



## Trusts and Fiduciary Group

In re the A Trust: The circumstances in which a trust will be declared invalid on the basis of mistake

In The Matter of the A Trust [2009] JRC 245

This case clarifies the test to be applied as regards when a trust or disposition made into it will be set aside on the basis of a mistake. In particular, the judgment provides:

- that the correct test to be applied is whether the mistake was 'sufficiently serious' leading to 'injustice' (as laid down in *Ogilvie v Littleboy*<sup>1</sup>);
- that the aforesaid test should be preferred to the narrower test as set out in *Gibbon v Mitchell*<sup>2</sup> which distinguishes between the 'effects' and 'consequences' of a transaction;
- that the Jersey courts could grant relief whether or not the mistake was one as to law or to fact; and
- that, in applying the aforesaid test, the Court must be satisfied that the donor or settlor would not have entered into the transaction "but for" the mistake.

## The Facts

The Representor, Mrs B, applied for a declaration pursuant to Article 112 of the Trusts (Jersey) Law 1984 that the "A Trust" was established by mistake. In particular, Mrs B made voluntary dispositions into the A Trust shortly after its inception which dispositions represented all of the property in the trust. In making the dispositions, Mrs B was under the mistaken belief that she was non-domiciled in the United Kingdom for Inheritance Tax purposes ("IHT"). In fact, she was domiciled for the purposes of IHT and was therefore personally liable for the sum of between £1M and £1.2M.

The Court accepted Mrs B's evidence that: (i) she had understood that she was non-domiciled and that a successful application had been made to establish her as such; and (ii) had she known at the time of making the dispositions into the trust that it would attract a large charge to IHT, she would not have made the dispositions.

By reason of the dispositions being made by mistake, Mrs B sought a declaration that the A Trust was invalid in its entirety.

## The Decision

The Court held that:

- (i) It was clear there was a mistake of law as to Mrs B's domiciled status for IHT purposes;
- (ii) It was a serious mistake in that it gave rise to an immediate charge to IHT of between £1M and £1.2M, which represented 20% of the sum involved and a material proportion of Mrs B's wealth;
- (iii) There was no doubt that she would not have made the disposition "but for" the mistake, indeed, the Court found it 'inconceivable' that anyone in her position would have voluntarily agreed to the disposition with such immediate consequences;
- (iv) None of the other parties involved (the Trustee or beneficiaries) would be adversely affected (indeed they agreed to the gift being set aside) and therefore it would be unjust for the trust to retain the sums donated;
- (v) Even on the basis of the narrower test as laid down in *Gibbon v Mitchell*, this was satisfied in that Mrs B had not been advised of and did not understand the terms of the trust and was therefore mistaken as to its effect and on that basis also the disposition would be set aside.

n.b. *Since this judgment was handed down by the Jersey court on 16 December 2009, the English High Court issued a judgment on this subject on 18 January 2010 in the case of Pitt v Holt and another. There the court preferred the test in Gibbon v Mitchell, but said that there was, in truth, no "real divergence" between that case and Ogilvie v Littleboy. It is understood that the decision in Pitt v Holt may be the subject of appeal.*

<sup>1</sup> (1897) 13 TLR 3811; Sub nom *Ogilvie v Allen* in the House of Lords (1899) 15 TLR 294

<sup>2</sup> (1991) WLR 1304

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