Guernsey Court of Appeal provides avenue of escape to tax advisors and trustees

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The long awaited judgment of the Guernsey Court of Appeal in M v St Annes Trustees has now been handed down.

For background see our previous article Two islands, two courts, two laws - and two different approaches to Hastings-Bass.

On appeal, neither party challenged the decision of the Royal Court that Guernsey law should follow Pitt v Holt, rather they focused on arguing that there was a breach of fiduciary duty and that the Royal Court should have exercised its discretion to grant relief.

The Court of Appeal therefore proceeded on the assumption (but without expressly deciding) that Guernsey law was as Pitt v Holt.

The Court of Appeal noted there were differences in view as to whether the duty of adequate deliberation by a trustee (which encompassed a duty to exercise reasonable skill and care) was or was not a fiduciary duty, but that it was clear that the Court of Appeal and Supreme Court in Pitt v Holt were of the view that the duty was a fiduciary duty, such that a breach of duty would be a breach of fiduciary duty. This was also consistent with section 22 of the Trusts (Guernsey) Law, 2007.

Given nothing turned on the distinction for the purpose of the application of the Hastings-Bass principle, they did not decide the point, though proceeded on the basis that the duty of adequate deliberation was a fiduciary duty.

The Court of Appeal disagreed with the Royal Court that there must be a causal connection between the breach of duty and the actual transaction, because once a breach of trust was established, the court had jurisdiction to avoid the transaction if it felt it was the appropriate form of relief.

The Court might decide there was no need to avoid a transaction if no prejudice or loss had been caused, but that would be a matter pertaining to the discretion of the court in deciding whether to grant relief, and not a pre-condition for its jurisdiction to be engaged.

The Court of Appeal found the Royal Court had erred in holding that a transaction which was voidable because of a breach of trust may only be set aside when unconscionable not to do so because: (i) there was no previous decision in any jurisdiction suggesting that unconscionability was the test; (ii) there was no suggestion in Pitt v Holt this was the test; (iii) there was good reason for differentiating between the Hastings-Bass principle and the equitable law of mistake, referring to the example of a gift of property and (iv) the Hastings-Bass jurisdiction had a very different foundation as it arose only on a breach of trust, a prejudiced beneficiary should not have to additionally show unconscionability. Thus, the Court of Appeal declined to import into the principle the test of unconscionability.

The Court of Appeal further held: (i) once a breach of trust (by breach of duty) was established, the court had discretion to grant relief by set aside, and there was no 'extra hurdle' or 'something more' required; (ii) there was no requirement for an 'extreme' case before the court would exercise its discretion (the Royal Court had read too much into the word 'aberrant;); (iii) the Royal Court should not have taken into account, when deciding how to exercise its discretion, the four policy grounds identified in Pitt v Holt, as to do so was to take the observations out of context – it was an inevitable consequence of the existence of the Hastings-Bass jurisdiction that a beneficiary might well be in a better position than an ordinary individual – this had already been fully taken into account by reining in the principle by imposing the requirement for breach of duty and so should not be taken into account a second time; (iv) the court should not re-visit the seriousness of the breach when deciding whether to exercise its discretion; and (v) it would be a very rare case where the court, when considering the exercise of its discretion, should take into account the possibility of a claim against professional advisers. If it is, the weight given to it should be small.

The Court of Appeal ultimately exercised a new discretion to set the transaction aside.

Conclusion

The Court of Appeal emphasised that in the absence of any adversarial argument, they had not decided that Guernsey law should follow Pitt v Holt. This effectively means that it is still open to the Royal Court to find, in another case, that Guernsey law does not follow Pitt v Holt. However, we consider this possibility is remote due to the strength in numbers of the decisions in HCS trustees Limited and Another v Camperio Legal and Fiduciary Services Plc [Unreported, 30th June 2015] and in Re The Aylesford Trust [27th February 2018]. Instead what the Court of Appeal has done is clarify the law as set out by Pitt v Holt on the basis that each case is to be determined on its own facts and ultimately it is up to the Court to decide, in the exercise of its discretion (without any guidelines as to how that discretion should be exercised) as to whether the relief sought should be granted.

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Key Contacts

Mathew Newman

Partner

Guernsey

E: mathew.newman@ogier.com

T: +44 1481 752253

Abby Brown

Advocate & Professional Support Lawyer

Guernsey

E: abby.brown@ogier.com

T: +44 1481 752247

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