

Trust hall of fame – Top 10 trust cases in the last 10 years

Presented by

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The application of the *Hastings-Bass* principle

Pitt v Holt, Futter v Futter [2013] UKSC 26

- **Facts**

- Trustees had received erroneous tax advice from professional advisers, leading to actions which resulted in adverse tax consequences
- The cases succeeded under the principle in *Hastings-Bass* initially but were subject to a conjoined appeal to the Supreme Court by HMRC

- **Decision**

- For a trustee to rely on *Hastings-Bass* their failure to consider only relevant matters must constitute a breach of fiduciary duty
- Despite the tax advice being wrong, the Trustees in this case could not be in breach of trust as they had considered the tax consequences
- Therefore, they could not rely on *Hastings-Bass* to set aside their actions

The impact on offshore jurisdictions

The Fallout of Pitt v Holt

- Statutory enactments made in multiple jurisdictions – including Jersey, Bermuda and the British Virgin Islands
 - Jersey: *Re the L Trust* [2017] JRC 191
 - Bermuda: *Re F Trust, Re A Settlement* [2015] SC (Bda) 77 Civ
- Guernsey does not have statutory *Hastings-Bass* which has resulted in the Guernsey Courts following *Pitt v Holt*
 - *M v St Anne's Trustees* (unreported) 21/2018 GCA

Slido poll

- **Should Guernsey amend its trust law to introduce statutory *Hastings-Bass*?**
 - Yes
 - No

Does the substratum rule exist? or continue to exist?

Grand View Private Trust Company Ltd. v Wen-Young Wong and others [2022] UKPC 47

- **Facts**

- Trustee had attempted to exclude all the beneficiaries of a family trust and appoint a purpose trust as sole beneficiary
- On appeal from Bermuda, it was argued on multiple grounds that the Trustee had acted wrongly by excluding them and appointing a purpose trust as beneficiary

- **Decision**

- There is no absolute “*Substratum Rule*”
- Despite acting within the scope of its powers, the Trustee had used powers outside of their intended purpose, breaking the “*proper purpose rule*”
- The Court could use its discretion in determining the proper purpose of the Trust considering the trust instrument, circumstances of its creation, and letters of wishes not post-dating the trusts creation

The key takeaways of *Grand View*

- It is key that a settlor's intention is made clear and recorded in a letter of wishes prior or alongside the signing of a trust instrument
- A trust instrument should reflect a settlor's specific intention and not rely on generic wording
- When discerning the purpose of a trustee's power a beneficiary's best interest cannot be ignored but does not alone determine the purpose for which the power has been given
- It is important to make blessing applications in relation to monumental decisions and the purpose of the trust should be a factor in deciding whether to apply
- The substratum of a trust is important when considering the purpose of a power but there is no absolute "substratum rule"

Anti-Bartlett clauses - residuary high level supervisory duty

Zhang Hong Li v DBS Bank [2019] HKCFA 45

- **Facts**

- A company held on trust had suffered large investment losses through poor trading by a beneficiary given control over the company's investments
- An “anti-bartlett clause” excusing the Trustee from monitoring, overseeing and being involved in the affairs of the company was in place

Anti-Bartlett clauses - residuary high level supervisory duty

Zhang Hong Li v DBS Bank [2019] HKCFA 45

- **Decision**

- An “anti-bartlett clause” excusing the Trustee from monitoring, overseeing and being involved in the affairs of a company could not be negated by a “high level duty”
- There was no residual obligation or high-level duty to supervise the company’s affairs stemming from reasonableness of performing such a role
- It would undermine the parties’ agreement to impose a supervisory duty and create uncertainty and risk

Personal liability of Trustees – insolvent trusts

Investec Trust (Guernsey) Limited v Glenalla Properties (Guernsey) Limited [2018] UKPC 7

- **Facts**

- Jersey Law Trust with Guernsey based Trustees
- The Trust was “insolvent”
- Were the Trustees personally liable?

Personal liability of Trustees – insolvent trusts

Investec Trust (Guernsey) Limited v Glenalla Properties (Guernsey) Limited [2018] UKPC 7

- **Decision**

- A32 of the Trusts (Jersey) Law 1984 acts in such a way as to split a trustee's legal personality as a legal entity and its legal personality as a trustee
- Creditors are only entitled to claim from the trust fund and there is no personal liability to a trustee
- Creditors of the trust are limited to claiming through subrogation of a trustee's right to be indemnified out of the trust fund
- If the trust fund is depleted, a trustee's liability is discharged
- Whilst not identical to A32, section 42 of the Trusts (Guernsey) Law, 2007 would be interpreted in the same way

Recovery of Trustees fees – priority

Equity Trust (Jersey) Ltd v Halabi (executor) and ITG Ltd v Fort Trustees Ltd [2022] UKPC 36

- **Facts**

- Both cases on joint appeal involved “insolvent trusts”
- Addressing the priority amongst former and current trustees

- **Decision**

- A trustee’s right of indemnity gives a proprietary interest in the form of an equitable lien that survives transfer of trust assets to a new trustee
- In the case a trust can satisfy its liability to all trustees the debt ranks according to when it was created
- A trustee’s equitable lien ranks above other creditors with a right to the trust fund through A32
- In the case the trust assets were insufficient to meet all of a trustee’s liabilities their interests ranked equally (*pari passu*)
- A trustee’s indemnity extends to proving its claim against the trust fund even if the trust fund is ‘insolvent’

Disclosure of information – by Beneficiaries

Re R & RA Trust (unreported) GCA 25/2014

- **Facts**

- The Trustee was proposing to partition the Trust Fund between two groups of beneficiaries, but the true value of the Trust Fund was disputed
- One group of beneficiaries had access to documents which the Trustee did not have access to
- In the first instance the Trustee's application for disclosure was denied, but one of the other beneficiaries appealed

- **Obiter on appeals**

- It was first noted that the Trustee had not appealed the denied application on the grounds of Salmon LJ's judgement on the appeal of *Londonderry*
- The Court made it clear a trustee had the right and a responsibility to appeal a denied application where it thought it was in the interest of the beneficiaries
- A trustee could not be denied indemnity for reasonably appealing

Disclosure of information – by Beneficiaries

Re R & RA Trust (unreported) GCA 25/2014

- **Decision on disclosure**

- Beneficiaries do not owe a duty to trustees, but the Court could order disclosure under section 68 and 69 of the Guernsey Trust Law in certain circumstances:
- Where provision of information from a beneficiary is in the interest of the beneficiaries as a whole
- The information withheld is thought to be important by the trustee to properly carry out its fiduciary duty
- There was a sufficiently close connection between the beneficiary disclosing and the information requested to reasonably assume they had access to it
- In this case, only information originally requested by the beneficiary was ordered to be disclosed, additional information sought by the appealing beneficiary was not

Disclosure of information – to Non-Beneficiaries

BX v T Limited [2024] GRC 036

- **Facts**

- Two separate stepfamilies, an Offshore Family and a US Family
- The US Family applied for disclosure of Trust Information from the Offshore Family's Trust for tax purposes
- The applicants submitted they had a strong case to be added as beneficiaries of the Offshore Family's trust and therefore the Court should order disclosure

- **Decision**

- The Royal Court has jurisdiction to order disclosure in favour of non-beneficiaries
- A non-beneficiary would need a “sufficiently strong moral claim” to be added as a beneficiary to satisfy the Court disclosure was required for the proper administration of the trust
- In this case, the Court could not justify intervening with the Trustee's discretion

Saunders v Vautier, Section 53 of the Guernsey Trust Law

Rusnano Capital AG (in liquidation) v Molard International (PTC) Limited and Pullborough International Corp [2019] GCA 077

- **Facts**

- The sole beneficiary of the trust applied under section 53(3) of the Guernsey Trust Law to have all trust assets appointed to him
- The trust contained a provision allowing the Trustee to add any person or class of persons as beneficiary

- **Decision**

- Common law development of *Saunders v Vautier* did not effect the interpretation of the statute
- A power to add beneficiaries does not create potential beneficiaries if it is unspecific and non-identifying, only potential objects of the power
- It was correct to say all the beneficiaries are in existence and have been ascertained

Forum of administration and exclusive jurisdiction

Crociani v Crociani [2014] UKPC 40

- **Facts**

- A clause in the Trust Instrument provided that on a change of trustee:

“thereafter the rights of all persons and the construction and effect of each and every provision hereof shall be subject to the exclusive jurisdiction of and construed only according to the law of the said country which shall become the forum for the administration of the trusts hereunder”

Forum of administration and exclusive jurisdiction

Crociani v Crociani [2014] UKPC 40

- **Decision**

- “Forum” could potentially refer to the courts with exclusive jurisdiction, but could also refer to the place a trust is administered
- The words “exclusive jurisdiction” did not refer to the courts with jurisdiction over the Trust but to the governing law to be applied to all aspects of the Trust
- A trustee can enforce an exclusive jurisdiction clause, but the clauses carry less weight than in a contract between contracting parties
- An exclusive jurisdiction clause could be disregarded under the Court’s supervisory jurisdiction but only if there was good reasons to do so
- The Court does not have “freewheeling unfettered discretion” to intervene in the administration of a trust and must ensure it uses that power to protect the best interest of the beneficiaries

Scope of Protectors' powers and duties

Wide View: Re the Piedmont Trust and the Riviera Trust [2021] JRC 248

- **Facts**

- A corporate Protector had denied the Trustee's request for consent to distribute all the assets of the trust to the beneficiaries
- They did so on the grounds it was against the settlor's letter of wishes

- **Decision**

- The protector had "wide" powers as they are bound by a fiduciary duty, and to properly carry out that duty they needed to use discretion
- The settlor created the office of protector intending it to act as more than a "rubber stamp" on trustee decisions in cases where no specific intention was outlined
- The Protector's role could not be compared to the Court's supervisory jurisdiction and could veto a decision the Court found to be reasonable
- The Protector was not a "joint decision-maker" and should never put conditions on or use ultimatum in issuing its consent

Scope of Protectors' powers and duties

Narrow View: *Re the X Trust [2023] CA (Bda) 4 Civ*

- **Facts**

- The beneficiaries of a group of trusts sought clarification on the scope of the Protector's powers under the trust instrument as a change to the trust structure was going to be undertaken in the near future and required protector consent

Scope of Protectors' powers and duties

Narrow View: *Re the X Trust [2023] CA (Bda) 4 Civ*

- **Decision**

- Upholding a previous BSC decision, the Protector had “narrow” powers
- “with prior written consent” could not be construed as imparting a discretionary power of review on the Protector without explicit intention otherwise
- The Protector had a similar jurisdiction to the Court, and it was unreasonable to deny consent where a Court would bless a decision
- The Protector could not fetter the absolute discretion of the Trustee, where the trust instrumented provided the Trustee should liaise with the Protector in decision making it was merely part of the Trustee’s relevant considerations
- The Protector is only an enforcer with respect to the terms of the trust instrument

Slido poll

- **Would Guernsey adopt the “wide view” or “narrow view”?**
 - **Wide**
 - **Narrow**

Non-binding guidance and blessing applications

In the matter of SG Kleinwort Hambros Trust Company (CI) Limited [2023] JCA 088

- **Facts**

- In a case where one group of beneficiaries had a subjective loss of trust and confidence in the Trustee the Court gave “non-binding guidance” with respect to splitting the fund in the judgement of another application
- This “non-binding guidance” was the subject of an appeal

- **Decision**

- The lower Court’s decision to give “non-binding guidance” was a case-management decision and no “non-binding guidance” had been given that could be appealed
- The non-intervention principle was non-binding on the Court, and the Court has jurisdiction to intervene with a trustee’s discretion in certain circumstances
- It would require extreme circumstances for the Court to allow an appeal against a lower court’s case-management decision

“Immunity” following blessing applications

Denaxe Ltd v Cooper [2023] EWCA Civ 752

- **Facts**

- Receivers selling on behalf of Denaxe had sold assets after receiving a category 2 *Public Trustee v Cooper* blessing on the sale fiduciaries in respect of the assets
- Denaxe brought a claim that the receiver had breached its fiduciary duty by selling the assets at an undervalue
- The Court strongly implied these rules apply to blessings issued to trustees

- **Decision**

- Whilst there was no “immunity” under English law existing legal principles around litigation applied to provide protection against claims
- Issue estoppel applies where the Court determined an issue as part of the blessing application
- Abuse of process applied to prevent a party from re-litigating where they had been party to the blessing

Slido poll

- **Which case do you believe was most important in developing legal theory?**
 - *Pitt v Holt, Futter v Futter*
 - *Grand View Private Trust Company Ltd. v Wen-Young Wong and others*
 - *Zhang Hong Li v DBS Bank*
 - *Investec Trust (Guernsey) Limited v Glenalla Properties (Guernsey) Limited / Equity Trust (Jersey) Ltd v Halabi (executor) and ITG Ltd v Fort Trustees Ltd*
 - *Re R & RA Trust*
 - *Rusnano Capital AG (in liquidation) v Molard International (PTC) Limited and Pullborough International Corp*
 - *Crociani v Crociani*
 - *Re the Piedmont Trust and the Riviera Trust / Re the X Trust*
 - *In the matter of SG Kleinwort Hambros Trust Company (CI) Limited*

Slido poll

- **Which case do you believe was most important in terms of its practical effect on legal and fiduciary practice?**
 - *Pitt v Holt, Futter v Futter*
 - *Grand View Private Trust Company Ltd. v Wen-Young Wong and others*
 - *Zhang Hong Li v DBS Bank*
 - *Investec Trust (Guernsey) Limited v Glenalla Properties (Guernsey) Limited / Equity Trust (Jersey) Ltd v Halabi (executor) and ITG Ltd v Fort Trustees Ltd*
 - *Re R & RA Trust*
 - *Rusnano Capital AG (in liquidation) v Molard International (PTC) Limited and Pullborough International Corp*
 - *Crociani v Crociani*
 - *Re the Piedmont Trust and the Riviera Trust / Re the X Trust*
 - *In the matter of SG Kleinwort Hambros Trust Company (CI) Limited*



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Questions

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