Manx High Court Applies Hastings Bass Principle

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Although the Isle of Man is an entirely separate jurisdiction from England and Wales, it has its own broadly similar equitable, common law and statutory provisions so that English court decisions are usually regarded as strongly persuasive. In a recent case before the Isle of Man High Court, the deemster (ie, High Court judge) followed the principle developed in the English case of *Re: Hastings-Bass deceased* [1975] Ch 25 in declaring void a deed of appointment made by trustees.

The case involved a discretionary settlement which included power for the trustees to add beneficiaries subject to them having been first nominated for this purpose by the settlor. The trustees executed a deed of appointment which added beneficiaries not nominated by the settlor and excluded the principal beneficiary (the settlor). In executing the deed of appointment, the trustees incorrectly believed that the settlor had been fully advised of the implications of the deed of appointment and approved its wording.

The settlor was content with the addition of beneficiaries, but this part of the appointment would have failed in the absence of a nomination by him, thereby rendering the deed of appointment at least partially void. Of greater significance was the settlor's ignorance of his own removal as a beneficiary: the terms of the settlement made him the principal beneficiary during his lifetime and a situation had now arisen where the trustees were being asked to consider a substantial distribution to him on the basis that he was still a beneficiary.

The evidence of the trustees was that they would never have executed the deed of appointment had they not been under the impression that the settlor had full knowledge of its terms and effect. They also stated that it was never their intention to execute a deed which was partially or wholly void. The confusion appeared to have arisen purely as a result of an unfortunate breakdown in communication, in which the trustees believed that the solicitor preparing the deed of appointment had conferred with the settlor, whereas in fact there had been no such consultation.

No full report of the case is likely to be available, although a note of it may appear in the Manx law reports in due course.

The increasingly common application of this principle clearly has far-reaching implications for trustees and their legal advisers. Originally little more than an affirmation of the *ultra vires* rule (which prevents persons or institutions from acting beyond the scope of their legal authority), the principle now appears to allow for the correction of mistakes under quite a wide spectrum of circumstances. It remains to be seen whether the courts continue to allow liberal use of this particular escape route, or if future decisions begin to demonstrate a more restrictive approach.

For additional information please contact us by telephone +44 1624 690 300, fax +44 1624 690 333 or email enquiries@simcocks.com