

How to interpret deeds of trust

The days of looking clinically at the words of a contract as if their dictionary meaning must prevail have gone



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My article this week is short. It involves the principles of interpretation of deeds of trust. In *Dewat & Others v Lal & Others* [2023] NZHC 1908, Sussock AJ wrote succinctly about the matter.

I write about the decision because in my experience, most deeds of trust contain mistakes and errors and it is helpful to have some clear and succinct guidance on the principles to be applied when interpreting them. Sussock AJ has distilled them down to three.

The first principle is that “the court’s approach is objective. It must determine what the contract would mean ‘to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract.’”

It is common sense that the “background knowledge” of the parties should be investigated and appropriate weight be given to it. The days of looking clinically at the words of a contract as if their dictionary meaning must prevail have gone. The background knowledge of the parties to the deed may be of fundamental importance to the meaning to be given to the words.

The second principle is that “if the language at issue has an ordinary and natural meaning, construed in the context of the contract as a whole, that will be a powerful, but not a conclusive,

indicator of what the parties meant”.

This also is a sensible proposition. The “ordinary and natural meaning” of words will usually be the meaning the parties intended the words to have.

But if the court, having all the background knowledge of the parties to the contract, knows that some words are intended to have an unusual or special meaning, the court is not bound by the meaning given to them in a dictionary. Instead, the meaning to be given to them is the meaning that the parties intended them to have.

The third proposition is that “if there remains an ambiguity after the interpretive exercise, the court will generally prefer an interpretation that does not flout business sense”.

This reminds me of Lord Mansfield’s approach to commercial law. Mansfield, one of the giants of the common law, used to dine with businessmen

so he could learn from them the realities of commerce; to understand how it worked; what the expectations of commercial people were; and how he could be a better judge when dealing with commercial matters.

The process helped him to become a highly successful judge. Except in rare cases, the law should never flout commercial common sense. ■

Anthony Grant is an Auckland barrister and trustee specialising in trusts and estates ■

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