Case No: PT-2021-000157

Neutral Citation Number: [2021] EWHC 2573 (Ch)

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

Rolls Building
7 Rolls Buildings
Fetter Lane
London
EC4A 1NL

BEFORE:

CHIEF MASTER SHUMAN

BETWEEN:

KARIM MAHER ABADIR **CLAIMANT**

- and -

CREDIT SUISSE TRUST LTD **DEFENDANT**

Legal Representation
Mr Laurent Sykes QC (Barrister) on behalf of the Claimant
Credit Suisse Trust Ltd (Defendant), Litigant in Person

Other Parties Present and their status
None known

Judgment

Judgment date: 19 August 2021
(start and end times cannot be noted due to audio format)

Reporting Restrictions Applied: No

Number of folios in transcript 94

Chief Master Shuman:

1. Dr Abadir, the claimant, seeks to set aside a transfer made by him in March 2005 of $16,807,209.86 ("the Transfer") into the *Daxi Tech Trust*, a Guernsey resident discretionary trust ("the Trust"). The Transfer was made in the mistaken belief that there would be no adverse tax consequences for Dr Abadir.

2. The claim is brought by part 8 claim form issued on 22 February 2021. It is supported by a very detailed witness statement made by Dr Abadir on 11 February 2021. Dr Abadir's father, Dr Maher, was the primary mover in setting up the Trust in November 2004. However, I am satisfied from the evidence that Dr Abadir was kept informed at all times as to what advice was being given and what steps were being taken by Credit Suisse Bank ("Credit Suisse").

3. The defendant is trustee of the Trust. It filed an acknowledgement of service dated 28 May 2021, indicating that it would not contest this claim and has elected not to file any evidence. Therefore the only evidence before me is the witness statement of Dr Abadir. I have also had the benefit of a detailed and extremely helpful skeleton argument from Laurent Sykes QC, who represents Dr Abadir, supplemented by his oral submissions during the hearing. I have been taken at length through the contemporaneous documents. I accept without hesitation the evidence of Dr Abadir.

4. I will go on to deal with the facts of this claim in more detail but it is clear that Dr Abadir and Dr Maher received poor and erroneous advice from Credit Suisse when the Trust was set up in November 2004. It was Credit Suisse who recommended the offshore structure to Dr Maher to enable him to transfer funds to Dr Abadir. It is as a direct result of that advice, and through no fault of his own, that Dr Abadir has found himself in an invidious position. Dealing with the aftermath of this has had a personal impact upon Dr Abadir.

5. Dr Abadir has incurred substantial IHT charges that I am satisfied would never have arisen but for Credit Suisse's errors. He has made payments totalling £4,613,199, which includes IHT liabilities and late payment interest. Taylor Wessing realised there might be a problem in early 2016, investigation was hampered by Credit Suisse's slow approach to providing information to Dr Abadir. He touches on this at paragraph 61 of his witness statement:

> *"In early March 2016, I approached Taylor Wessing to seek UK tax advice in respect of my share of my father's intestate estate and, in particular, on the possible re-direction of my inheritance into the Trust. It was in April 2016 that the first hints of a problem emerged. Credit Suisse was slow in releasing information, with their lawyer, Ms Ghazala, even telling me that I had no right to Trust information. Taylor Wessing then looked at the arrangements and started asking me detailed questions about residence."*

6. Taylor Wessing, who was providing Dr Abadir with UK tax advice, only received copies of some of the relevant trustee resolutions and documentation relating to additions and distributions to the Trust in September 2016. As a result of this slow and apparently reluctant release of information Dr Abadir was advised by Taylor Wessing in September 2016 to consider approaching this case via the World Disclosure Facility

route. He would then voluntarily disclose the tax issues relating to offshore income and gains in respect of the Trust and settle any UK tax liabilities instead of relying on Credit Suisse to make full disclosure.

7. During the reporting process to HMRC Dr Abadir voluntarily waived any privilege to the confidentiality of correspondence with Taylor Wessing and Credit Suisse. He shared all the data and emails with the HMRC inspector, and he says in his evidence at paragraph 66:

> *"At the same time, I asked Credit Suisse to share their documents too but they refused unless I signed a liability release form, which I declined to do. After discussions with Taylor Wessing and Saffery Champness as part of the disclosure process, I also decided that I would pay income tax and CGT on the basis that I was the contributor of all the funds, ignoring the role of my father and the funds contributed by him – that increased my liabilities but simplified matters considerably. The IhT was also calculated on this basis."*

8. It is rather surprising that Credit Suisse, having given erroneous advice, did not assist Dr Abadir to resolve matters with HMRC but rather appear to have taken a defensive position. Whilst I have not heard from representatives for the defendant, the Trust vehicle set up via Credit Suisse Bank, it elected not to put in any evidence and, as I have indicated, I entirely accept the evidence of Dr Abadir. It shows the subsequent conduct of Credit Suisse in a poor light.

9. HMRC have been served with these proceedings and the evidence in support. They have indicated that they do not wish to contest these proceedings and from Dr Abadir's detailed witness statement it is clear that he and his advisors have fully engaged with HMRC.

The Law

10. Dr Abadir seeks to set aside the transfer, a voluntary disposition, and the law in this area is set out in *Pitt v Holt* [2013] 2 AC 108. It is also helpfully summarised in *Kennedy v Kennedy* [2014] EWHC 4129, in the judgment of the then Chancellor, Sir Terence Etherton and specifically at [36], he says as follows:

> *"(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"*

Mr Sykes QC has referred to the case of *Freedman v Freedman* [2015] EWHC 1457, specifically at [26], as supporting his submission that in circumstances where tax advice has been taken, it is not determinative that the advice received has not touched directly on the ultimately mistaken feature. In *Pitt v Holt* itself, it was observed that a mistake as to the tax consequences of a transaction may be sufficient.

11. Going back to the summary from Sir Terence Etherton in *Kennedy v Kennedy* at paragraph 36:

> *"(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 when 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 unconscionableness) 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 a … judgment whether it would be unconscionable, or unjust, to leave the mistake uncorrected"*

12. Mr Sykes QC then highlighted some factors in terms of the test of unconscionability (3 and 4 above). He submitted that there were, in particular four points, which tend towards unconscionability.

    (1) But for the mistake, the transaction would not have been entered into;

    (2) The mistake has ultimately led to the imposition of a substantial sum of tax or a sum of tax which represents a large proportion of the trust's property;

    (3) The intended result could have been reached by an essentially similar transaction without encountering the problem associated with the mistake; and

    (4) Where the mistake relates to the tax consequences of a transaction, the fact that the transaction was not an artificial form of avoidance tends towards the unconscionability of denying the relief.

13. As he also reminds me, the fact that granting the relief sought would have the effect of reducing a tax liability on the part of the disponer does not by itself render it inappropriate to exercise the discretion in favour of Dr Abadir.

<u>Factual background</u>

14. Dr Abadir is an Egyptian national. He was born in Cairo on 6 January 1964. He undertook his bachelor and master's degrees at the American University in Cairo. I am

told that it is highly improbable that he ever lost his domicile of origin, and he has been domiciled for non-tax purposes at all times in Egypt.

15. Dr Abadir sets out his academic career in his witness statement. I will summarise that as follows. He came to the United Kingdom for the first time to study at the University of Oxford in September 1986 and was admitted to the MPhil degree programme. He was accepted as a full DPhil student in June 1989. From 1993 until 2017, he worked in the United Kingdom as an academic. Dr Abadir was senior lecturer and reader at the University of Exeter, chair and senior professor at the University of York, chair at Imperial College London, where he became emeritus professor on 1 April 2017, and he retains an honorary role at the Imperial College Business School for life. From September 2017 to May 2018, he has held the position of Distinguished Visiting Professor of Economics at the American University in Cairo.

16. Whilst Dr Abadir was working in the United Kingdom, he was able to live comfortably, from his salary. His father had bought him a flat in York and then later a flat in London, in which he lived. He was able to live rent free and his UK salaries funded his living expenses and in the end generated a small amount of savings, which have now been depleted. The Trust fund, and now Dr Abadir's father's inheritance, are his capital and present source of income.

17. Dr Abadir has had a long and full career in economics, specifically in econometrics, which is the adaptation of statistical and mathematical methods to the specialised context of economics. He has never studied and has no detailed knowledge of UK tax law. As Dr Abadir observes, just because he is an academic specialising in financial econometrics:

> *"It does not follow that I ought to be able to understand complex tax legislation. I am as reliant upon expert advice as any other taxpayer"*

18. Dr Abadir describes his family background and the source of the funds for the Trust. He says that his paternal grandfather was a senior judge in the Court of Cassation, his family had land and other possessions in Egypt. Dr Maher, who had originally trained as a medical doctor, went into business with his older brother, who is an engineer, in the 1940s. At paragraph 32 of his witness statement he says,

> *"My father was one of the most respected and trusted businessmen in Egypt for more than half a century. He never had any political affiliation or contacts with any of the presidents. The money he made was not made quickly."*

19. Dr Abadir goes on to explain that Dr Maher wanted to provide for each of his three children, two boys and a girl, equally both during their lifetime and on his death. It is as a result of his father's generosity and Credit Suisse's advice as to how money being paid to Dr Abadir could be held that Dr Abadir is in the position that he is in.

20. I am told, and accept, that Dr Maher was in almost daily contact with Credit Suisse, having banked with them since around 1954. In 2003, Dr Maher was concerned to set up some form of structure to benefit Dr Abadir and, after advice from Credit Suisse, the Trust was settled on 12 November 2004 with an initial Trust fund of $100. Dr Maher was the protector and initially, Dr Abadir was the sole beneficiary. In 2011, Dr Maher and Dr Abadir's sister were added as beneficiaries. In March 2016, Dr Abadir's

brother was added as a beneficiary and then added as protector of the Trust on 8 June 2016, which was after the death of Dr Maher. Dr Abadir says:

> *"My siblings were added as beneficiaries of the Trust in the event of my death. I have no wife or children and they and their children are the beneficiaries of my estate in due course"*

21. The defendant is a Guernsey registered company and has been trustee throughout the life of the Trust. A few days before the coming into effect of the Trust deed on 8 November 2004, the Trustee incorporated a wholly owned subsidiary company, Daxi Techs Ltd in the Bahamas. Nothing turns on this for the purposes of the claim. There are a number of additions to the Trust, which the defendant permitted, they were made over time by Dr Maher or Dr Abadir. As Dr Abadir makes clear in his evidence, Dr Maher was an egalitarian and so he made similar payments or equivalent compensations to each of his three children.

22. In 2004 or 2005, Dr Abadir contributed the initial Trust fund of $100 and then the sum of $16,807,109.86. Dr Maher contributed directly the sum of around £2million, although that was distributed shortly thereafter and I do not need to go into that for the purposes of this judgment.

23. The evidence sets out the distribution of the Trust property that took place from 2009 onwards and I am told that the remainder of the Trust property was distributed per a deed of termination, save for a residual sum of £69,696, which remains Trust property and is held in the client account of Taylor Wessing, solicitors who acted both for Dr Abadir and for the defendant. For obvious reasons, as a result of this case, they clearly found themselves in conflict and could not continue to act. Dr Abadir says that all additions to the Trust were made through an account with Credit Suisse.

24. This case concerns one specific transfer that I have referred to. Dr Abadir made that transfer into the Trust and so he is treated as the settlor for tax purposes. This gave rise to the IHT liabilities. Ironically, given that it was money provided to him by Dr Maher, had Dr Maher paid that sum directly into the Trust, the issue would not have arisen as Dr Maher lived in Cairo, and has never been a UK resident, actual or deemed, for tax purposes.

25. By way of further background, Dr Maher died intestate in Cairo on 28 November 2015 leaving three adult children. Dr Abadir says in his evidence[1] that:

> *"Under Sharia law, which governs inheritance in Egypt, men receive twice as much as women. Wills are not valid if they do not comply with Sharia law and therefore my father had no intention of drawing up a will. The Trust was part of my father's estate planning, since we all received more or less equal amounts in life"*

And he goes on to say that:

> *"As regards my father's assets on death, as we are a Coptic family, we decided to share the estate equally, although there has been a change in the law since then"*

[1] Paragraph 60.

The estate is made up of cash, shares and a half share in a flat in Monaco, Dr Abadir's mother owning the other half share.

The claim

26. Turning to the claim and dealing first with mistaken belief. What is clear from the evidence and what underpins the transaction in question is the mistaken belief that no adverse UK tax consequences would arise from the use of this offshore Trust vehicle and that Dr Abadir would only incur tax liabilities if he remitted funds into the UK. It was as a result of Dr Maher's close business connection with Credit Suisse that he discussed with Credit Suisse, effectively, estate planning. I am satisfied on the evidence that Dr Maher specifically asked about the tax consequences of the proposed planning in a letter dated 17 November 2003 in which he expressed the desire to discuss the legal and tax aspects of the contemplated trust. Miss Salzmann from Credit Suisse had specifically reassured Dr Maher that it was a service that Credit Suisse offered.

27. What the correspondence shows before the inception of the Trust is that Dr Maher specifically sought advice on whether the creation of the Trust was a sound tax vehicle. That is clear from various emails I have been taken to and, in particular, there is an email of 7 November 2003 from Credit Suisse responding to Dr Maher's concerns, noting that the proposed scheme would be an effective tax plan which involved the superimposition of an estate plan. So I am satisfied that Credit Suisse understood that they were trying to achieve an estate plan.

28. In order to do that, they had to carefully consider the UK Gift Tax implications. From the evidence, it is clear that the purpose was to form a tax efficient structure. There is reference to estate planning in the documents, to concerns raised by Dr Maher and an agreement that Credit Suisse would provide or obtain advice . What is also clear from the contemporaneous documents is that the advice would have to cover, and did indeed cover, the issue of Dr Abadir's domicile, and more specifically, the deemed domicile rules.

29. Mr Sykes QC has summarised this in his submissions as follows. The tax analysis behind the planning has specifically considered the deemed domicile rules and understood that Dr Abadir was approaching the 17-year period for IHT domiciliation purposes. The implication of this was that Credit Suisse would need to look at an alternative structure, irrespective of pending changes to the domicile legislation. In fact, those changes did not take place and Mr Sykes QC specifically refers me to an email from Credit Suisse dated 25 July 2003 and observes this:

> *"Despite understanding the application of the deemed domicile rules or how they applied to Dr Abadir, the same email concluded as a preliminary proposal, which was subsequently adopted, that a Guernsey trust should be established into which Dr Abadir would settle offshore assets."*

30. Mr Sykes QC also submits that the attention paid to this element of the tax planning is also clear from the continued correspondence between Credit Suisse and Dr Maher on the proposed changes in the legislation. For example, in an email of 8 April 2004 from Dr Maher to Andre Herr, he says:

> *"Many thanks for your email dated 7 April 2004. Should be grateful if you asked Mr Ferguson to give us his comments re: the changes that might touch our case"*

Because there was a concern that there was going to be a change in the law.

31. The email from Andre Herr to Dr Maher dated 13 April 2004 says:

> *"I've just received an email by one of our trust officers stating that the rules to residents' non-domiciled did not change, only changes on pre-earned assets which will impact from next year. A mail will fo[l]low which I expect to receive this week"*

So, the correspondence proceeds specifically on the basis that Dr Abadir's deemed domicile, and the rules that apply to that for IHT purposes by implication, would not be problematic.

32. In fact, the concern that they might need to move quickly with matters had already been allayed in an email dated 25 July 2003 from Charitos Leonidas to Ms Salzmann, which was forwarded to Dr Abadir and Dr Maher,

> *"Based on what you've told me, it looks like [Dr Abadir] has only been a tax resident of the UK for about ten years. This is great, because it means we may not have to hurry in our planning (as opposed to his having been a tax resident for 16 years)."*

33. In fact, as Mr Sykes QC has explained to me in the course of his submissions, this wrongly assumed that a 1993 break in which Dr Abadir was a diving instructor in Egypt effectively reset the clock for the tax rules, (so that it reset the clock for the 17 out of 20-year rule), and that was wrong.

34. The evidence from Dr Abadir is that he was fully aware of the advice being received by Dr Maher in relation to the trust structure. He often himself reviewed correspondence and indeed, his witness statement is mainly derived from his own personal knowledge of events at the time.

35. So, whilst Dr Maher was the main point of contact for the advisors for Credit Suisse, it is clear that Dr Abadir understood the advice that was being sought, why it was being sought, understood the nature and purpose of the advice and was aware of the substantive conclusion of the advice from a tax perspective. What underpins the subsequent inception of the Trust is that Credit Suisse advised that the proposed structure would not give rise to adverse UK tax consequences.

36. Dr Abadir says at paragraph 46 of his witness statement, and this is in relation to the correspondence that I was specifically taken to by Mr Sykes QC,

> *"The correspondence referred to above is in line with my recollections. The real discussions took place between my father and Credit Suisse from July 2003 until November 2004, with Credit Suisse then liaising with the Trustee and passing back the Trustee's responses to my father throughout"*

Perhaps the statement in the email dated 29 July 2003 from Leonidas Charitos to Miss Salzmann best encapsulates the mistaken understanding, caused by Credit Suisse:

> *"If the banker splits capital from income, the son only has to pay taxes on the funds once they are in the UK"*

Dr Abadir says in his witness statement[2] that:

> *"This was my guiding rule all along. This is why I never lived off the Trust and instead relied entirely upon my UK academic salary for doing so until 2013"*

Later he says[3]:

> *"I was aware that my residence position in the early years of my presence in the United Kingdom was relevant to this UK tax treatment since the point was discussed prior to the creation of the Trust, although I did not know that the significance lay in relation to Inheritance Tax specifically"*

37. Dr Abadir says that the meeting with Credit Suisse for him to sign the Trust deed took place in Zurich and almost certainly, on 24 September 2004; he remembers he was on a sabbatical term at university in Lucerne and he recalls taking a train to Zurich to meet his parents there. He says that he believes the defendant signed subsequently, so that is why the Trust was formally set up on 12 November 2004.

38. It was only after the death of Dr Maher that the error in this case has become clear. What is obvious from the evidence is that the Trust was established on the erroneous understanding that it would be an excluded property settlement for IHT purposes because Credit Suisse were wrong with their analysis of how the deemed domicile rules applied to Dr Abadir.

39. Dr Abadir says in his evidence that the reason for the IHT arising is that he became UK resident and therefore deemed domiciled for IHT purposes, which occurs after 17 years of residence, and this was earlier than was assumed in the discussions with Credit Suisse. He says that in his early years in the United Kingdom, which started in 1986, he was studying for a MPhil at the University of Oxford but spending a considerable amount of his time in Egypt.

40. However, in 1987 / 1988, he developed a tumour near his ankle and required surgery and so that led to him being in the United Kingdom for longer than he would otherwise have been. In fact, he ended up spending just over 183 days in the United Kingdom for medical reasons. Dr Abadir did not appreciate that this would probably cause him to be UK resident, and all of this has been set out in extremely full and frank disclosure to HMRC. and what he says is:

> *"At all times from 2004 and prior to undertaking the Disclosure exercise, I believed that I was non-UK tax resident in the early years of my presence in the UK, such that I would not have become UK deemed domiciled for IHT purposes before 6 April 2005"*

[2] Paragraph 40.
[3] Paragraph 43.

It was this erroneous belief which led to him reporting in his early tax returns and accompanying tax forms that he first became resident in the United Kingdom for tax purposes in September 1993.

41. At paragraph 54 he says,

> *"I also had no appreciation of the fact that I would be liable to pay UK tax on income arising under the settlement, whether in the UK or abroad, as settlor of the Trust. Such liability to UK tax could easily have been avoided, for instance by electing for the remittance basis of taxation."*

When Dr Abadir appreciated the correct position he voluntarily reported himself to HMRC. His evidence is that, had he known the true position as regards IHT, he would not have contributed any money into the Trust, rather he would have retained the funds and avoided the IHT charges which have been incurred, and he says at paragraph 55,

> *"Since I am non-UK domiciled, I would have been entitled to the remittance basis of taxation on overseas income or gains which would have been perfectly adequate."*

42. Dr Abadir makes clear that throughout his time in the United Kingdom, he has filed UK self-assessment tax returns in respect of his employment earnings, his interest and royalties. He prepared those, which I fully accept, entirely honestly and based on a legitimate assumption as to his domicile and how he should account for his tax.

43. So, what has precipitated the error being discovered? That is the death of Dr Maher. In early March 2016, Dr Abadir approached Taylor Wessing to seek UK tax advice in respect of his share of Dr Maher's intestate estate. In April 2016 the first hint of a problem started emerging and Taylor Wessing then started to ask Dr Abadir detailed questions about his residence.

44. In early 2016, following an analysis of Dr Abadir's tax residence position, it became apparent that there had been an error in how Dr Abadir's tax records were accounted for. The Trust was subject to various undisclosed and unpaid IHT charges as a result of Dr Abadir being deemed domiciled in the United Kingdom for IHT purposes when the Trust was established in 2004. In addition there are chargeable lifetime transfers in respect of monies going into the Trust, ongoing charges while the property was held in the Trust, ten-year charges and exit charges.

45. Dr Abadir engaged accountants, Saffery Champness, and on their advice, he sought to amend his 2014 / 2015 tax return, complete his 2015 and 2016 tax return and prepare a report for HMRC under the worldwide disclosure facility procedure, the WDF. His disclosure included under-reported income tax and capital gains tax liabilities arising to him personally in connection with the Trust for prior years.

46. As I have indicated and is set out as an appendix to the claim form, that has meant that there have been charges in the region of £4.6 million unnecessarily incurred by Dr Abadir and that he has settled monies said to be owed to HMRC. HMRC had not raised any enquiries into the Trust and so it has been as a result of Dr Abadir being completely transparent, having discovered this error, and with the support of his advisors, providing proper reports to HMRC.

47. On the evidence, Dr Abadir was advised that he had in fact been tax resident in the UK since the start of the 1987 / 88 tax year. He had first become deemed domiciled in the UK for IHT purposes from the 2003 / 2004 tax year, having by that time spent and had been tax resident in the United Kingdom for 17 out of 20 tax years.

48. And so, the consequent impact upon the Trust is that, as settlor, he was deemed domiciled for UK IHT purposes. That meant that IHT charges arose when the monies was transferred into the Trust and every ten years and on exit. Dr Abadir remained UK resident until the end of the 2016 / 17 tax year, having ended his employment on 31 March 2017, and ceased to be UK resident for tax purposes on 5 April 2017.

49. On 15 June 2017, following what Dr Abadir says was a huge amount of work on the part of Taylor Wessing, Saffrey Champness and himself, and I have no doubt of that, not helped by a lack of disclosure by Credit Suisse in this matter, he submitted a disclosure report to HMRC in respect of his own liabilities. HMRC raised queries, a supplemental report was submitted on 23 May 2018, then a further disclosure report in respect of the IHT liabilities and the Trust were submitted on 26 September 2017. Queries in relation to that were addressed by Saffery Champness and they sent further information on 8 March 2018 and 18 April 2018.

50. All of this was unprompted from a voluntary disclosure on the part of Dr Abadir and HMRC has accepted the calculations provided by Dr Abadir and, in relation to his own personal liability, he offered, and it was accepted by HMRC, additional amounts to be paid. As to the additional IHT liabilities, they have also been paid.

51. It is also worth bearing in mind, in terms of Dr Abadir's transparency, that, absent full disclosure from Credit Suisse, Dr Abadir took a pragmatic approach to dealing with disclosure and he, with advice from his advisors, decided he would pay income tax and CGT on the basis that he was the contributor of all the funds, ignoring the role of Dr Maher and the funds contributed by him. That increased his liabilities, but it made matters much simpler, and IHT was calculated on this basis.

52. I have also touched upon the fact that Dr Abadir's siblings are now beneficiaries and involved with the Trust and he says, in relation to that, at paragraph 70,

> *"If this claim to set aside my transfer is effectively successful, I will not claim against my brother or the Trustees with respect to Trust property or anything else. I am not seeking the repayment of any of the fees paid to the Trustee in relation to its management and my brother and sister have also confirmed to Seddons [Dr Abadir's solicitors] that they are content for the set aside to occur."*

There are letters in the bundle formally recording the siblings' position.

53. When Dr Abadir says in his evidence at paragraph 72 that:

> *"I have sought at all times to act with absolute honesty and integrity, both in the conduct of my tax affairs throughout my period of tax residence in the United Kingdom and in how I have dealt with them since the error in the underlying basis of the Trust came to light in early 2017"*

I entirely accept that evidence. It is very clear that Dr Abadir has been transparent, fully frank and assisted the tax authorities in this country.

54. Dr Abadir has also said that he has considered the position of Credit Suisse in all this. I am told there may be insuperable issues with limitation periods arising out of the application of the Swiss code of obligations which may prevent him from bringing a claim against Credit Suisse in Switzerland.

55. This feeds into a point that I will go on to mention and that is bars to recission and delay. One might wonder, at first blush, what has been happening in the interim if this error started to bubble up in April 2016. However I am satisfied that Dr Abadir was not told about the potential for bringing this claim until April 2019, when his current legal advisors provided him with a number of options for the way forward, one of which was to set aside the Transfer.

56. So, stepping back and looking at the evidence in this case, and what Dr Abadir needs to satisfy in order to have a voluntary disposition set aside for mistake, there is no question in my mind that there was a distinct mistake in this case. It was the mistake on the part of Credit Suisse that led to the Trust being set up in the structure that it was. It led to Dr Abadir transferring funds into the Trust in the mistaken belief that he would not incur the substantial liabilities that he has been faced with in relation to transferring money. Ironically that money was given to him by Dr Maher, had the money been transferred directly by Dr Maher to the Trust Dr Abadir would not have incurred the substantial liabilities that he has incurred.

57. I am satisfied that the mistake here, which is the operation of the deemed domicile rules and the way that they have worked in this case, with an immediate charge to IHT, is a relevant mistake for the purposes of the claim before me.

58. Is the mistake sufficiently grave to render retention unconscionable? The sole purpose behind this transaction was to put in place a structure for effective estate planning and the IHT charges in this case are at odds with the purpose of the disposition. Had Dr Abadir both at the inception of the Trust and the subsequent Transfer understood the true IHT position, I am satisfied that the Trust would not have been established.

59. As a result of the error caused by Credit Suisse, there have been significant tax consequences for the Trust. I am told, and accept, that the tax plus interest plus penalties stands at around £4.6 million for a transfer that was actually, as at March 2005, $16,807,109.86, sterling equivalent of £8.85 million. So, the Transfer has left Dr Abadir in a very significantly financially worse position, and indeed the beneficiaries of the Trust as a class.

60. To use the words of HHJ Hodge QC in the case of *Hartogs v Sequent (Schweiz) AG* [2019] EWHC 1915 (Ch), the imposition of the trust structure in these circumstances is, *vanilla tax planning."* It is not an artificial form of avoidance against which public policy would militate against setting aside the Transfer.

61. Mr Sykes QC, very properly, has taken me through potential bars to recission in his submissions. I have also considered any third-party rights that might be affected. Pursuant to the Instrument of Appointment, Indemnity and Termination dated 13 June 2019, Loan Receivables were held on trust for Dr Abadir's brother, amounting to some £2.9 million as at 13 June 2019, and the remaining assets within the Trust were held

on trust for Dr Abadir save for £435,000 which was to be retained to cover anticipated UK IHT liability.

62. The fact that the Trust has now distributed most of the assets is not necessarily a bar to the availability of recission. Indeed, that was the position in *Pitt v Holt* itself, where almost all of the trust assets were distributed before it came before the court and rescission of the transfers into the trust was still ordered.

63. Mr Sykes QC also referred me to *Wright v National Westminster Bank plc* [2014] EWHC 3158 (Ch) as to how third-party rights acquired under a trust are to be treated. Norris J at paragraph 25 analysed that the property is treated as having been held by the settlor at all times. So where a third party has received funds from the trust during its existence the transaction is imputed to the settlor. As further explained in *Bainbridge v Bainbridge* [2016] EWHC 898 where the trust has dealt with third parties, rescission is still available but continues in respect of the property which results from those transactions, not the original property. Applying that reasoning any distributions received by Dr Abadir's brother during the lifetime of the Trust and upon its termination are imputed to Dr Abadir and treated as if they were gifts made by Dr Abadir. Where funds contributed by Dr Abadir were used to acquire investments, it is those investments to which the remedy attaches.

64. I have touched on the doctrine of laches. It simply does not arise in this case. I cannot begin to imagine the complexity of trying to unravel the background to this case without full disclosure and full documentation. There has been no delay between discovering the mistake and bringing the claim to court in my view. Even if I am wrong on that, then I accept the point that Mr Sykes QC makes about the need for detrimental reliance for the doctrine of laches really to bite. There is no detrimental reliance stemming from any delay and I am not satisfied, even on the factual background, that there has been any delay.

65. So, which would probably be rather obvious from the tenor of this judgment, I allow the claim. The order of the court is that the Transfer is set aside.

66. I have also considered whether the court should seek any reassurance from Dr Abadir about the recovery of tax because, under section 150 of the Inheritance Tax Act, he is entitled to repayment of sums. I have looked in detail at the witness evidence and the supporting correspondence and the reports prepared and filed on behalf of Dr Abadir with HMRC. I am satisfied on the evidence that Dr Abadir has been upfront and transparent with his dealings with HMRC. There is no reason not to accept his evidence, particularly at paragraph 77 of his witness statement when he says:

> *"I confirm that I shall be willing to enter into full and frank discussions with HMRC with regard to all and any matters arising from the set aside of the Trust should the court accede to my application and to pay any tax due. Indeed, the Trust would not make any application to recoup the IHT due until the complete tax position had been agreed.*
>
> *I am advised that if the application to set aside the transfers is granted, my income tax position would appear to be largely unchanged, apart from potentially some timing differences in the first years post 2008 / 2009. However, the CGT position would increase materially as a result of differences in the way gains are taxed for settlors of non-resident trusts,*

which is more favourable than if the gains had been realised by the settlor personally"

67. I am also told by Mr Sykes QC that HMRC would be able to set off the sums due to Dr Abadir from those that need to be paid by him and I also note that he retains assets in the jurisdiction, so whilst I gave serious consideration to whether the Court needed any reassurance from Dr Abadir, I am satisfied that is not necessary in this case.
