

Settlor Relieved of Consequences of Mistake

In a case before the High Court of Justice of the Isle of Man in 2006,⁽¹⁾ the settlor of a trust was allowed to recover as against the trustees a portion of the funds which he had paid into the trust, on the grounds that they were paid as a result of a mistake. The mistake concerned the tax consequences of the payment by reference to the settlor's country of residence for tax purposes and domicile at the relevant time. The cause was Section 267 of the Inheritance Tax Act 1984, under which a person leaving the United Kingdom is deemed still to be domiciled in the United Kingdom for purposes of inheritance tax for a period after actual domicile for other purposes is no longer in the United Kingdom.

The court was prepared to accept that in these circumstances the settlor would not have made the initial payments into the trust as soon as he did had he been aware of the true inheritance tax consequences of what he was doing. The settlor claimed to have relied on advice from a solicitor who had not suggested that expert advice on this particular tax point should be taken.

The submissions made to the court included reference to the history of the law of mistake, and in particular that relief was originally available only from the consequences of a mistake of fact rather than at law, but that this position had now changed. There was also consideration of the law on limitation, as the settlor had issued the present proceedings within six years of his discovery of the mistake (in May 1999), a little over 12 years after the original mistake was made.

In some ways, this could be seen as an extension of the *Hastings-Bass* principle to offer relief to parties other than trustees.

Endnotes

(1) *Clarkson v Barclays Private Bank and Trust (Isle of Man) Limited*, case number CLA2005/42. Judgment was delivered on August 17 2006. The case has not yet been formally reported, but is likely to be included in the forthcoming issue of *Wills and Trusts Law Reports*.

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