

TRUST LAW

A cautionary tale: what happens when trustees refuse a settlor's reasonable request?

Perhaps, to solve the problem, it would be better for her to catch covid and die soon. We can keep her inheritance because with her alive, we won't keep any of her inheritance. Perhaps it is a solution for her to die now



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Belen Clarisa Velutini Perez, a wealthy Venezuelan, settled scores of millions of dollars on a trust.

At the age of 98, and with no spouse, no children and no immediate family, she wanted to use some trust funds for a building project but the corporate trustee objected.

Even though the Deed of Trust had a clause stating she was "entitled to ask the trustees to pay any part or parts of the capital of the trust fund to or for her benefit", the trustee said Velutini had no business plan, no work program, no timeline and had done no budgeting. It said the project appeared to vastly exceed its anticipated cost and substantial additional work was still needed.

Velutini embarked on the project with other funds but ran out of money and was forced to stop work. A co-venturer in the project invoked an arbitration which she lost. The co-venturer was authorised by the arbitrator to seize goods from Velutini to the value of approximately US\$4 million. Bailiffs entered her home and seized her possessions. She was terrified.

A Lord Balfour was responsible for the corporate trustee's actions. In *Velutini Perez v Equion Trust Corporation (UK) Ltd and Another* [2023] WTLR 349 a High Court judge criticised emails that Balfour had sent to her assistant as "threatening" and "ill-judged" and said Balfour appeared to have "lost all perspective". The judge said Balfour's emails were "high-handed, hostile and entirely inappropriate for an experienced trustee".

Balfour worked in cooperation with a Charles Rack who was a protector of the trust. Rack could justifiably be described as "the trustee from hell". He was unwise enough to leave a voice message in which he criticised Velutini in these terms: ".... perhaps, to solve the problem, it would be better for her to catch covid and die soon, and that will solve a lot of problems. We can keep her inheritance because with her alive, we won't keep any of her inheritance.

Perhaps it is a solution for her to die now."

When Velutini became aware of this extraordinary message, she feared for her life. Rather than wait for Rack's wishes for her to die prematurely to be fulfilled, she arranged for the trust to be dissolved and a new trust created.

Balfour and Rack disputed the validity of the revocation of the trust and suggested she had lacked sufficient mental capacity when she revoked the trust and had been the subject of elder abuse when she did so.

To immunise themselves from financial risk, the former trustee took US\$1.5m to cover its potential legal fees and the risk of having to meet other liabilities.

The High Court in London said Balfour and Rack had taken an inappropriately aggressive and threatening approach to Velutini and had incurred unnecessary costs. They had not acted neutrally or reasonably in refusing to hand over the assets of the old trust to the new and the trustee was entitled to only 70% of a standard indemnity. As I understand a separate costs decision, the former trustee was ordered to pay costs of which it would be personally liable to pay 30%.

According to *The Daily Mail* in Australia, Lord Balfour, an old Etonian and a descendant of two former English Prime Ministers, subsequently resigned from the corporate trustee through which he had acted and was "no longer a director of [it]" or of any companies associated with it.

Balfour was quoted in the *Mail* as justifying his decisions as a trustee: "When we questioned these unusual actions, which it would have been irresponsible not to do, given past history and new actors on the scene, we were hit with a writ. Our sole mission was always to protect Miss Velutini's patrimony for her designated charitable foundations. Sadly, the court didn't see it that way."

The case is an interesting contemporary illustration of a trustee being held to have breached its duties to a beneficiary and the adverse financial consequences that a trustee in such circumstances can be personally liable to pay.

In 2022, Lord Balfour was ranked one of Britain's best "offshore experts for high-net-worth individuals". It is common in England, and increasingly in New Zealand, for lawyers to boast of the high ranking they have achieved from international rating agencies but I have a scepticism about the merits of many such rankings. I suspect many of those who read of Lord Balfour's ranking might be sceptical too. ■

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