Neutral Citation Number: [2020] EWHC 1049 (Ch)

Case No: PT-2019-BRS-000100

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

Bristol Civil Justice Centre
2 Redcliff Street, Bristol, BS1 6GR

Date: 01/05/2020

Before :

HHJ PAUL MATTHEWS
(sitting as a Judge of the High Court)

- -

Between :

(1) MICHAEL HAMILTON BOWACK	**Claimants**
(2) ANN JENNIFER BOWACK	
- and -	
CLAIRE VERA SAXTON	**Defendant**

- -
- -

Christopher Jones (instructed by **Veale Wasbrough Vizards LLP**) for the **Claimants**
The Defendant did not appear and was not represented

Hearing date: 17 March 2020

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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HHJ Paul Matthews :

Introduction

1. This is my judgment on a claim made by claim form under CPR Part 8, issued on 19 November 2019, and heard before me on 17 March 2020. Each of the two claimants (who are married to each other) seeks relief as settlor of a trust of an investment bond issued by AXA Isle of Man Limited in circumstances where it has appeared to be unclear whether the relevant trust has been completely constituted, or alternatively rectification of relevant documents so that such constitution has been properly made. The defendant, who is the daughter of the claimants, and a potential beneficiary of the trusts which they have sought to create, has filed an acknowledgement of service, dated 25 November 2019, in which she states that she does not intend to contest the claim, but indeed supports it. She neither appeared at the hearing nor was represented.

2. On 11 December 2019 DJ Watson directed that the claim be served on HM Attorney General and HMRC, requiring each to file an acknowledgement of service by 27 January 2020. Both were served. Neither has filed an acknowledgment. I proceed on the basis that neither wishes to oppose the relief sought or to participate in the proceedings. At the hearing before me on 17 March 2020 I directed that notice of the claim be served on AXA Isle of Man Ltd (now called Utmost Wealth Solutions Ltd) and Hargreaves Lansdown Ltd under CPR rule 19.8A. Each has responded expressing no objection to the relief sought, and declining to take part. Accordingly, the evidence in support of the claim is unchallenged.

3. In outline, the claim is this. Each of the claimants was advised by an independent financial adviser to set up an AXA offshore bond which would be subjected to discretionary trusts for the benefit of a class of potential beneficiaries, including the defendant. The claimants were not included as objects or beneficiaries of either trust. But they and their daughter (the defendant) were to be the trustees of the trusts of each bond. Each bond was for the value of £325,000, which as I understand it was the then upper limit of the nil rate band for inheritance tax purposes. The bonds were issued, but there is a question as to whether the trusts intended to be created were ever properly constituted. The claimants seek a declaration that each of their two trusts was properly and completely constituted, or alternatively rectification of the relevant documents so as to make them conform with the true intentions of the two settlors.

The evidence

4. The unchallenged evidence in this claim is contained in four witness statements. The first is a substantial witness statement of the first claimant made on 14 November 2019, together with one exhibit. The second is a short witness statement of the second claimant dated the same date, and which merely confirms the truth of what is stated in the first claimant's witness statement. The third is a short witness statement of the defendant dated 25 November 2019, in which she says that she supports the claim made by the claimant's and confirms her willingness to be appointed as a representative beneficiary in relation to all the potential beneficiaries of both trusts. The fourth is a second witness statement of the first claimant dated 1 April 2020, which exhibits copies of the two bonds which were purchased, and also two pieces of correspondence from AXA Isle of Man Ltd. No witnesses were cross-examined before me.

The facts

5. The first claimant is a retired accountant, and the second claimant, his wife, a retired magistrate. They are both in their 70s. They have one child, the defendant, who is now aged about 45. She is married with two children. The first claimant has no siblings. The second claimant has a brother who has a son (*ie* the second claimant's nephew).

6. The evidence establishes that in 2013 claimants took advice from Hargreaves Lansdown Advisory Services Ltd, and in particular from Paul Coyle, a Chartered Financial Planner. He wrote an initial letter of advice to the claimants dated 10 December 2013, accompanied by a detailed report, and a supplemental letter dated 12 December 2013 accompanied by a further report. The initial advice was to create a trust of an AXA financial product worth £750,000 for the benefit of the defendant absolutely, and to take out life assurance in the value of £1 million (to pay out on the second death) again on trust for the defendant absolutely. The supplemental advice was to change the absolute trust for the defendant to a discretionary trust in relation to which the defendant was one of the class of beneficiaries, and the claimants and the defendant would be trustees.

7. In the light of this advice the claimants agreed each to set up an AXA Offshore Bond, which would be subjected to discretionary trusts of which the claimants and the defendant would be trustees. On 29 January 2014, there was a meeting between the claimants on the one hand and Mr Coyle on the other. At that meeting each of the claimants signed a hand-completed standard application form headed "AXA Isle of Man Limited Evolution" (attaching a cheque for £325,000) for the issue of the bond, and a completed trust form headed "AXA Isle of Man Limited Discretionary Trust."

8. The former document is a standard form application for the issue of a bond. On the first page there are a series of notes, one of which reads:

> "**Identification requirements**
>
> Under Isle of Man Anti-Money Laundering regulations, we are required to verify the identity and address of each applicant."

Section C of the form asks for details of the applicant. In both forms this section is fully completed. The first claimant is the applicant in, and has signed, one form, and the second claimant is the applicant in, and has signed, the other. Neither form mentions Claire Bowack.

9. The latter document is also a "one size fits all" standard form, which consists partly of printed text and partly of boxes to complete. This is largely a "tick-box" exercise, very different from traditional bespoke trust documents. In itself this does not matter, if all the relevant trust law rules are otherwise followed. Section A contains what is headed "Settlor's declaration":

> "The Settlor named in part B3 is hereby declares that from the Effective Date, the Trust Fund defined in part B2 will be held by the Trustees subject to the Trust Provisions set out below. The Trust shall be irrevocable."

10. The reference to the "Effective Date" is a reference to paragraph B1 (headed "Effective Date") in the definition section B. This begins with the words "This Settlement is made on …" And then there follows a box, in which the date is evidently to be written. A note in the margin reads "Please leave blank – to be completed by AXA Isle of Man". The claimants left it blank, as instructed. Unfortunately, in each case it is still blank.

11. That is not the only omission in the trust documents. Paragraph B2 says:

> "The 'Trust Fund' is comprised of the property described below.
>
> (a) All policies contained within the following bond
>
> (b) and any other property transferred to the Trustees to hold on the terms of this Trust, and
>
> (c) all property representing the above."

Immediately following the word "bond" at the end of (a), there is a large box to be completed, with these prompt details: "company", "contract type", "date of application for a new contract", and "contract number". In the margin there is a note against this box reading "Please leave blank where this is a new contract – it will be completed by AXA Isle of Man". Once again, the claimants did as they were told, and left it blank. Once again, however, in each form it is still blank.

12. On the other hand, in each case paragraph B3 ("The Settlor") of the form *has* been completed, to show the first claimant as the settlor of one trust, and the second claimant as the settlor of the other. Paragraph B4 ("the Trustees") has also been completed in each form. This shows that the claimants and the defendant are intended to be the three trustees of each trust.

13. Section B5 is headed "The Potential Beneficiaries". This excludes the settlor, but otherwise includes the settlor's descendants, current or former spouses or civil partners, siblings and their children, will beneficiaries, intestacy beneficiaries, any descendant's current or former spouses or civil partners, and any children of any spouse of the settlor. It also includes:

> "Any person or a charity not already included in the categories above, and other than the Settlor, whose name has been notified to the Trustees in writing by the Settlor during the Settlor's lifetime as being the person the Settlor wishes the Trustees to consider as a Potential Beneficiary."

14. Section C is headed "Trust provisions". Paragraph C1 provides as follows:

> "Where the Trust Fund or any part of the Trust Fund consists of a bond, the Settlor hereby assigns all the policies referred to in part B2, and all proceeds and benefits attached to the said policies to the Trustees jointly to hold subject to the trusts and powers and provisions set out in this Deed."

15. Paragraph C2 confers a number of powers and discretions upon the Trustees. These include an overriding power of appointment amongst the Potential Beneficiaries, a power of accumulation of income, a power to apply income or capital for the benefit

of any beneficiary, a power to pay benefits to a minor's parent or guardian. Subject to those powers and discretions, there are default trusts in favour of such of the Potential Beneficiaries as a living at the end of the Trust Period, if more than one in equal shares, but if none then for such charities as the Trustees determine.

16. Paragraph C11 provides

> "This Settlement will be governed by the laws of England and Wales."

Accordingly, English and Welsh law will apply to decide whether the trust deeds are valid and create valid trusts: see the Recognition of Trusts Act 1987, s 1(1) and Schedule, articles 6 and 8. There is, however, no provision as to jurisdiction for deciding any disputes. Since the claimants and the defendant are all resident in England, it is clear that, although the subject-matter of the intended trusts consists of bonds issued by an Isle of Man company, the English court has jurisdiction: see *Ewing v Orr-Ewing* (1883) 9 App Cas 34, 46.

17. The trust form is described throughout as a 'Deed'. Indeed, the signature clause (section D) begins with the words "IN WITNESS the parties have executed this deed on the day and year first above written". The reference to the last few words is another reference back to paragraph B1 (headed "Effective Date") in the definition section B, which, as I have already explained, has been left blank, so that no "Effective Date" is expressed in the document. A further omission is that although the document is in each case signed by the claimants and the defendant, and the signatures of the claimants have been witnessed, the signature of *the defendant* is not witnessed in either case. It is not clear from the evidence as to when the defendant signed the forms. Since Mr Coyle signed the forms as the witness for the claimant's signatures, I infer from this that he was not present at the time that the defendant signed the forms, otherwise he would have added his signature to attest her signatures too.

18. As is well-known, section 1(3) of the Law of Property (Miscellaneous Provisions) Act 1989 provides that:

> "An instrument is validly executed as a deed by any individual if, and only if –
>
> (a) it is signed –
>
> (i) by him in the presence of a witness who attests the signature; or
>
> (ii) at his direction and in his presence and the presence of two witnesses who each attest the signature; and
>
> (b) it is delivered as a deed by him or a person authorised to do so on his behalf."

19. The evidence (which I accept) is that the defendant's signature was not witnessed because Mr Coyle told the claimants that he would deal with that. Accordingly, although the trust forms are validly executed as deeds by the claimants, they are not validly executed *as a deed* by the defendant. Moreover, this would be the case even if Mr Coyle had subsequently arranged for another person to append his or her signature to the form purportedly to attest the signature of the defendant, *unless* that person was

present at the time that the defendant actually signed (which I infer was not the case). Notwithstanding the absence of attesting witnesses' signature, Mr Coyle submitted the documents to AXA Isle of Man Limited on 30 January 2014. As it happens, the missing signatures mean only that the documents are not deeds made by *the defendant*. They can still be deeds *made by others*. And, as she is not by virtue of the trust forms purporting to do anything which can *only* be done by deed, the omission probably makes no difference in trust law terms. But it is sloppy behaviour, all the same.

20. On 13 February 2014 AXA Isle of Man Limited wrote to Hargreaves Lansdowne to point out the failure to witness the signature of the defendant on the trust forms. They said:

> "We appreciate the time taken to complete the Deeds, however we are unable to proceed with placing the policy into Trust at present as we require Ms Claire Bowack's signature to be witnessed by an independent person.
>
> We will also require a certified copy of Ms Claire Bowack's current valid passport and address verification in accordance with the enclosed requirements."

The letter was sent by an administrator in the "Policy Servicing Department".

21. No explanation was given by AXA Isle of Man Limited at the time as to why the failure to have the defendant's signature witnessed should prevent the policy issued from being subjected to a trust of which the trustees were intended to be the claimants and the defendant, who had already expressed their consent so to act (rather than, for example, AXA Isle of Man Limited, which had not). Nor was any explanation given to why a copy of the defendant's passport and a verification of her address were needed before the trust could come into existence, again given that AXA Isle of Man Limited was not intended to be a trustee. I come back to this issue later.

22. Notwithstanding the sending of the letter of 13 February 2014, the two cheques that had been sent to AXA Isle of Man Limited had already been cashed and the bonds applied for issued, under reference numbers HZR2000823 (second claimant) and HZR2000824 (first claimant). The bonds (which were not in evidence at the hearing but were supplied at my request subsequently) were purchased separately, one in the name of the first claimant and one in the name of the second claimant. Two letters dated 4 February 2014 from AXA Isle of Man Ltd, one to each claimant, make clear that each bond was issued to the particular applicant alone. However, the reference numbers for the bonds (which appear on the letters and on the bonds themselves) were not recorded on the trust forms.

23. It is not clear from the evidence as to how and when exactly the problem was discovered. But the evidence goes on to say that, at an unstated but more recent date, the claimant's solicitors wrote to AXA Isle of Man Limited about the trusts, and were told by that company that if the bonds were

> "to be transferred into the trusts then they would require a copy of the trust deeds, the identification documents for the trustees and a tax declaration".

I do not understand the reference to "a copy of the trust deeds" since the originals were sent to, and acknowledged by, them in early 2014. Nevertheless, I accept the evidence that all the information required has now been sent to AXA Isle of Man Limited. I should also say that the bonds are expressed (by clause 12.3 in each case) to be governed by Manx law rather than English law, and the parties agreed (by the same clause) to submit "any dispute" to the exclusive jurisdiction of the courts of the Isle of Man. There is nothing in the evidence to show whether or not this was explained to the claimants. But in the end nothing turns on it.

24. Clause 11.5 of each bond provides (so far as material):

> "Any assignment must be registered in writing at our Headquarters and will be subject to the agreement of the Company (such agreement not to be unreasonably withheld or delayed) and that you supply any necessary paperwork or other requirements necessary to enable the Company to fulfil its legal and regulatory obligations."

Given that paragraph C1 of the standard form trust deed issued by the same company expressly contemplates – and, in some cases actually operates as – an assignment of the bond, this provision is plainly not meant to prevent assignment generally. In any event, however, there is nothing in either bond which deals with the question of *declaring a trust of* the bond, either imposing a prohibition or restriction, or requiring any particular formalities for it to be created or notification of its creation to AXA Isle of Man Ltd.

Principles of construction

25. It was not discussed at the hearing, but in passing I will say something about the principles of construction. The well-known principles of interpretation for commercial documents (*Investors Compensation Scheme v West Bromwich Building Society* [1998] 1 WLR 896, 912-3) also apply to trusts and wills: see for example *Marley v Rawlings* [2015] AC 129 (construction of a will); *Millar v Millar* [2018] EWHC 1926 (Ch) (construction of a family trust); and *Armstrong v Armstrong* [2019] EWHC 2259 (Ch) (construction of a family trust).

26. In Lord Neuberger's words in *Marley*,

> "23. In my view, at least subject to any statutory provision to the contrary, the approach to the interpretation of contracts as set out in the cases discussed in para 19 above is therefore just as appropriate for wills as it is for other unilateral documents."

What that means is that

> "19 … the court is concerned to find the intention of the party or parties, and it does this by identifying the meaning of the relevant words, (a) in the light of (i) the natural and ordinary meaning of those words, (ii) the overall purpose of the document, (iii) any other provisions of the document, (iv) the facts known or assumed by the parties at the time that the document was executed, and (v) common sense, but (b) ignoring subjective evidence of any party's intentions."

Discussion

27. First of all, I have to say that, given that the matters which I have set out above are not everyday corner-shop transactions for pennies, but life-changing estate planning exercises which involve hundreds of thousands of pounds, I am not very impressed with the documentation supplied to the claimants, or the way it has been handled. Indeed, the 'one size fits all', 'tick-box' nature of the forms, and the unduly formalistic (and legally ignorant) approach of the professionals involved are profoundly worrying. Nevertheless, the parties are where they are. Two questions accordingly arise. The first question is whether, on the facts as set out above, trusts were ever constituted of the bonds which that company issued (and, if so, who are the trustees). The second question is whether any of the documents in the case may be rectified by the court on the basis that they do not accurately record the intentions of those who made them, with a view to the complete constitution of the trusts of the bonds as advised by Mr Coyle and intended to be created by the claimants.

28. It is convenient to begin with the two sums of £325,000 which was sent by the claimants to AXA Isle of Man Limited. On the evidence it is clear that the claimants were not making a gift of the money to that company, and neither were they paying it with a view to that money being held on trust by that company for their intended beneficiaries. Instead each claimant was paying the money to AXA Isle of Man Limited in return for the issue of the bond – a financial obligation – to him or her. On any view, the person to whom each bond was issued was one of the persons intended to be trustees of them under the trust forms.

29. I referred earlier to two blanks in the trust deeds. One related to the "Effective Date". A failure to express the date on which the trust is constituted is not fatal to its validity. It is sufficient that it was constituted. Here, it is clear that the applicants (the claimants) intended that their bonds be subjected to a trust as soon as issued. Accordingly, if the trust was properly constituted on or shortly after issue, that is the date on which it takes effect.

30. The other problem was the failure to identify the particular trust property in the trust deeds by inserting the bond numbers in them. Of course, the applicants for the bonds would not have known them until they were allocated on issue by AXA Isle of Man Ltd. But it is not necessary for the validity of the trusts that the numbers be inserted, as long as the relevant property can be identified from the circumstances. I had to consider just this point in another case recently, *Armstrong v Armstrong* [2019] EWHC 2259 (Ch). One of the problems that arose in that case (another case of selling trusts as mere financial products) was that, as here, the issuing company had not inserted the reference number of the policy in the trust document.

31. I said:

> "43. … This Trust Schedule formed part of an application by Mrs White [the settlor] to the life assurance company for the issue of a policy on the lives of Mr and Mrs White. Assuming that the application was successful (as indeed it was) and the policy was issued to Mrs White, *that* is the policy which is held on trust. She will have received and retained the policy document, and the relevant policy can therefore be identified. If a settlor hands over banknotes to a trustee to hold on trust for others, the terms of the trust, taken in their context, must identify the

> trust property (for example, 'You will hold these notes on trust for…'), but it is not necessary to state the serial numbers of the notes. It is true that the company has also written a number on the Trust Schedule. But that was for its purposes, rather than Mrs White's. Even if there were no policy number at all, it would still be obvious which policy was concerned. …"

32. So the failure to insert the bond number in the trust deed does not prevent the trust from taking effect, if the bond can be identified as the relevant trust property. In the present case it can, and so there is no problem of uncertainty of subject-matter.

33. In principle, there is nothing to stop a person to whom a bond of this kind has been issued from declaring that he or she holds it on trust for specified beneficiaries. Such a trust can be declared orally, because it does not concern land (*cf* the Law of Property Act 1925, section 53(1)(b)). But it can also be made in writing, and certainly does not require to be made by deed. It would be the same if the settlor were to make a deposit with a bank, and declare (whether orally or in writing) that the deposit account were held on trust for third parties.

Restriction on creating trusts?

34. As I have said, there is nothing in the evidence to suggest that the terms of the bond included any prohibition on declarations of trust of such bonds, or even that any formalities had to be gone through before such trusts could be effective. Indeed, given that these bonds are sold by the Isle of Man company *specifically* in order to be settled on trust for the benefit of third parties, any such prohibition would make little or no sense at all. However that may be, in an email dated 5 March 2019 from Alexandra Bell, described as the "Senior Welcome and New Business Administrator" at Utmost Wealth Solutions Ltd (formerly AXA Isle of Man Ltd), to Victoria Harman of Hargreaves Lansdown, she said:

> "At the time the two mentioned policies were established, our standard procedure was to obtain the following:
>
> – Completed Application form
>
> – Completed Trust Deed
>
> – AML requirements for the Settlor and Trustees
>
> – Premium (from settlor)
>
> Upon receipt of the above, I can confirm that we would have had no further involvement from the Settlor before adding the policy number and dating the deed."

35. Then, in an email from Utmost Wealth Solutions Ltd dated 17 April 2020 to the claimants' solicitors, its "Technical Services Manager", Simon Martin, says

> "I note that the witness statements provided do not make reference to the fact trust deeds were not initially processed as Claire Bowack's signature (the third trustee) had not been witnessed, nor had she provided the relevant AML [anti-

> money laundering] documents required (address and ID verification). You will note this omission on exhibit MHB1.
>
> It is our understanding that for Claire Bowack to be validly appointed as a trustee the signature must be witnessed and this, together with the outstanding AML, is why we could not process this initially. I understand that chase requests with respect to these omissions were sent to HL at the time of application. The fact the date and policy number was omitted is therefore due to the fact the process never completed, i.e. we would have completed the deeds have these points been cleared off.
>
> To clarify, is the view being taken that, given the settlor's were declaring themselves as trustees of the trust the trust was correctly constituted in this respect despite the lack of witness signature for Claire Bowack? Are we to assume that Claire is still to be included as a trustee?
>
> Whilst we would have no objection to the proposed course of action these outstanding issues re Claire Bowack as trustee would still need to be satisfactorily closed off in order to satisfy our legal and regulatory requirements."

36. In passing, it will have been noted that there is nothing in the application form for the bonds about anti-money laundering regulations affecting anyone but the applicant himself or herself. In particular, there is no mention of any such requirements in relation to *trustees*.

37. It is clear on the authorities that a prohibition on assignment of a debt or other financial obligation is not at all the same as a prohibition on declarations of trust of that debt or obligation. In *Re Turcan* (1888) 40 ChD 5, a marriage settlement contained a covenant by the settlor to settle any property to which he should become entitled during the marriage. He later purchased some life assurance policies, one of which is subject to a condition that "it should not be assignable in any case whatever". The Court of Appeal held that the effect of the condition against assignment was merely to mean that it could not be assigned *at law*. Cotton LJ (with whom Lindley and Bowen LJJ concurred) said (at p 10):

> "But though he could not assign the policy, I think it would have been a sufficient compliance with the covenant if he had executed a declaration of trust for the trustees of the settlement…"

In other words the covenant against assignment did not prohibit a declaration of trust of the policy.

38. In *Don King Productions Inc v Warren* [2000] Ch. 291, CA, the question was whether the partnership agreement between the parties to bring into the partnership the benefit and burden of existing promotion and management contracts with boxers had any effect on existing contracts which expressly prohibited assignment. Morritt LJ (with whom Aldous and Hutchison LJJ agreed) said:

> "26. … I agree with the judge that *In Re Turcan*, 40 ChD 5, 10, shows clearly that the court will protect the interests of those contractually entitled to have the benefit of an inalienable asset before the fruits of the asset have been realised. In

> that case … the court gave effect to the intention of the parties by means of a declaration of trust. But, it is objected, the existence of such a trust would enable one partner to interfere in the management of the personal contract made by a third party with the other partner. I do not agree. The other partner cannot insist on rendering vicarious performance of personal obligations arising under the contract. Rules and procedures designed to enable a beneficiary to sue in respect of the contract held in trust for him would not be applied so as to jeopardise the trust property."

39. In the present case, the only relationships which AXA Isle of Man Limited has are with the settlor (who paid for the issue of the bond) and the person to whom the bond has been issued (who in this case was the same person). AXA Isle of Man Limited is the *debtor* under the bond, and the person to whom it has been issued, the holder of the bond, is the *creditor*. When and if the bond comes to be realised, AXA Isle of Man Limited will pay the holder of the bond, and is not normally concerned to know anything about the beneficiaries of any trust that may have been declared. Where the holder of the bond is the same person as the applicant, there is no third person involved at all, and since the debtor company has carried out its anti-money laundering regulatory duties in relation to the applicant there is nothing further to be done.

Third party trustees

40. However, where the bond is intended to be held on trust for others, and the trustees include a person or persons other than the applicant, there will normally be an assignment of the bond to the trustees. It is exactly this which is contemplated by the standard form trust deed by clause C1. As I have said, this deed is expressed to be governed by English law. Under section 136 of the Law of Property Act 1925, a chose in action (such as a bond of this kind is) can be assigned at law to a third party if it is absolute and in writing under the hand of the assignor, and express notice in writing is given to the debtor. The bonds in this case are expressed to be governed by Manx law, but the assignment itself is contained in the (English law) trust deed. In any event, in the absence of any suggestion that the law there is different I proceed on the basis that on this point Manx law is the same as English law. It is therefore unnecessary for the assignment of the bond to the trustees to be made in a *deed*. Signed writing will do. So the absence of a witness for Claire Bowack's signature was on any view quite irrelevant.

41. But it is to be observed that, in this case, *the applicant* for each bond signed the trust deed. And that deed was expressed in clause C1 to operate as an assignment of the bond by the applicant once issued. So, in considering whether there was a valid assignment to the defendant, it is the *applicant's* signature that matters. The defendant's signature (let alone a witness for it) was completely unnecessary in law. If it mattered, the applicant in each case signed "as a deed" and his or her signature *was* witnessed, and this would comply with the relevant English law formalities for a valid deed. But, as I have said, a deed was not necessary anyway. Accordingly, I conclude that the assignment of the bonds once issued to the trustees was effective and valid under English law.

42. It may be that, under the terms of the relevant anti-money laundering or regulatory law, it would or might have been unlawful for the debtor to pay the sum due on the

bond on maturity to anyone in respect of whom it did not have the relevant anti-money laundering information. I do not know. But that does not affect the *constitution* of the trust. At worst, it might slow down the realisation of the proceeds in due course.

Alternative argument

43. In case am wrong about that, and somehow the assignment to the other trustees was ineffective, I go on to consider the position if each of the bonds was issued to its respective applicant, but never transferred further to the other trustees. In such a case the *applicant* would be the legal owner of the bond, having entered into a trust deed, by which that applicant and others were to hold it upon trust for the benefit of third parties. It is an elementary principle of English trust law that, in order for a trust of property to be validly constituted, one of two things must happen. Either the owner of the property must declare a trust, whereby that owner becomes trustee, or that owner must transfer the property to another person to hold on trust for the beneficiaries. This is known as the rule in *Milroy v Lord* (1862) 4 De G, F & J 264, and is a staple of trust law examinations. But in the present case the facts are not quite so simple. The applicant for the bond certainly intended to become a trustee of it, *but with others*, and the mechanism adopted was for the bond to be assigned by the applicant to the trustees jointly. The question is whether this set of facts satisfies the rule in *Milroy v Lord*.

44. In *T Choithram International SA v Pagarani* [2001] 1 WLR 1, PC, the deceased, having provided for his extended family, and being terminally ill, wished to create a foundation for charitable purposes. This would take the form of a trust, of which he and several others would be trustees. He, and later other trustees, executed the foundation trust deed, and declared that he had given all his wealth to the foundation. But no transfer of the shares registered in his name ever took place before he died. It was argued that these facts did not satisfy the rule in *Milroy v Lord*. This contention was successful, both at first instance and on appeal, in the British Virgin Islands.

45. On appeal to the Privy Council, Lord Browne Wilkinson said (referring to the deceased by his initials, 'TCP'):

> "31. … Although the words used by TCP are those normally appropriate to an outright gift – 'I give to X' – in the present context there is no breach of the principle in *Milroy v. Lord* if the words of TCP's gift (*ie* to the Foundation) are given their only possible meaning in this context. The Foundation has no legal existence apart from the trust declared by the Foundation trust deed. Therefore the words 'I give to the Foundation' can only mean 'I give to the Trustees of the Foundation trust deed to be held by them on the trusts of Foundation trust deed'. Although the words are apparently words of outright gift they are essentially words of gift on trust.
>
> 32. But, it is said, TCP vested the properties not in *all* the Trustees of the Foundation but only in one, *ie* TCP. Since equity will not aid a volunteer, how can a court order be obtained vesting the gifted property in the whole body of Trustees on the trusts of the Foundation. Again, this represents an over-simplified view of the rules of equity. Until comparatively recently the great majority of trusts were voluntary settlements under which beneficiaries were volunteers

> having given no value. Yet beneficiaries under a trust, although volunteers, can enforce the trust against the trustees. Once a trust relationship is established between trustee and beneficiary, the fact that a beneficiary has given no value is irrelevant. It is for this reason that the type of perfected gift referred to in class (b) above [that is, a declaration of trust by the settlor] is effective since the donor has constituted himself a trustee for the donee who can as a matter of trust law enforce that trust.
>
> 33.What then is the position here where the trust property is vested in one of the body of Trustees *viz* TCP? In their Lordships' view there should be no question. TCP has, in the most solemn circumstances, declared that he is giving (and later that he has given) property to a trust which he himself has established and of which he has appointed himself to be a Trustee. All this occurs at one composite transaction taking place on 17th February. There can in principle be no distinction between the case where the donor declares himself to be sole trustee for a donee or a purpose and the case where he declares himself to be one of the Trustees for that donee or purpose. In both cases his conscience is affected and it would be unconscionable and contrary to the principles of equity to allow such a donor to resile from his gift. … "

Accordingly, the appeal was allowed, as the trust was completely constituted even with only one of the intended trustees holding the property.

46. In the present case, the position is similar. Each of the first two claimants, as applicant, desired to act as a trustee of the bond issued to him or her, in company with other trustees. On the assumption (contrary to what I have held) that the assignment to the other trustees was ineffective, nevertheless each of them executed a deed of trust intending to subject the bond to the particular trusts in favour of third parties. In the circumstances, even if there were no effective assignment to the other trustees, the trust would still be completely constituted with that applicant as trustee, although if it was still desired to appoint the other persons trustees, that would have to be carried out later. However, as I have already held that the assignment to the other trustees was effective, and the trust thereby constituted, there is nothing further to do. Since Utmost Wealth Solutions Ltd now have all the necessary information to satisfy their regulatory requirements, I cannot see that there is anything more for them to do either.

Rectification

47. In these circumstances, the question of rectification of the documents does not arise, and I prefer not to deal with it.

Conclusion

48. Accordingly, I hold that (1) valid and effective trusts of each of the two bonds concerned were created at the time of their issue, and that (2) there were also simultaneous valid and effective assignments of those bonds to the three trustees in each case. I will make an appropriate declaration to that effect.