to occur in any event.
3. As a matter of interest, W is considering with Bassenger the appointment of a new trustee who will be sympathetic to carrying out the purpose trust. Doubtless any such new trustee will also faithfully consider the interests and claims of the class of which Bob is a member. And good luck to him.

ANDREW COSEDGE