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Case No: PT-2018-000913

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY TRUSTS & PROBATE LIST (ChD)

The Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Wednesday, 26 June 2019

BEFORE:

HIS HONOUR JUDGE HODGE QC
(Sitting as a Judge of the High Court)

BETWEEN:

BERNARDO GUTTENBERG WILLEM HARTOGS

Claimant

- and -

(1) SEQUENT (SCHWEIZ) AG
(2) JEMA UNIVERSAL CORPORATION
(3) LEVAR UNIVERSAL SA

Defendants

MR RICHARD WILSON QC (instructed by **Linklaters LLP**) appeared on behalf of the Claimant

MR JAMES WEALE (instructed by **Linklaters LLP**) appeared on behalf of the Defendants

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APPROVED JUDGMENT

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JUDGE HODGE QC:

1. This is my extemporary judgment on the hearing of a claim brought by way of Part 8 claim form dated 4 December 2018 by Mr Bernardo Guttenberg Willem Hartogs. By that claim form, he seeks to set aside two voluntary transactions which he made in 2009 and late 2013 and early 2014 respectively. The case concerns two trusts of which the claimant is the settlor and one of the beneficiaries. The first defendant, now known as Sequent (Schweiz) AG, is the trustee of both settlements. One of the settlements, the Milky Way Settlement Trust, is the owner of the second defendant, Jema Universal Corporation. The other trust, the Mercurius Settlement, is the owner of the third defendant, Levar Universal SA. Both the second and third defendants are British Virgin Islands incorporated trading companies.

2. The claimant is represented by Mr Richard Wilson QC and all three defendants are represented by Mr James Weale (of counsel). The first defendant filed an acknowledgment of service stating that it did not intend to contest the proceedings but indicating that it would seek an order that it be appointed to act as the representatives of all of the beneficiaries of the two trusts pursuant to CPR 19.7. It is now recognised that such an order is unnecessary because of the provisions of CPR 19.7A whereby a claim may be brought against trustees in that capacity without adding as parties any persons who have a beneficial interest in the trust; and any judgment or order given or made in the claim will be binding on the beneficiaries unless the court orders otherwise.

3. The evidence in support of the claim is contained in the first witness statement of the claimant, Mr Hartogs, dated 4 December 2018, and exhibiting various documents as exhibit BGWH/1. The only evidence in response to the claim is in the form of two witness statements from Ms Anna Frances Steward dated 20 December 2018 and 13 June 2019. Ms Steward is an English solicitor and also a director of both the first defendant and another company, RTB Administrators AG, which is the sole director of both the second and third defendant companies. Ms Steward's first witness statement addresses the position of the beneficiaries of the trust; and her second witness statement simply updates the court as to relevant developments since her first witness statement.

4. Notice of these proceedings was given to HM Revenue & Customs by way of a letter from the claimant's solicitors, Linklaters LLP, dated 6 December 2018. That letter invited HMRC to be joined as a party to the proceedings by no later than 28 December 2018 and made it clear that if no confirmation was received from HMRC by that date then the claimant would proceed with the claim on the basis that HMRC did not intend to seek to be joined as a party. A representative of the Assets, Residence and Valuation Section of the Inheritance Tax and Trusts Technical Division of HMRC responded to that letter by way of email dated 21 December 2018. That email confirmed that HMRC did not wish to be joined as a party to the proceedings and invited Linklaters to let HMRC know the outcome of the proceedings (misdescribed as a petition) in due course. As a result, I have not heard any argument on behalf of HMRC. I wish to make it clear that the court is always willing to consider anything that HMRC may wish to say about claims of this nature, even if it is only in the form of a written letter to be placed before the court by the claimant's own solicitors. In this case I have heard no representations from HMRC. That, however, does not mean that the court will not scrutinise a case of the present kind closely to ensure that the applicable legal principles have been properly addressed and considered.

5. Turning to the background to the claim, the two transactions are as follows: First, in 2009, acting on advice from his then professional advisors, Attendus Trust Co AG, the claimant created a trust structure to acquire and hold a UK residential property, 17 Blenheim Road, St John's Wood NW8, for the occupation of himself and his family. This was done by the claimant settling funds into an offshore trust (in this case the Milky Way Settlement Trust) which acquired off the shelf the second defendant (a BVI incorporated trading company) which in its turn acquired the property and then granted a licence for the claimant and his family to occupy the property. The purchase price was some £4.195 million. The claimant also transferred sums totalling some £2.9 million to the second defendant company for renovation costs for the property.

6. Secondly, in late 2013/early 2014, the claimant sought advice from the same professional advisors as to the most efficient method for holding his classic car collection from an estate-planning perspective. He was again advised to do so through the means of an offshore trust structure. The claimant accordingly established another offshore trust (in this case the Mercurius Settlement Trust) which acquired the third defendant, another

BVI incorporated trading company. The claimant then transferred four classic cars which he had purchased in his own name between 2009 and 2013 to the third defendant. The third defendant also subsequently purchased five further classic cars using funds transferred to it by the claimant. The claimant also transferred substantial funds to the third defendant for restoration costs for the cars.

7. Those transactions are addressed more fully at paragraphs 48 to 51 of the claimant's supporting witness statement. It is said that, unfortunately, in acting upon the professional advice he had received, the claimant did so acting under an operative mistake as to the tax consequences of the two sets of transactions. He assumed, wrongly, that there would be no immediate tax consequences of entering into the transactions but in fact there were significant immediate adverse inheritance tax charges as a result. He says that, had he known about those tax consequences, he would not have entered into the transactions. In those circumstances, he seeks to invoke the court's jurisdiction to set aside the transactions on the grounds of mistake.

8. His case is summarised at paragraph 6 of his witness statement:

> "By this claim, I seek an order setting aside certain transfers of my assets into trusts. The transfers were made by me as a result of a mistake as to the tax consequences of making them. If they are not set aside, they create a significant tax liability for me, which I mistakenly did not believe would arise when I made the transfers. The trusts are known as the Milky Way Settlement Trust and the Mercurius Settlement Trust. The relevant asset transfers were the transfer of money into the Milky Way Settlement Trust for the purchase and refurbishment of 17 Blenheim Road, St John's Wood, London NW8 0LX and the transfer of four classic cars and the transfer of money for the purchase of five further cars into the Mercurius Settlement."

9. The precise nature of the mistake is addressed at section G of the claimant's witness statement (at paragraphs 52 through to 76). At paragraph 71, the claimant states that had he known at the time of the potential for a significant consequential inheritance tax liability during his lifetime, then he would not have transferred the second defendant into the Milky Way Settlement Trust or purchased the property through that (or any other) trust; nor would he have transferred the third defendant into the Mercurius Settlement Trust or transferred or purchased the classic cars through that (or any other) trust. He

simply would not have structured his financial affairs in a way that would have incurred a substantial, and adverse, tax charge. At paragraph 72, the claimant states that, had he known about the tax charge, he would simply have purchased the property and the classic cars in his own name, or kept those classic cars which were transferred to the third defendant in his own name, or he would not have transferred the second or third defendants into the respective trusts. By doing either of those things, he understands that he would not have been liable to pay any immediate inheritance tax charge; and his estate would potentially be in a better position in relation to UK inheritance tax when he dies than it would be if the assets were held within the trusts.

10. At paragraph 75, the claimant states that his mistake in structuring his personal affairs using the trusts was that he thought that he was (as Attendus had advised him) structuring them in the most tax-efficient way possible when, in fact, it was anything but. At no point, until he received advice from his present solicitors (Linklaters) in 2016, did the claimant ever appreciate that this might not be the case, and that making cash additions to the trusts, and transferring cars to the Mercurius Settlement, would result in immediate adverse tax charges. In particular, the claimant says (at paragraph 76) that whilst he understood that his estate might have to pay inheritance tax in relation to the property and the classic cars when he died, he did not believe that purchasing the property, or transferring or purchasing the classic cars through the trusts, would result in an immediate inheritance tax liability of at least £2.9 million, plus a recurring charge, levied at a rate of up to 6 per cent every ten years, and an exit charge at the same (or a similar) rate if all the assets were removed from the trusts, or that he would suffer any other adverse tax consequences. As he now knows, that was not the case. The consequence of his mistake, resulting from the incorrect advice he had received from Attendus, is that, absent the relief sought in these proceedings, it will have a serious, unintended, and prejudicial impact on the claimant's tax liability and personal affairs.

11. The claimant says (at paragraph 77) that he understood from Attendus that holding certain of his personal and business assets using a trust was a normal and standard approach to estate-planning for someone in his position. At paragraph 78 he says that, as he hopes he has made clear, he finds himself in this situation because he followed the professional advice that he had received, but which turned out to be wrong. Not only does he face a significant, and unexpected, tax charge, but he has spent considerable

sums on professional advisors to help with dealing with the problem. He believes that it would be unjust in all the circumstances for him to be left with the substantial tax charges he now faces; and, therefore, he asks the court to set aside the transfers that he has made.

12. The defendants support the claim.

13. The principles applicable to the rescission of a non-voluntary disposition for mistake were comprehensively set out in the seminal judgment of Lord Walker in *Pitt v Holt* [2013] UKSC 26, [2013] 2 AC 108, with which the other members of the Supreme Court agreed. At paragraph 103, Lord Walker adopted as a convenient framework the three-stage test that had been applied in the Court of Appeal by Lloyd LJ: (1) the donor must have been mistaken; (2) the mistake must be of a relevant type; and (3) the mistake must be sufficiently serious to satisfy the *Ogilvie v Littleboy* test. The reference to this test was to the formulation in the judgment of Lindley LJ in *Ogilvie v Littleboy* (1897) 13 TLR 399 at 400 which was cited by Lord Walker at paragraph 101 of his judgment in *Pitt v Holt*: it must be " … some mistake of so serious a character as to render it unjust on the part of the donee to retain the property given to him".

14. In his written skeleton argument, Mr Weale elaborates upon that three-stage test. First, in relation to mistake, Lord Walker concluded that a "conscious belief" or" tacit assumption" was sufficient to qualify as a mistake in this context, and should be distinguished from mere causative ignorance or a misprediction as to a future event.

15. Secondly, as to the relevant type of mistake, Lord Walker gave guidance in relation to this requirement at paragraph 122 of his judgment:

> " … the true requirement is simply for there to be a causative mistake of sufficient gravity; and, as additional guidance to judges in finding and evaluating the facts of any particular case, that the test will normally be satisfied only where there is a mistake either as to the legal character or nature of a transaction or as to some matter of fact or law which is basic to the transaction."

Lord Walker thereby rejected the distinction previously drawn by Millett J between "effects" and "consequences".

16. As to the third stage, Lord Walker held that the gravity of a mistake fell to be assessed by reference to “unconscionableness”, “injustice” and “unfairness”, drawing no distinction between these words in his judgment. Unconscionability was to be assessed “objectively”, “by a close examination of the facts”, looking at the “consequences for the person who made the vitiated disposition”, at “change of position”, and at “other matters relevant to the exercise of the court's discretion”.

17. Recent case law has confirmed that there is no reason why a mistake as to tax consequences should be treated any differently from any other kind of mistake which is sufficiently serious to engage the doctrine. At paragraph 27 of her judgment in *Freedman v Freeman* [2015] EWHC 1457 (Ch), [2015] WTLR 1187, Proudman J said that it was clear from *Pitt v Holt*, at paragraphs 129 to 132, that a mistake as to the tax consequences of a transaction might, in an appropriate case, be sufficiently serious to warrant rescission. There was said to be no justification for a different approach to mistakes about tax and other types of mistake.

18. Finally, Mr Weale invites the court to note that in circumstances where the trusts are governed by Guernsey law, and the relevant holding companies were incorporated in the BVI, it is possible that the law of one (or other) of those jurisdictions might be thought to govern the principles relating to the setting aside of the disputed transactions. In the present case, however, neither party has alleged either that foreign law governs or that the application of foreign law would produce a different outcome from the English law. On that basis, Mr Weale, with the concurrence of Mr Wilson, submits that the court should proceed on the basis that English law applies. He refers to the principle expressed at rule 25 of *Dicey, Morris & Collins on the Conflict of Laws* (15th edn) at paragraph 9R-001:

> "Rule 25
>
> (1) In any case to which foreign law applies, that law must be pleaded and proved as a fact to the satisfaction of the judge by expert evidence or sometimes by certain other means.
>
> (2) In the absence of satisfactory evidence of foreign law, the court will apply English law to such a case."

I have no doubt that I should apply English law principles in the present case. No different foreign law has either been pleaded or proved; and, in those circumstances, the court will assume that English law applies, and will apply English law to the case.

19. Mr Wilson has taken me to the judgment of Sir Terence Etherton C (as he then was) in *Kennedy v Kennedy* [2014] EWHC 4129 (Ch), [2015] WTLR 837 at paragraph 36 where the Chancellor summarised the principles laid down by the Supreme Court in *Pitt v Holt*:

> "(1) There must be a distinct mistake as distinguished from mere ignorance or inadvertence or what unjust enrichment scholars call a 'misprediction' relating to some possible future event. On the other hand, forgetfulness, inadvertence or ignorance can lead to a false belief or assumption which the court will recognise as a legally relevant mistake. Accordingly, although mere ignorance, even if causative, is insufficient to found the cause of action, the court in carrying out its task of finding the facts should not shrink from drawing the inference of conscious belief or tacit assumption when there is evidence to support such an inference.
>
> (2) A mistake may still be a relevant mistake even if it was due to carelessness on the part of the person making the voluntary disposition, unless the circumstances are such as to show that he or she deliberately ran the risk, or must be taken to have run the risk, of being wrong.
>
> (3) The causative mistake must be sufficiently grave as to make it unconscionable on the part of the donee to retain the property. That test will normally be satisfied only where there is a mistake either as to the legal character or nature of a transaction or as to some matter of fact or law which is basic to the transaction. The gravity of the mistake must be assessed by a close examination of the facts, including the circumstances of the mistake and its consequences for the person who made the vitiated disposition.
>
> (4) The injustice (or unfairness or unreasonableness) of leaving a mistaken disposition uncorrected must be evaluated objectively but with an intense focus on the facts of the particular case. The court must consider in the round the existence of a distinct mistake, its degree of centrality to the transaction in question and the seriousness of its consequences and make an evaluative judgment whether it would be unconscionable or unjust to leave the mistake uncorrected."

Where that test is satisfied, the court has a discretion as to whether to order rescission. At that stage the generalised question of unconscionability is perhaps of the greatest

importance. In broad terms, the court must ask itself the straightforward question of whether in all the circumstances it would be unconscionable to allow the mistake to be left uncorrected. Mr Wilson submits that the evidence shows that all the necessary elements are present in this case and therefore it is an appropriate one for the court to exercise its discretion to set aside the transaction.

20. Mr Wilson proceeds to apply the relevant legal principles to each of the transactions in turn. The first is the 2009 transaction. It is said that the claimant made a mistake of sufficient seriousness to engage the jurisdiction. The claimant describes that mistake at paragraph 34 of his witness statement in the following terms:

> "I recall that Attendus advised me that I should use a trust structure and that I should set up an offshore company, transfer the ownership of that company into the Milky Way Settlement Trust and then arrange for the company to purchase the property in its name. The company would then license the occupation of the property to me and my family … I now understand from Linklaters that this advice was wrong as it has resulted in my incurring an unnecessary and significant immediate inheritance tax liability and ongoing long-term inheritance tax disadvantages. I did not know that these would be the tax consequences of using the tax structure, having mistakenly believed that there would be no adverse tax charges."

Mr Wilson recognises that it might be argued that this amounts to ignorance or inadvertence (on the basis that the claimant is ignorant of a particular tax charge). However, he submits that the authorities show that a party's lack of knowledge of a particular tax charge amounts to a tacit assumption and that that amounts to a mistake. He instances *Pitt v Holt* itself where it is said to be clear (from paragraph 54) that Mrs Pitt had no knowledge of any inheritance tax charge.

21. Mr Wilson also refers to the decision of Proudman J in *Freedman v Freedman* (previously cited). That was a case where HMRC had intervened in the proceedings, arguing that the claimant had made no distinct mistake in the sense meant by Lord Walker. In the course of her submissions for the claimant, leading counsel had asked rhetorically what the distinction was between "ignorance" and a "tacit assumption". She had submitted that, whilst ignorance meant that the person simply did not think about the consequences of an action, a tacit assumption did not involve a thought process involving a series of steps culminating in the thought: "I believe I will

be able to comply with [in that case] the loan agreement." It was submitted that that would be a conscious belief, but there were some things that were simply taken for granted. The claimant's assumption was to be inferred because she had proceeded on the basis of legal advice, coupled with a belief that her father would not advise her to do something that was dangerous. Accordingly, there was said to be at the least a tacit assumption that entering into the settlement did not involve any impediment to compliance with her agreement to repay the relevant loan. Proudman J accepted that line of argument. At paragraph 30, Proudman J said that it had been "entirely reasonable" for the claimant to have said that, based on the advice she had received, she had broadly understood there would be no adverse tax consequences for her in entering into the settlement. In any event, Mr Wilson submits that the claimant has given evidence of his *positive belief* that there would be no adverse tax charge. The credibility of that evidence is said to be obvious in the context of steps being taken by the claimant to plan his affairs. It is said to be inconceivable that the claimant would have done so without a belief that it would not be disadvantageous.

22. Mr Wilson submitted that the courts are prepared to view an absence of knowledge about a particular tax charge as amounting to a tacit assumption that there will be no adverse tax consequences rather than as a case of mere ignorance. He submits that the courts have taken a relatively benign approach to finding a tacit assumption. He points out that in cases involving tax-driven structures, a tacit assumption can more readily be inferred. He makes the point that this is a transaction that was entirely tax-driven. There had been no pressing need for the claimant to take the steps that he had done, otherwise than in the context of tax planning.

23. Mr Wilson also took me to the decision of Morgan J in the case of *Van der Merwe v Goldman* [2016] EWHC 790 (Ch), [2016] 4 WLR 71. At paragraph 41, Morgan J, when considering the application of the equitable rules to his analysis of the case, considered the position to have been that the claimant and the first defendant had made a relevant mistake when they had entered into the transfer and, almost immediately thereafter, a further settlement and transfer. They, and in particular the claimant, had been ignorant of a budget announcement a few days earlier:

> "… that ignorance cannot be regarded as 'mere ignorance' which would not give rise to a relevant mistake because the ignorance in the present case led them to a false belief or assumption that the creation of the settlement did not involve a chargeable transfer so that no inheritance tax would be payable as a result".

Mr Wilson submits that that is precisely the situation in the instant case. I accept those submissions.

24. Mr Wilson then goes on to make the point that the claimant was not careless because he was acting on professional advice; and, in any event, carelessness did not prevent relief. The claimant had certainly not run the risk of things going wrong. This was not an untested tax planning scheme. Rather, it was the claimant merely organising his affairs in a sensible way.

25. I accept that this was not a controversial tax planning scheme. It was what Mr Wilson described as "vanilla tax planning". The whole transaction was directed to holding the relevant assets in a tax efficient manner. The unexpected tax charge arose because those advising the claimant had failed to appreciate that he was no longer a non-domicile for UK inheritance tax purposes. The claimant was advised that the planning he was seeking to carry out was standard estate planning for someone who was resident, but not domiciled, in the UK. It would have been perfectly appropriate for someone of that status; but, unfortunately, he had become domiciled in the UK on or about 6 April 2008, at the beginning of the tax year following 16 years of being a tax resident in the UK. That was something that the claimant had only discovered when he received advice to that effect from Linklaters in November 2016.

26. The mistake was a sufficiently grave one to make it unconscionable for it to be allowed to stay uncorrected. The tax charges arising from the 2009 transaction are addressed at paragraphs 62 to 65 of the claimant's witness statement. They approach some £1.7 million and will therefore be substantial; and they will have to be borne by the claimant as a UK domiciled settlor. Moreover, it was a causative mistake. As paragraph 71 of the claimant's witness statement makes clear, had he known of the potential charges to tax, he would not have transferred the shares in the second defendant into the Milky Way Settlement Trust, nor would he have purchased the St John's Wood property

through such a structure. The authorities are consistent in showing that a causative mistake of this nature satisfies the gravity test.

27. In these circumstances, I accept that it would plainly be unconscionable for the claimant to be left to bear the substantial immediate tax charges in respect of the 2009 transaction. The claimant has become liable to the charge merely by following advice that he was given, on the basis of an incorrect analysis, and in a mistake belief as to the outcome of doing so. I am satisfied that this is precisely the type of situation where unconscionability (which in this context is synonymous with injustice or inequity) should be found by the court. I therefore accept that it is appropriate for the court to set aside the 2009 transaction. I accept Mr Wilson's submission that this is a paradigm case for the invocation of the *Pitt v Holt* jurisdiction. Without such relief, the initial 20 per cent charge will have to be borne by the claimant himself, as the donor of the relevant assets into the settlement.

28. Turning to the 2014 transaction, subject to one additional point (to which I will shortly come), the position is similar to that of the 2009 transaction. The same mistake was made by the claimant as to the lack of any immediate tax charge as a result of acting on the advice that he had been given, which was erroneous because of the same misunderstanding of his non-domiciled position. Again, the mistake was a serious one, resulting in a significant and unexpected charge to tax. This is addressed at paragraphs 62 to 65 of the claimant's witness statement, and it amounts to something in the order of £1.2 million. Again, the claimant is clear that he would not have entered into the 2014 transaction had he been aware of the tax charge. Mr Wilson therefore submits that it would be appropriate for the court to exercise its discretion to set aside the 2014 transaction as well.

29. There is, in my judgment, one distinguishing feature between the two transactions. That appears from paragraph 57 of the claimant's witness statement. There the claimant says that, on 7 January 2010, he received an email of advice from Ross Welland at Haines Watts, the accountants, which referred to the claimant's domicile status in relation to the remittance basis and his deemed domicile status in relation to inheritance tax. The email stated that the claimant could claim to be taxed on the “remittance basis” as he was not domiciled in the UK. It also stated that, as at that time, he was deemed to be domiciled

in the UK for the purposes of inheritance tax. The writer also asked whether the claimant had transferred any assets into his non-UK resident trust since he had arrived in the UK, and that the writer would then be able to confirm whether the assets in the trust were liable for UK inheritance tax.

30. The claimant goes on to relate that he forwarded that email to an individual at Attendus to ask him to explain the advice from Haines Watts. He says that he was confused by the accountant's email and did not understand what it meant. That email was, like other detailed documents the claimant received, not something that he had understood in detail at the time, which is why he had asked Attendus for an explanation. The claimant says that he does not recall anyone at Attendus explaining the Haines Watts email to him, nor did the claimant appreciate at the time, or until he received the advice from Linklaters in 2016, the consequences of what the accountant had been saying about inheritance tax and, in particular, about inheritance tax liability in respect of the claimant's assets that had been transferred into trust.

31. I asked Mr Wilson about that email. Mr Wilson's response was that it was clear on the evidence that the claimant had not appreciated that the change in domicile status for inheritance tax would have the effect of subjecting what became the 2014 transaction to an immediate charge to inheritance tax. Rather, the claimant had still made the same mistake about the inheritance tax consequences of the 2014 transaction. Ironically, Mr Wilson submitted, this information made it even more of a mistake. That was because the email had not spelt out, and no one had later spelt out, that there would be an immediate tax charge on the transfer of any assets into the Mercurius Settlement. Mr Wilson said that even if it had been possible for the claimant to have pieced the consequences together, there would still have been a mistake. At its worst, the claimant had been careless, because he did not appreciate the implications of the email of 7 January 2010; but such carelessness was no bar to relief and did not change the position. Again, I accept that submission. In my judgment, the 2010 email does not affect the fact that there was an operative mistake for the purposes of the *Pitt v Holt* jurisdiction.

32. It is clear from the evidence that the claimant has transferred a mixture of cash and assets into the two settlements. Where cash has been provided by the claimant, it has been used to purchase assets and to incur expenditure on them. I accept that that is no bar to

rescission because the traceable proceeds can still be recovered. The parties anticipate that the issue can be resolved by agreement between the parties if the court grants rescission; but, if necessary, there can be appropriate accounts and inquiries.

33. The first defendant, in its capacity as trustee of the trusts, has given careful consideration to the position which it should adopt in these proceedings, in the light of the interests of the beneficiaries. The first defendant has, in particular, borne in mind that if the two disputed transactions were to be left as they are, the value of the trust's assets would be larger; and therefore the discretionary beneficiaries would, in principle, benefit in so far as potential distributions of those assets to one or more of them might be effected in the future.

34. Pursuant to its duties as trustee, the first defendant, through its director and solicitor, Ms Anna Steward, has canvassed the views of the claimant's wife, Julia, who is also the mother of one of the minor beneficiaries, and of the claimant's two adult daughters, Jessica and Marine (who are aged 37 and 34 respectively, and are the mothers of the other minor beneficiaries). They are each said to be supportive of this claim in circumstances where (1) the claimant has indicated that it is his intention ultimately to pass his wealth on to his children and grandchildren through tax-efficient means, (2) the value of the assets forming the subject-matter of the disputed transactions will steadily erode over time as tax liabilities are incurred on an ongoing basis, and (3) the first defendant currently has no intention of making any distribution to any of the beneficiaries, save for the claimant and his wife, in the foreseeable future but would instead consider making an appointment of the entirety of those assets to the claimant and/or his wife in order to avoid any further tax charges.

35. In all of those circumstances, it is said that the first defendant does not consider that it would be in the best interests of the beneficiaries for the assets to remain locked in the trusts, with the consequence that their value would steadily erode over time through the application of tax charges. The position is summarised at paragraph 33 of Ms Steward's first witness statement. There she says that the first defendant supports the claim. It is conscious that the setting aside of the transfers may not appear, at first glance, to be in the best interests of the beneficiaries of the trusts. However, taking account of (1) the substantial depletion of the funds/assets as a consequence of tax liabilities, (2) the fact

that the first defendant has no current intention to make a distribution to the beneficiaries, other than the claimant and his wife, and (3) the fact that the claimant intends to pass on his wealth to his family in due course, Ms Steward is content that the overall outcome of the setting aside of the disputed transfers is in the best interests of the beneficiaries. In those circumstances, the first defendant supports the claim. Mr Weale concisely expressed the position in his submission that it was in no one's interests for the family "pot" to be eroded, so that it can be passed down the family line intact.

36. For those reasons, therefore, I am entirely satisfied that this is a case in which the court's jurisdiction to grant relief on the grounds of mistake is plainly engaged, and in which it would be appropriate for the court to exercise its power to set both series of transactions aside.

37. I should emphasise that the principles established by the Supreme Court in *Pitt v Holt* should not be viewed as an available "get-out-of-jail-free" card, which may be invoked wherever a taxpayer finds himself facing a charge to tax which has not been anticipated. The Supreme Court's decision imposes strict limits on the circumstances in which a voluntary disposition may be set aside on the grounds of mistake. In the present case, all of the pre-conditions to the exercise of that jurisdiction have been established. In particular, the evidence of the relevant taxpayer, or potential taxpayer, the claimant, is quite clear. It has not been challenged because the Revenue has not sought to intervene in this case. The claimant is quite clear at paragraph 72 of his witness statement that had he known about the tax charge, he would simply have purchased the property, and the classic cars, in his own name, or kept those cars which were transferred to the third defendant in his own name or he would not have transferred the second or third defendants into the respective settlement trusts. In that way, he would have avoided the immediate inheritance tax charge; and his estate would, as a result, have been in a better position in relation to UK inheritance tax when he dies than it would be if the assets were held within the trusts.

38. The claimant goes on to say that he understands from Linklaters that, by structuring the acquisitions and transfers of the property and the classic cars in the way that he did, he has also created a further tax disadvantage in that, if the property and the classic cars were in his own name, on death he could leave them to his wife when he dies, and they

would then be exempt from UK inheritance tax, whereas the assets in the trust are chargeable when he dies, with no exemption if his wife survives him. He therefore says that following Attendus's advice has cost him the opportunity to carry out that straightforward estate-planning. It does not seem to me that that latter point, of itself, would have been enough because that would have been a case of mere ignorance. But, for the reasons I have already given, I am satisfied that the other matters did give rise to a relevant, and operative, mistake and cannot be regarded as mere ignorance.

39. The state of knowledge of the claimant in this present case led him to a false belief or assumption that the creation of the settlements, and the transfers into them, would not involve a chargeable transfer, so that no inheritance tax would be payable as a result. That was a mistake of a character against which the *Pitt v Holt* jurisdiction will grant relief so as to put the taxpayer, the claimant, back into the position he would have been if that mistake had not been made.

40. So, for those reasons, I will make an order in the terms of Mr Wilson's draft. The court will declare that the Milky Way transfers, and also the Mercurius transfers, were both executed by the claimant as a result of a mistake. In consequence, it will order that both transfers be set aside, and the assets, and/or their traceable proceeds, will be transferred to the claimant. If not agreed between the parties, there will be an account and inquiry of what assets represent the traceable proceeds of the two transfers in the hands of the first defendant, as the trustee of the two settlements. The parties shall have liberty to apply to one of the Chancery Masters in respect of the taking of the account and inquiries. It is agreed that there should be no order as to costs.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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