

# COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Vines v. Wilcock*,  
2025 BCCA 393

Date: 20251117  
Docket: CA50322

Between:

**James Vines**

Appellant  
(Respondent)

And

**Simon Wilcock**

Respondent  
(Petitioner)

Before: The Honourable Justice Griffin  
The Honourable Justice Winteringham  
The Honourable Justice Gomery

On appeal from: An order of the Supreme Court of British Columbia, dated  
November 20, 2024 (*Vines Alter Ego Trust (Re)*, 2024 BCSC 2085,  
Vancouver Docket S244636).

Counsel for the Appellant:

F. Lamer

Counsel for the Respondent:

D.A. Frenette  
A. Girou  
A. MacDonald

Place and Date of Hearing:

Vancouver, British Columbia  
October 31, 2025

Place and Date of Judgment:

Vancouver, British Columbia  
November 17, 2025

**Written Reasons by:**

The Honourable Justice Gomery

**Concurred in by:**

The Honourable Justice Griffin  
The Honourable Justice Winteringham

**Summary:**

*A judge in chambers was called upon to interpret provisions of an alter ego trust by which a settlor, now deceased, made provision for the distribution of the trust fund after his death. His son appealed the judge's determination that the settlor's spouse would be trustee of a trust fund established for the benefit of him and his heirs.*

*Held: appeal dismissed. The appeal raised a question of mixed fact and law and the judge's interpretation was not obviously (or "palpably") wrong. The judge's interpretation was logical and grounded in the language of the trust deed.*

**Reasons for Judgment of the Honourable Justice Gomery:****Overview**

[1] This appeal involves a dispute concerning the interpretation of a trust deed establishing an alter ego trust. The settlor was Alan Vines. Mr. Vines executed the deed in September 2021 and died in August 2022. The dispute pits his son, James ("Jim") Vines, against his spouse, Simon Wilcock. For convenience and intending no disrespect, I will refer to the parties and family members other than Mr. Vines by their first names.

[2] An alter ego trust is established for tax planning purposes. As in this case, the settlor is declared a trustee of certain assets for their own benefit for life with provision for the continuation of the trust for the benefit of other beneficiaries after death. The settlor reserves discretionary powers over the assets and the administration of the trust including an unfettered power to encroach on the assets.

[3] In May 2022, Mr. Vines exercised a power of appointment under the trust deed appointing Simon as his replacement in the event of his resignation or inability to act as trustee. But for this appointment, as provided in the deed, Simon and Jim would have served as co-trustees.

[4] In 2024, Simon petitioned the Supreme Court for advice and directions concerning the administration of the alter ego trust. The petition came before the chambers judge who heard submissions on behalf of Simon and Jim and issued

written reasons for judgment indexed at 2024 BCSC 2085 (*sub. nom. Vines Alter Ego Trust (Re)*). The judge's reasons and order address five questions posed in the petition. On appeal, Jim takes issue with two of them.

[5] Clause 3.3 of the trust deed provides for the division of the trust fund between Simon and Jim following Mr. Vines' death. The chambers judge held, and it is not disputed on appeal, that the clause requires division of the trust into two separate trusts, one for the benefit of Simon and his heirs, and the other for the benefit of Jim and his heirs. In issue on appeal are the judge's determinations that Simon is the trustee of both trusts and retains a power granted under the trust deed to appoint any replacement trustee for Jim's trust. Jim maintains that the clear intention of the trust deed is that he would be the trustee of his own trust, with an absolute discretion to make payments to himself from the income and capital.

[6] For the reasons that follow, I would dismiss the appeal.

### **Background**

[7] Mr. Vines was a successful businessman. He lived with Simon in a spousal relationship from 2007. He had two children: Jim and Amanda. He was on good terms with both of them. Jim and Amanda each have one child.

[8] The assets of the alter ego trust were loans owing from other trusts and companies owed by Mr. Vines with a total value of approximately \$17 million. The trust qualified for a tax exemption under s. 73 of the *Income Tax Act*, R.S.C. 1985, c. 1 (5<sup>th</sup> Supp.), such that the transfer of assets into the trust did not trigger a capital gain, while the same assets could pass to designated beneficiaries outside of Mr. Vines' estate on his death, avoiding probate fees.

[9] Amanda was not made a beneficiary of the alter ego trust because she resides in the United States and her inclusion would give rise to tax complications.

[10] Under the trust deed, Mr. Vines is named as both the Settlor and the Original Trustee. Clause 6.1 provides:

**6. REPLACEMENT TRUSTEE**

6.1 If the Original Trustee shall for any reason be unable to act or to continue to act as Trustee hereunder, then the replacement Trustee shall be the person appointed as such by Alan Rodney Vines and such power may be exercised by instrument in writing. If no such person is appointed then the replacement Trustee shall be **James Owen Vines** and **Simon John Wilcock**.

[Emphasis in original.]

[11] On May 15, 2022, Mr. Vines executed a written instrument referencing s. 6.1 and stating:

Simon Wilcock is hereby appointed as the replacement Trustee for the Trust in case Alan Rodney Vines shall resign or be unable to act as a Trustee.

[12] A few days later, Mr. Vines signed documents resigning his position as trustee of other trusts in favour of Simon. There is no record of a resignation from his position as trustee of the alter ego trust.

[13] As noted, Mr. Vines died in August 2022.

[14] On July 12, 2024 Simon filed a petition seeking the Supreme Court's opinion, advice and direction concerning the administration of the alter ego trust. The petition was brought pursuant to s. 86 of the *Trustee Act*, R.S.B.C. 1996, c. 464 and the inherent jurisdiction of the Court. Jim did not oppose Simon's request for declaratory relief in answer to the five questions posed in the petition, and the judge considered it appropriate that the Court provide guidance: reasons at para. 34.

**The trust deed**

[15] The trust deed begins with the following recitals:

A. The Settlor wishes to create a trust for the benefit of himself and others upon his death, and has transferred to the Original Trustee the sum of \$10.00 and intends to transfer to the Original Trustee the property set forth in Schedule "A" hereto (the "Settled Property") and may hereafter transfer or

cause to be transferred to the Trustee other real or personal property, all of which is to be held by the Trustee upon the trusts and with and subject to the terms, powers and provisions, as are hereinafter declared and contained; and

B. The Original Trustee has agreed to accept and to hold and deal with the Settled Property in accordance with such trusts, terms, powers and provisions.

[16] Clause 3.3 of the trust deed is central to this appeal. It states:

**Division Among Beneficiaries on Death of Settlor**

3.3 Upon the death of the Settlor, the Trustee shall pay and transfer the balance of the Trust Fund then remaining among **James Owen Vines** and **Simon John Wilcock** in equal shares *per stirpes*, which Trust Fund shall be held in an *inter vivos* trust for **James Owen Vines** and **Simon John Wilcock**. Subsequent to the Settlor's death, at any time and from time to time, the Trust Fund from the *inter vivos* trust may be used to pay to or for the maintenance and other benefit of **James Owen Vines** and **Simon John Wilcock** so much of the income and capital of the Trust Fund as the Trustee, in the Trustee's absolute discretion, considers appropriate.

[Emphasis in original.]

[17] The following definitions contained in clause 1.1 of the trust deed are important to an appreciation of the judge's reasons:

1.1 In this Deed:

...

(b) "Beneficiaries", at any time means the Settlor and such other persons who are then alive and who are beneficially interested in all or any part of the Trust Fund pursuant to the provisions of this Settlement or pursuant to the exercise of any power of appointment hereunder, and "Beneficiary " shall be construed accordingly;

...

(i) "Trustee" initially means the Original Trustee and at any other time means the person or persons holding office as trustee or trustees of this Settlement at such time;

(j) "Trust Fund" means the Settled Property and any other property added to the Trust Fund, including any investments made by the Trustee, that may be held at any time by the Trustee pursuant to this Deed and any undistributed income from such property.

**The judge's reasons and the order under appeal**

[18] The primary issue before the judge was whether clause 3.3 should be interpreted as requiring the establishment of one or two trusts following Mr. Vines'

death. The judge found that two trusts were intended and, as noted, this conclusion is not disputed on appeal. In coming to this conclusion, the judge placed particular weight on the use of the term, *per stirpes*, in the first sentence of clause 3.3, as contemplating a division of the trust fund into two distinct trusts in order that, as the judge put it, “if either Jim or Simon were to die, his share would not go to the surviving member, but to that deceased’s heirs”: reasons at para. 40.

[19] The judge rejected Jim’s argument that the terms and trustees of the new trusts were to be left to the discretion of Jim and Simon respectively. She emphasized the second sentence of clause 3.3 and the definitions of the “Trustee” and “Trust Fund” as providing “clear direction” that Simon would continue as trustee of both trusts, post-division: at paras. 42–43.

[20] The judge added that she found “further support for the view that Simon was to remain the trustee of the two new trusts” from the fact of Mr. Vines’ declarations in May 2022 appointing Simon as the replacement trustee: at para. 44.

[21] So far as is relevant on appeal, the order under appeal provides as follows. Those provisions that are disputed by the appellant are underlined:

THIS COURT DECLARES that:

1. In answer to the following questions in the Petition:

- a. whether a single trust must be settled for the benefit of James Owen Vines ("**Jim**") and Simon John Wilcock ("**Simon**") in their capacities as beneficiaries of the Alan Rodney Vines Alter Ego Trust (the "**AET**"), or whether two separate trusts must be settled, one each for the benefit of Jim and Simon; and
- b. the meaning of the terms "*inter vivos*" and "*per stirpes*" in Section 3.3 of the AET Deed of Settlement dated September 15, 2021, and in particular whether such terms alter the nature of the trust or trusts from those settled for the benefit of Jim and Simon for their lifetimes, and for their issue after their deaths;

this Court's opinion, advice, and direction is that:

- a. two trusts should be created, one with Jim as the beneficiary and one with Simon as the beneficiary (the "**New Trusts**");

- b. Simon will serve as trustee of the New Trusts;
- c. Simon will have absolute discretion to make payments to Jim and himself from the income and capital of each of the New Trusts;
- d. "*Per stirpes*" indicates that if either Jim or Simon were to die, the deceased's share would go his respective heirs, and not to the other; and
- e. "*Inter vivos*" indicates that the two trusts are to be created during the lifetimes of Jim and Simon.

2. In answer to the following question in the Petition;

- a. what are the provisions for the distribution of the trust property from the trust or trusts upon the deaths of Jim and Simon;

this Court's opinion, advice, and direction is that the two New Trusts ought to continue after the deaths of Jim and Simon and are to benefit their respective heirs.

[Bolded emphasis in original.]

[22] The significance of para. 2 of the order is that Jim and Simon are not the sole beneficiaries of their respective trusts (described in the order as the New Trusts). The beneficiaries include their heirs following their deaths. Jim's child is accordingly a contingent beneficiary of Jim's trust.

### **The issues on appeal**

[23] Jim contends that the judge erred in two ways: first, by interpreting clause 3.3 in a manner contrary to its manifest intent, which was to effect a distribution of the alter ego trust assets following the settlor's death; and second, by considering post-settlement conduct, namely, the appointment of Simon as replacement trustee in May 2022, as bearing on the interpretation of the trust deed made in September 2021. Simon maintains that the judge did not err in either respect.

[24] I would state the issues as follows:

1. Did the judge err in interpreting clause 3.3 of the trust deed as requiring in the circumstances that Simon would serve as the trustee of the New Trusts and

- would have absolute discretion to make payments to Jim and himself from the income and capital of each of the New Trusts?
2. Did the judge err in considering post-settlement conduct in construing the trust deed?

### **Analysis**

1. **Did the judge err in interpreting clause 3.3 of the trust deed as requiring in the circumstances that Simon would serve as the trustee of the New Trusts and would have absolute discretion to make payments to Jim and himself from the income and capital of each of the New Trusts?**

[25] I begin with the question of the standard of review. Jim submits that this Court must decide whether the judge's interpretation of clause 3.3 of the trust deed is correct, without deference to the judge's reasoning. Simon submits that the question is one of mixed fact and law requiring deference and a showing of an palpable and overriding error on the part of the judge.

[26] In my view, the law is clear and Simon is correct. This issue involves the application of legal principles of construction to the interpretation of a unique private instrument. As in *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53 at paras. 50–52, this is a question of mixed fact and law. The law stated in *Sattva* applies to the construction of trust instruments and, unless an extricable question of law can be isolated, we may only intervene on the showing of error by the judge that is both palpable and overriding: *Doukhobor Heritage Retreat Society #1999 v. Vancouver Foundation*, 2020 BCCA 80 at para. 21; *Peepeekisis Cree Nation v. Whitecalf*, 2025 SKCA 89 at para. 40.

[27] *Sattva* is an important case that changed the approach taken by judges in interpreting private legal instruments (deeds, wills, and contracts) that are not standard form documents. The interpretation of a standard form document has precedential value but the interpretation of other private documents is one-off,

dependent on consideration of the words used and their context, both within and outside the instrument. Such questions are now treated as questions of fact within the domain of a judge of first instance, and appellate intervention is limited as described above.

[28] Jim acknowledges *Sattva*, but suggests that the interpretation of the words used in a private instrument should only be considered as factual if it is necessary to make findings as to the factual matrix. This is a misreading of *Sattva*. Giving judgment for the Court, Rothstein J. states the proposition broadly. At para. 52 he explains:

... [T]his Court in *Housen [v. Nicolaisen, 2002 SCC 33]* found that deference to fact-finders promoted the goals of limiting the number, length, and cost of appeals, and of promoting the autonomy and integrity of trial proceedings (paras. 16-17). These principles also weigh in favour of deference to first instance decision-makers on points of contractual interpretation. The legal obligations arising from a contract are, in most cases, limited to the interest of the particular parties. Given that our legal system leaves broad scope to tribunals of first instance to resolve issues of limited application, this supports treating contractual interpretation as a question of mixed fact and law.

[29] Accordingly, Jim's burden on appeal is to show that the judge's interpretation of clause 3.3 is vitiated by an extricable error of law or an overriding and palpable error in the application of the law to the language of the trust deed. Apart from the question of the judge's use of post-settlement conduct, a point addressed separately below, Jim does not identify an extricable question of law. His appeal stands or falls on his ability to identify an overriding and palpable error.

[30] The judge reasoned as follows:

[41] Jim argues he and Simon are to settle the terms of the new trusts at their discretions, as befit the needs of their respective families. Jim argues Alan did not specify any terms to be attached to these new trusts. Jim goes further and argues once these new trusts have been settled, the AET [alter ego trust] must terminate.

[42] I do not agree with Jim that the new trusts can be settled at Jim and Simon's respective sole discretions. The AET, read as a whole, sets out that Simon, as its trustee, continues to be the trustee of the two new trusts that are to be settled. Clause 3.3 provides that after Alan's death, and after the

trust assets have been divided into two new trusts, the “Trust Fund from the *inter vivos* trust may be used to pay to or for the maintenance and other benefit of James Owen Vines and Simon John Wilcock so much of the income and capital of the Trust Fund as the Trustee, in the Trustee’s absolute discretion, considers appropriate”.

[43] The Trust Fund is defined as the “Settled Property”, which consists of the loans payable to Alan from the Underlying Trusts and Underlying Companies, and any other property added to the Trust Fund, including any investments made by the Trustee. In my view, this is a clear direction that Simon as trustee of the AET will continue to be the trustee of the two new trusts. The second sentence of clause 3.3 is directed to the time period after Alan’s death, and makes clear that it is the trustee who decides if trust funds ought to be advanced.

[Emphasis added.]

[31] I do not discern a palpable error in these reasons. A palpable error is one that can be plainly seen; it is obvious: *Hydro-Québec v. Matta*, 2020 SCC 37 at para. 33. There is nothing that is obviously wrong in the judge’s reasoning.

[32] As the judge observed, the second sentence of clause 3.3 expressly reserves to the “Trustee”—a defined term—a continuing role in the administration of the “Trust Fund”—also a defined term—following the settlor’s death. Jim submits that the judge’s interpretation of clause 3.3 gives rise to a practical impossibility, because it seems to contemplate that Mr. Vines, the Original Trustee, would continue to direct the distribution of assets through the New Trusts following his death. But the direction is reserved to the Trustee, not Mr. Vines in his personal capacity, and clause 6.1 expressly makes provision for the appointment of a replacement Trustee “[i]f the Original Trustee shall for any reason be unable to act or to continue to act as Trustee hereunder”. The judge did not err in concluding that, by the operation of clause 6.1, Simon became the Trustee on Mr. Vines’ death. The judge’s conclusion that, as the trustee of both of the New Trusts, Simon is authorized to exercise the discretionary power expressly contemplated in the second sentence of clause 3.3 is logical and grounded in the language of the deed.

[33] In oral argument, Jim proposed that the capital T in “Trustee” in the second sentence be viewed as a drafting error. That is far from obvious.

[34] Jim submits that the first sentence of clause 3.3 provides for the payment of the trust funds to Jim and Simon, giving them legal title to the funds as trustees for themselves and their heirs. If the first sentence stood alone, there would be force to this argument, but the first sentence is followed by the second, and the judge did not err in construing the two sentences together, giving effect to defined terms.

[35] Jim submits that the purpose of the alter ego trust is to secure to the settlor (Mr. Vines) the use of the trust property during his lifetime and provide for its distribution after his death, while the purpose of the New Trusts is fundamentally different. In that light, he maintains that it cannot be assumed that the provisions and trustee of the former would carry over into the latter. The difficulty with this submission is that the trust deed serves both purposes, and can only be interpreted having regard to the language found in it. This is what the judge did.

[36] In sum, I am not persuaded that the judge erred in interpreting clause 3.3 as requiring that Simon would serve as the trustee of the New Trusts and would have absolute discretion to make payments to Jim and himself from the income and capital of each of the New Trusts. I accept that clause 3.3, read as a whole, presents interpretive difficulties. It was the task of the judge to wrestle with them. She did so and cannot be said to have obviously erred.

[37] I would offer one comment on an aspect of the judge's order that was touched on in oral argument. Following the language of the trust deed, the order refers to Simon's "absolute discretion" in directing payments from the New Trusts. The judge was not asked to address, nor are we, whether Simon's absolute discretion is constrained by fiduciary principles. As counsel for Simon observed, that would be a matter to be addressed in a different case on a different record.

**2. Did the judge err in considering post-settlement conduct in construing the trust deed?**

[38] The judge stated:

[44] I find further support for the view that Simon is to remain the trustee of the two new trusts from the fact that in May 2022, Alan made declarations resigning as trustee from the AET and the four Underlying Trusts, and naming Simon as the trustee. Prior to these declarations in May 2022, Jim and Simon were both to be the replacement trustees. If Alan had not made these declarations in May 2022, Jim would have had a stronger argument that he ought to settle the new trust for his benefit at his sole discretion, as there would be no mechanism in the AET to choose who between Jim and Simon decides the terms of the new trusts, if they do not agree. Clause 10 dealing with majority decisions only applies where there are more than two trustees.

[Emphasis added.]

[39] Jim submits that the judge erred because a trust deed can only be interpreted in the light of surrounding circumstances within the knowledge of the maker at the time it was made, citing *Sattva* at para. 47.

[40] In my view, the question of the use that may be made of post-settlement conduct does not arise on this appeal, because the judge did not rely on post-settlement conduct in coming to her conclusion that Simon would serve as trustee of both the New Trusts. Her statement at para. 44 is an afterthought, and I need not address whether it is correct.

[41] I would neither endorse nor reject Jim's argument concerning the use of post-settlement conduct to construe a trust deed. *Sattva* is far from the final word on the point, because *Sattva* is a contract case, and even in the contractual context, evidence of subsequent conduct is sometimes admissible: *Canadian National Railways v. Canadian Pacific Limited* (1978), 95 D.L.R. (3d) 242, [1979] 1 W.W.R. 358 (B.C.C.A.), aff'd [1979] 2 S.C.R. 669, 105 D.L.R. (3d) 76. Trust deeds reserving to the settlor or the trustee powers to add beneficiaries, designate successor trustees, or otherwise alter the terms of the trust, may raise distinct considerations. Potentially subtle and difficult questions should be left to an appeal in which they are truly raised and fully argued.

**Disposition**

[42] For these reasons, I would dismiss the appeal.

“The Honourable Justice Gomery”

I AGREE:

“The Honourable Justice Griffin”

I AGREE:

“The Honourable Justice Winteringham”