[2023 Gib LR 326]

IN THE MATTER OF THE LSJ SETTLEMENT

LINE TRUST CORPORATION LIMITED (as trustee of the LSJ SETTLEMENT) v. J. SCHIMMEL and EIGHT OTHERS

SUPREME COURT (Restano, J.): April 27th, 2023

2023/GSC/019

Trusts—mistake—incorrect legal advice—deed of addition of beneficiaries set aside as based on incorrect legal advice as to tax consequences—mistake gave rise to risk of serious adverse tax consequences—manifestly unjust, unfair or unconscionable to leave mistake uncorrected

A trustee sought to set aside a deed of addition of beneficiaries.

The trust was a discretionary settlement established under Gibraltar law in 2017. It was designed to avoid tax liabilities in Israel. The first to fourth defendants were the original beneficiaries. Israeli residents were not originally listed as excluded persons but there were other trust provisions which made it clear that the trustee's powers were restricted to ensure that Israeli residents could not benefit or be added to the class of beneficiaries. According to an Israeli lawyer acting for the trustee, this meant that the trust was originally classified as a foreign resident beneficiary trust under the Israeli Tax Ordinance 1961 and not exposed to tax liabilities in Israel. The first defendant subsequently emigrated to Israel and became a new resident there at some point before April 2021.

The other defendants were added to the class of beneficiaries by the deed of addition in April 2021, and they included all of the first defendant's children and remoter issue. The beneficiaries who were added by the deed of addition were all resident in Israel when the trust was created. They had originally been excluded from the class of beneficiaries to avoid tax liabilities. When the deed of addition was executed it was believed that this was no longer an issue, but it subsequently appeared that this was based on incorrect legal advice.

The trustee considered that the deed of addition had created a new tax risk over the assets of the trust which could be as much as 25% to 33% of the trust's income. The trustee considered that it would be unconscionable for the deed of addition to remain in place, especially as the financial position of the additional beneficiaries was such that they did not need

distributions from the trust. The trustee commenced a Part 8 claim seeking to set aside the deed of addition for mistake. None of the defendants contests the claim.

Held, ordering as follows:

(1) The deed of addition constituted a transaction which enabled the trustee to invoke the court's equitable jurisdiction to apply to set it aside on the ground of mistake. The trustee had varied the trust and executed the deed of addition based on incorrect advice as to the Israeli tax consequences. This was a distinct mistake, it was not a question of ignorance or inadvertence. The court was satisfied that if the trustee had known about the tax risk to which the trust was being exposed by adding the Israeli domiciled beneficiaries, it would not have executed the deed of addition. Further, this mistake was sufficiently serious to render the transaction unconscionable. Even though the mistake gave rise to a risk which had not yet come to pass, the risk of a serious adverse tax consequence was sufficient for the court to exercise its discretion to set aside the transaction. Hypothetical projections produced by the trustee showing the tax which might be payable under Israeli law if the position was not reversed showed a potential liability of £150,000 in 2022, and over £2m. in 2023. The next question was whether it was manifestly unjust, unfair or unconscionable to leave the mistake uncorrected. No distributions had been taken by the trustee following the deed of addition. The beneficiaries who had been added were not in need of support and, in any event, did not object to the setting aside of the deed of addition. If they decided to move away from Israel, they could be added to the beneficial class in the future. Further, the barrister instructed to provide an opinion on behalf of the unborn beneficiaries supported the application. This was not one of those cases of artificial tax avoidance where the court might think it right to refuse discretionary relief on grounds of public policy. The trust was legitimately structured to ensure that it did not incur tax in Israel, and a mistake had been made in amending that trust based on incorrect legal advice. Taking all these matters into account in the round, it would be manifestly unjust, unfair or unconscionable to leave the mistake uncorrected. The mistake had created a risk which, if it crystallized, would be serious, and the trustee's aim, which was a proper one, was to preserve the trust fund from exposure to that risk (paras. 22–31).

(2) The general practice was to notify the tax authority affected by an application to set aside a transaction, although whether notification was required would be determined on a case-by-case basis. In the present case, the court was able to determine the application without the involvement of the Israeli tax authorities. The court had the benefit of the independent opinion of the barrister instructed to provide an opinion on behalf of the unborn beneficiaries which supported the application, and his conclusion that it was hard to see that the court could reach any other conclusion but that it would be unjust to leave the mistake uncorrected. This reflected the fact that this was a fairly straightforward case. It was not about a trustee

misjudging tax risks or artificial tax avoidance, but about patently incorrect legal advice on a critical issue concerning an amendment to a legitimately structured trust. Further, no tax obligation had crystallized as no distributions had been made by the trustee, and all beneficiaries agreed with the proposed reversal of the position (paras. 35–36).

(3) The court granted the application for anonymization so that the names of the eighth and ninth defendants were redacted from the judgment. The court should start from a neutral position when evaluating whether anonymity orders should be made. The evaluation required the importance of open justice to be taken into account together with all the other relevant factors in the case so that a determination could be made as to what the interests of justice required. In the present case, the eighth and ninth defendants were being excluded from the class of beneficiaries, which arguably meant that the court did not need to be concerned about redacting the names of these young children as they would no longer stand to gain from the trust. However, they could still be adversely affected by publicity concerning this judgment. They were very young children who had not chosen to litigate, and it was possible that they could be added to the class of beneficiaries again in due course. They could also be linked to a high value trust if their names appeared in this judgment, which might not be in their best interests. On balance, the proper administration of justice was best served by granting the anonymization order sought (paras. 37–40).

Cases cited:

(1) *AB* v. *Line Trust Corp. Ltd*., 2022 Gib LR 19, referred to.
(2) *AMP (UK) plc* v. *Barker*, [2000] EWHC 42 (Ch); [2001] WTLR 1237; (2000–2001), 3 ITELR 414, referred to.
(3) *Bruce* v. *SG Hambros Bank (Gib.) Ltd*., 2015 Gib LR 151, referred to.
(4) *E Settlement*, *In re*, [2022]JRC052; Jersey Royal Ct., February 28th, 2022, unreported; noted at 2022 (1) JLR *N* [5], referred to.
(5) *Kennedy* v. *Kennedy*, [2014] EWHC 4129 (Ch); [2015] WTLR 837, followed.
(6) *Klein Family Settlement*, *In re*, 2019 Gib LR 13, referred to.
(7) *Pitt* v. *Holt*, [2013] UKSC 26; [2013] 2 A.C. 108; [2013] 2 W.L.R. 1200; [2013] 3 All E.R. 429; [2013] S.T.C. 1148; [2013] Pens. L.R. 195, followed.
(8) *Q* v. *Lutea Trustees Ltd.*, [2021]JRC166; Jersey Royal Ct., June 10th, 2021, unreported, referred to.
(9) *Sternbuch Family No. 1 Trust*, *In re*, 2023 Gib LR 190, referred to.

M. Levy with *S. Marrache* (instructed by Hassans) for the claimant;
K. Navas (instructed by Kenneth Navas Barristers and Solicitors) for the first to seventh defendants;
T. Hillman (instructed by Hillmans Law) for the eighth and ninth defendants.

1 **RESTANO, J.:**

Introduction

This is a claim where the claimant, Line Trust Corp. Ltd. ("LTCL") in its capacity as trustee of the LSJ Settlement ("the trust") is seeking to set aside a deed of addition of beneficiaries dated April 13th, 2021 ("the deed of addition") which expanded the class of beneficiaries of the trust. The claim is based on mistake, and it has been commenced by way of a Part 8 claim form. The claim is supported by the first and second witness statements of Maurice Moses Benady dated March 4th, 2022 and January 6th, 2023.

2 The beneficiaries who were added to the class of beneficiaries following the execution of the deed of addition were all resident in Israel when the trust was created. They had originally been excluded from the class of beneficiaries because the trust was designed to avoid tax liabilities in Israel, and their residence in Israel was seen as a problem in this regard. For the reasons which are set out below, when the deed of addition was executed it was believed that this was no longer an issue but, as it happens, this was based on incorrect legal advice. It is for that reason that the reversal of that position is now being sought by the trustee.

3 Originally, the first to the fourth defendants, namely Jacob Schimmel ("Jacob") and three of his children were the named beneficiaries under the trust. The other defendants are the further beneficiaries who were added to the class of beneficiaries further to the deed of amendment, and they include all of Jacob's children and remoter issue. Acknowledgment of service forms have been filed by all the defendants stating that they do not contest the claim.

4 The eighth and ninth defendants who are minors were not originally named as defendants. The trustee's view was that there was no need to include them given that their father, the fifth defendant, agreed to his own exclusion, and that he was able to properly represent their interests. Following an order made on February 9th, 2023, however, the eighth and ninth defendants were ordered to be added as defendants, for their father to represent them as their litigation friend, and for Hillmans Law to act on their behalf.

5 Although the trustee originally considered that the defendants could represent the interests of their future children, it later instructed Owen Curry, a barrister at XXIV Old Buildings to provide an independent opinion on behalf of the unborn beneficiaries as to whether this application was in their interests. Mr. Curry's view is that it is in the interests of the unborn beneficiaries for the deed of addition to be set aside, even though the immediate effect of the order would be to remove them as beneficiaries under the trust.

Background

6 The trust is a discretionary settlement established under the laws of Gibraltar by deed of settlement dated August 14th, 2017. Line Trust Corp. Ltd., as trustee of the LS Settlement, was the settlor, and LTCL was named as trustee ("the trustee").

7 The trust confers on the trustee broad powers of appointment, powers of variation and the power to add and remove beneficiaries. Although Israeli residents were not originally named as excluded persons in the fifth schedule to the trust, which is where excluded persons are listed, there were other provisions making it clear that the trustee's powers were restricted to ensure that Israeli residents could not benefit or be added to the class of beneficiaries. These provisions are as follows:

(1) Clause 7(b)(iii) of the trust, which provides that no power conferred by the trust will be exercised in such a way that will enable Israeli residents as defined by the Israeli Tax Ordinance 1961 to become beneficiaries of any trust or receive funds or income, directly or indirectly;

(2) Clause 20 of the trust, which confers on the trustees the power of addition of beneficiaries but is subject to various exceptions, including, at sub-clause (v), a prohibition on Israeli residents being added to the class of beneficiaries; and

(3) Clause (10) of the second schedule, which sets out the trustee's powers to effect life assurance policies and provides that whilst the trustee can take out a policy of insurance, an Israeli resident cannot be the beneficiary of any such policy, whether directly or indirectly.

8 According to Elieser Kaplan, the Israeli lawyer acting for the trustee, this meant that the trust was originally classified as a foreign resident beneficiary trust under s.75J and s.75K of the Israeli Tax Ordinance 1961, and that it was not exposed to tax liabilities in Israel.

9 Jacob then emigrated to Israel and became a new resident there at some point before April 2021. As a new immigrant, he was exempt under Israeli law from all Israeli tax on non-Israeli income for a ten-year period. Mr. Kaplan's original view was that Jacob's new status changed the status of the trust to an Israeli residents' trust. Given Jacob's ten-year tax exemption, Mr. Kaplan originally advised that Jacob's other children could be added to the class of beneficiaries without jeopardizing the tax benefits of the ten-year rule.

10 Following Mr. Kaplan's advice, the trustee executed two deeds on April 13th, 2021 with a view to adding as further beneficiaries to the trust Jacob's other children who are resident in Israel. This was done by executing a deed of variation pursuant to the broad powers of variation conferred on the trustee under cl. 36 of the trust. This deleted cl. 7(b)(iii) and cl. 20(v),

referred to above, in their entirety and amended para. 10 of the second schedule, thereby enabling the addition of Israeli residents as beneficiaries of the trust. The trustee then executed the deed of addition adding as beneficiaries: "The children and remoter issue of Jacob Schimmel."

11 Mr. Kaplan later reconsidered his advice, and in an email to the trustees' lawyers dated July 16th, 2021, he stated as follows:

> "In my initial analysis I thought that since the trust is now considered as an Israeli Residents Trust it should have been possible to add Jacob Schimmel's children who were already residents in Israel before Jacob Schimmel's immigration to Israel as additional beneficiaries.
>
> On the basis of my initial analysis the Deed of Addition of Beneficiaries dated 13.4.2021 and the Deed of Variation dated 13.4.2021, were drafted.
>
> However, further analysis led me to the conclusion that such addition of Israeli resident beneficiaries during the 10 year exemption period under section 75k of the Ordinance may enable Israel Tax Authorities to argue that as a result of such addition of Israeli resident beneficiaries to the class of beneficiaries, the 10 year tax exemption to which the trust qualifies should be adversely affected or even canceled [*sic*]."

12 The trustee's view, therefore, is that the deed of addition based on incorrect legal advice has created a new tax risk over the assets of the trust that had not previously existed. Mr. Kaplan has quantified that this risk, if realised, could be as much as 25% to 33% of the trust's income which could be significant given that the trust has net assets of over £25m. according to the 2021 accounts. The trustee considers that it would be unconscionable for the deed of addition to remain in place in these circumstances, especially as the financial position of the additional beneficiaries is such that they do not need distributions from the trust.

13 As stated above, none of the defendants contests the claim. Further, the opinion of Mr. Curry states that it is also in the interests of the unborn beneficiaries for the deed of addition to be set aside. First, Mr. Curry refers to the fact that the unborn beneficiaries have no more than a right to the due administration of the trust, including the right to due consideration. As long therefore as the decision of the trustees to pursue this claim has been taken in good faith and after considering the relevant factors, he does not consider that the unborn beneficiaries can have a legitimate ground for complaint in the future.

14 Further, Mr. Curry considers that the risk to the trust is such that the setting aside of the deed of addition is a proper thing for the trustee to pursue. Whilst he points out that there is no evidence that the addition of the unborn beneficiaries has created a tax risk under Israeli law, he also notes that the partial setting aside of the deed of addition is not possible.

15 Mr. Curry also states that some of the unborn issue of Jacob's children who are not resident in Israel stand to be added as beneficiaries again in the future. He also says that it is not possible to discard the possibility of the other unborn beneficiaries possibly benefiting from the trust at some point in the future as they appear to be within the contemplation of the trustee as possible beneficiaries of the trust. He does not therefore consider that in the long run it can be said to be a real disadvantage to these unborn beneficiaries to be removed from the trust as they can always be added again.

16 Mr. Curry concludes that, whether or not it is strictly for the benefit of the unborn beneficiaries, the claim appears to be meritorious as the aim of the claim is to preserve the trust fund from exposure to a risk which, if it crystallizes, will be serious. Mr. Curry's view is that it is hard to see that the court could reach any other conclusion but that it would be unjust to leave the mistake uncorrected.

Legal principles

17 The principles governing the court's jurisdiction to rescind a voluntary disposition or gift made as a result of mistake were restated comprehensively by Lord Walker in *Pitt* v. *Holt* (7), and summarized by Sir Terence Etherton, C. (as he then was) in *Kennedy* v. *Kennedy* (5) as follows ([2014] EWHC 4129 (Ch), at para. 36):

> "(1) There must be a distinct mistake as distinguished from mere ignorance or inadvertence or what unjust enrichment scholars call a 'misprediction' relating to some possible future event. On the other hand, forgetfulness, inadvertence or ignorance can lead to a false belief or assumption which the court will recognise as a legally relevant mistake. Accordingly, although mere ignorance, even if causative, is insufficient to found the cause of action, the court, in carrying out its task of finding the facts, should not shrink from drawing the inference of conscious belief or tacit assumption when there is evidence to support such an inference.
>
> (2) A mistake may still be a relevant mistake even if it was due to carelessness on the part of the person making the voluntary disposition, unless the circumstances are such as to show that he or she deliberately ran the risk, or must be taken to have run the risk, of being wrong.
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> (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 an evaluative judgment whether it would be unconscionable, or unjust, to leave the mistake uncorrected."

18 The Chancellor also noted as follows (*ibid.*, at para. 39):

> "Lord Walker observed in *Pitt v Holt* at paragraph [135] that in some cases of artificial tax avoidance the court might think it right to refuse relief, either on the ground that such claimants, acting on supposedly expert advice, must be taken to have accepted the risk that the scheme would prove ineffective or on the ground that discretionary relief should be refused on grounds of public policy."

19 It is therefore clear that in order for relief to be given there must be a distinct mistake which must be serious and causative. There must then be an evaluation of the justice of the situation to determine whether the gift should be set aside. A causative mistake as to the tax consequences of a unilateral transaction may be sufficient to engage the court's jurisdiction to set aside the transaction. This is clear from a number of authorities which I reviewed recently in my judgment in *In re Sternbuch Family No. 1 Trust* (9) (2023 Gib LR 190, at paras. 20–24).

Discussion

20 The first point to consider is whether the deed of addition constitutes a transaction which enables the court's jurisdiction to be invoked. It is worth noting in this regard that the trustee's application is limited to the deed of addition because its view is that the court may not have the power to apply to set aside the deed of variation as it is arguably only an enabling deed. The trustee contends that the critical document is the deed of addition which potentially conveys a benefit to the beneficiaries named in it.

21 Although the deed of addition is not a trust itself but only an amendment to one, it is clear that this jurisdiction is not limited to voluntary settlements in the strict sense: see *AMP (UK) Ltd.* v. *Barker* (2), where the rectification of pension fund rules was allowed, and where Lawrence Collins, J. (as he then was) stated as follows (3 ITELR 414, at para. 82):

> "82. There is no reason in principle why this jurisdiction should be limited to voluntary settlements in the strict sense. As Millett J emphasised (see [1990] 3 All ER 338 at 341, [1990] 1 WLR 1304 at 1307) there is a wide equitable jurisdiction to relieve from the

consequences of mistake, and I would have decided that this would have been an appropriate case for setting aside NPI's consent for mistake."

22 Whilst it is ultimately a matter for the trustee whether the beneficiaries should benefit or not, there is a clearly stated intention to confer a benefit on the new beneficiaries under the deed of addition. The deed of addition is therefore a transaction which enables the trustee to invoke the court's equitable jurisdiction to apply to set it aside on the grounds of mistake.

23 Whether that jurisdiction can be successfully invoked then turns on the application of the equitable rules set out above to the facts of this case. In particular, this requires consideration of whether there was a distinct mistake which was serious and causative.

24 The evidence of Mr. Benady makes it clear that the trustee varied the trust and executed the deed of addition based on incorrect advice received from Mr. Kaplan as to the tax consequences in Israel of adding to the class of beneficiaries Jacob's children who live in Israel. This was a distinct mistake resulting from incorrect legal advice about the scope of Jacob's tax benefits as a new Israeli resident, and it is not a question of ignorance or inadvertence. I am satisfied that if the trustee had known about the tax risk to which the trust was being exposed by adding these Israeli domiciled beneficiaries, it would not have executed the deed of addition. There was no reason for the trustee to take this step, especially when the trust had been structured to protect it against any possible tax consequences under Israeli law.

25 Further, this mistake is sufficiently serious to render the transaction unconscionable. Even though the mistake gives rise to a risk which has not yet come to pass, the risk of a serious adverse tax consequence is sufficient for the court to exercise its discretion to set aside a transaction. This is clear from a decision of the Royal Court of Jersey in *Q* v. *Lutea Trustees Ltd.* (8) ([2021]JRC166, at para. 38). See also *In re E Settlement* (4).

26 The fact that the consequences of the mistake are serious in this case is illustrated by hypothetical projections produced by the trustee showing the tax which might be payable under Israeli law if the position is not reversed. Whilst these projections are not precise, they show a potential liability of £150,000 in 2022, and over £2m. in 2023.

27 The next question is whether it is manifestly unjust, unfair or unconscionable to leave the mistake uncorrected by taking matters in the round: see Lord Walker in *Pitt* v. *Holt* (7) (2013] 2 A.C. 108, at para. 128).

28 No distributions have been taken by the trustee following the deed of addition. Further, Mr. Benady states that the beneficiaries who have been added are not in need of support. In any event, they do not object to the setting aside of the deed of addition, even though it means that they will be

excluded if this happens. It is also worth bearing in mind that if they decide to move away from Israel, they could be added to the class of beneficiaries in the future.

29 Further, Mr. Curry's opinion on behalf of the unborn beneficiaries supports the application, and he makes the point that the aim of preserving the trust fund is ultimately beneficial. He also states that the unborn beneficiaries could also be added back to the beneficial class if it is appropriate.

30 This is also not one of those cases of artificial tax avoidance referred to by Lord Walker in *Pitt* v. *Holt* where the court might think it right to refuse discretionary relief on grounds of public policy. The trust was legitimately structured to ensure that it did not incur tax in Israel, and a mistake has been made in amending that trust based on incorrect legal advice.

31 Taking all these matters into account in the round, it seems to me that it would be manifestly unjust, unfair or unconscionable to leave the mistake uncorrected. The mistake has created a risk which, if it crystallizes, will be serious, and the trustee's aim, which is a proper one, is to preserve the trust fund from exposure to that risk.

32 There are two final issues to address. First, the fact that the Israeli tax authorities have not been served with this claim.

33 There are a number of authorities which show that notifying HMRC, or even joining it as a defendant in cases where the reversal of a transaction has a UK tax implication, has become fairly standard in recent years in the courts of England & Wales following HMRC's involvement in *Pitt* v. *Holt*. This practice also appears to be generally followed in Jersey, and in Gibraltar where HMRC has generally been notified where there is a UK tax angle: see for example *Sternbuch Family No. 1 Trust* (9) where HMRC was notified but did not apply to be joined or comment on the claim, and *Bruce* v. *SG Hambros (Gib.) Ltd.* (3) where HMRC was notified and it asked the court to consider in detail the judgment of Lord Walker in *Pitt* v. *Holt*. *In re Klein Family Settlement* (6) was a rectification case where the court was satisfied that on the facts of that particular case HMRC did not need to be served.

34 Although HMRC participated in *Pitt* v. *Holt*, there are many occasions where HMRC will decline the opportunity to participate in proceedings, and where it may limit itself to simply drawing to the court's attention a relevant authority or the correct legal test to be applied. In any event, notifying HMRC is a practice which is to be welcomed. For a start, this may well ensure that HMRC is bound by a court order and the tax consequences which flow from it. Further, hearings of this sort can often turn out to be one-sided affairs, even when parties are separately

represented. As HMRC will usually stand to lose revenue if the mistaken disposition is reversed and thus has an interest, it may be able to provide adversarial arguments from which the court can benefit. Generally, therefore, in cases where there is a UK tax angle, the interests of justice will usually require HMRC to be served in cases of this sort.

35 This case, however, does not have any UK tax implications and so HMRC is not relevant and it is the Israeli tax authorities which have a possible interest in the proceedings. Although Israeli tax authorities may well not be as familiar with these types of applications as HMRC is, that in itself would not be a reason to depart from the general practice of notifying the tax authority affected by the application for the reasons set out above. Ultimately, however, even though courts will incline towards requiring notification, whether this is required is a matter to be determined on a case-by-case basis.

36 In this case, my conclusion is that the court is able to proceed to determine this application without the involvement of the Israeli tax authorities. For a start, the court has the benefit of Mr. Curry's independent opinion which supports the application, and his conclusion is that it is hard to see that the court could reach any other conclusion but that it would be unjust to leave the mistake uncorrected. This reflects the fact that this is a fairly straightforward case. The trust was structured from the outset to avoid any tax liability in Israel, and the deed of addition was executed following incorrect legal advice which put this at risk. This is not therefore a case about a trustee misjudging tax risks or artificial tax avoidance, but it is about patently incorrect legal advice on a critical issue concerning an amendment to a legitimately structured trust. Further, no tax obligation has crystallized as no distributions have been made by the trustee and all the beneficiaries, including the new beneficiaries and unborn beneficiaries, agree with the proposed reversal of the position even though it means being excluded from the class of beneficiaries.

37 The other issue to address is the application for anonymization made by Mr. Hillman so that the names of the eighth and ninth defendants are redacted from the judgment. Mr. Hillman's application was supported by all the parties.

38 This application was made on the grounds that the eighth and ninth defendants are minors, and that they could be adversely affected by publicity. Mr. Hillman referred to *AB* v. *Line Trust Corp. Ltd.* (1), although he accepted that the context in which that decision arose was different from the present case. In *AB*, Dudley, C.J. exercised the power to anonymize the names of beneficiaries of a trust for various reasons including the fact that beneficiaries who were not involved in the contentious litigation which gave rise to that judgment could be adversely affected by publicity.

39 As the Chief Justice held in *AB*, the court should start from a neutral position when evaluating whether anonymity orders should be made. This evaluation requires the importance of open justice to be taken into account together with all the other relevant factors in the case so that a determination can be made as to what the interests of justice requires.

40 In this case, the eighth and ninth defendants are being excluded from the class of beneficiaries. This arguably means that the court does not need to be concerned about redacting the names of these young children as they will no longer stand to gain from the trust. That, however, is not the end of the matter as these minors could still be adversely affected by publicity concerning this judgment. They are very young children who have not chosen to litigate, and it is possible that they could be added to the class of beneficiaries again in due course. They could also be linked to a high value trust through their family connections if their names appear in this judgment, which may not be in their best interests. On balance, therefore, it seems to me that the proper administration of justice is best served by granting the anonymization order sought in this case which protects the interests of the eighth and ninth defendants, and that this step outweighs the need for them to be named in legal proceedings.

41 The trustee supported this application and made the point that, following this argument through, it made sense that all defendants' names should be anonymized to ensure that the anonymization is made effective. Be that as it may, it seems to me that this would be going too far, and the right balance to be struck in this case is for the anonymization of the eighth and ninth defendants only.

Conclusion

42 For the reasons set out above, the trustee is entitled to an order setting aside the deed of addition on the grounds of mistake, and to a declaration that the deed of addition is void and of no effect from the date when it was made. Further, the names of the eighth and ninth defendants are to be redacted in this judgment.

43 The trustee has acted properly and reasonably and it is therefore entitled to be indemnified from the trust's assets for its costs and disbursements occasioned by and incidental to this claim.

Order accordingly.