



CAREY OLSEN

Court of Appeal delivers landmark judgment clarifying the application of Hastings-Bass relief in Guernsey law

Service area / [Dispute Resolution and Litigation](#)

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The Court of Appeal has handed down a landmark judgment in *M v. St Anne's Trustees Limited*, in which Carey Olsen acted for the trustee. Setting aside the first instance decision, the Court of Appeal has provided welcome clarification of the application of the so-called rule in *Hastings-Bass* in Guernsey law.

M, a member of the Richmond Retirement Plan (the "Scheme"), appealed against the Royal Court judgment of Lieutenant Bailiff Marshall Q.C., in which the Lieutenant Bailiff refused to exercise jurisdiction under the rule in *Hastings-Bass* to set aside a transaction between M and the trustees of the Scheme, which had attracted a significant liability to UK tax for M.

The Court of Appeal allowed the appeal against the Royal Court judgment and exercised its discretion to set aside the transaction *ab initio*. Without expressly deciding the point, the Court of Appeal proceeded on the assumption that Guernsey law in respect of the rule in *Hastings-Bass* is to "like effect" as per the revised approach established in *Pitt v. Holt*. Interestingly, the Court of Appeal left the door open to further argument as to whether any breach of duty is required, as is the case under the current English position.

The Court of Appeal in its judgment departs from the first instance decision in four key points:

1. No causal connection required between the breach and damage to a beneficiary in that capacity

The Court of Appeal confirmed that for the rule in *Hastings-Bass* to apply, it is sufficient merely that there has been a breach of duty. Without deciding whether under Guernsey law the duty of adequate deliberation is a fiduciary duty or a duty to exercise reasonable skill and care, the Court proceeded on

the basis that it is the former, meaning that the jurisdiction was engaged.

The Court of Appeal then departed from the Lieutenant Bailiff's judgment in finding that there was no requirement for any causal connection between the breach and damage caused to the beneficiary in that capacity. Instead, the Court followed the reasoning in *Pitt v. Holt* in that once a breach of trust has been established, the Court has jurisdiction in principle to grant relief. The Court of Appeal acknowledged however that the question of loss or prejudice to the trust fund or beneficiaries is likely to be a material factor in the Court's exercise of its discretion as to what relief, if any, should be granted.

2. Inadequate deliberation constitutes breach of duty

The Court of Appeal had "no hesitation" in finding that the inadequate deliberation by the trustee was of sufficient gravity to constitute a breach of fiduciary duty. It found that the Lieutenant Bailiff ought to have made such a finding in her judgment, rather than proceeding on the mere assumption of such a breach.

The Lieutenant Bailiff was also deemed wrong to consider the seriousness of the breach in deciding whether to set aside the transaction.

3. No requirement for "unconscionability"

Furthermore, the Court of Appeal held that the Lieutenant Bailiff erred in finding that there was a requirement of unconscionability and that beyond a breach of duty no "extra hurdle" is required before a transaction can be avoided.

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4. Hastings-Bass relief is not an “extraordinary” remedy

The Court of Appeal disagreed with the Lieutenant Bailiff that Hastings-Bass relief should only be exercised in extreme cases. In its judgment, the Court of Appeal held that the discretion should be exercised in favour of avoidance when the Court considers it right to do so.

The Court of Appeal also found that conduct, which is sufficient to amount to a breach of duty, can properly be described as “aberrant” – the word used in *Pitt v Holt*. Disagreeing with the Lieutenant Bailiff further, the Court of Appeal held that the word does not imply some heightened misconduct nor that the power to set aside should only be used in extraordinary or extreme cases.

The Lieutenant Bailiff was also deemed to be wrong to take account of the four policy grounds identified by Lord Walker in *Pitt v. Holt* when deciding how to exercise her discretion.

The Court of Appeal found that the Lieutenant Bailiff had fallen into error in placing weight on the availability of a claim against M’s tax advisers and in seeking to assess its strength without argument from the parties.

Conclusion

The decision is important as it is the first time that the Guernsey Court of Appeal has considered the scope of the rule under Guernsey law, and the extent to which it will follow the English law position as established by the UK Supreme Court in *Pitt v. Holt*. Notably the Court of Appeal has departed from the strict requirement set out in *Pitt v. Holt* for there to be a breach of fiduciary duty, finding that a breach of duty, whether fiduciary or not, will suffice as long as it is of sufficient seriousness for the Court to exercise its discretion. Whilst the Court of Appeal considered that the scope of the rule in Hastings Bass applies in Guernsey to “like effect” as in England, the door remains open to further adaptation of the rule by the Guernsey Courts.

The Carey Olsen team advising the trustee comprised Advocates Karen Le Cras and Elaine Gray and senior associate Julia Schaefer.



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