PRIVATE CLIENT
GLOBAL ELITE

THE MONTH

SEPTEMBER 2023

BACK TO SCHOOL ROUND-UP

CONTENTS

EDITOR NOTE

FRANCESCA FFISKE

GLOBAL DIRECTOR, PRIVATE CLIENT

Welcome to our summer edition of The Month, which has a few updates in Private Client from the summer as we look towards autumn. With thanks to all of our contributors.

Thank you so much to those of you who joined us in France this month for our Minds of the Future event, which looked at everything from AI to the '100 Year Life', unpopular clients and the state of the world as we know it - small topics!

We are also very proud to announce that this month we raised over £6,200 for the Morocco Earthquake Appeal.

Finally, a very warm happy 125th birthday to Carey Olsen, and 130th birthday to Zepos & Yannopoulos!

We hope you enjoy this edition.

2023 - 2024

Private Client Exchange France
Chateau Saint-Martin, 12-13 October 2023

International Private Client Forum
Villa d'Este, 15-18 November 2023

Private Client Exchange UK
Cliveden House UK, 30 November - 1 December 2023

Private Client Exchange Cayman
The Ritz, 16 -17 January 2024

Private Client Global Elite Celebratory Dinner
Spencer House, London, 1 February 2024

Trust & Estates Litigation Forum (Postponed)
La Mamounia, 4-6 February 2024

Private Client Forum Americas
Banyan Tree Mexico, 28 February - 1 March 2024

International Women's Day Leadership Brunch
London, Thursday 7 March 2024

Private Client Exchange Switzerland
Guarda Val, Switzerland, 14-15 March 2024

Rising Leaders Leadership Brunch
London, 18 April 2024

Private Client Exchange Italy
Puglia, Italy, 21-22 April 2024

Private Client Exchange Asia
The Capella, Singapore, 16-17 May 2024

Private Client Exchange Portugal
TBC, 20-21 June 2024

Private Client Global Elite Summer Party

Trust & Estates Litigation Forum
La Mamounia, Marrakesh, 18-20 September 2024

Minds of the Future Exchange
TBC, 26-27 September June 2024

Private Client Exchange France
Chateau Saint-Martin, 3-4 October 2024

Private Client Exchange United States
TBS, 30 October - 1 November 2024

International Private Client Forum
Villa d'Este, 14-16 November 2024

Private Client Exchange UK
Cliveden House, 14-16 November 2024

WHAT TRENDS ARE SHAPING PRIVATE WEALTH DISPUTES?

Geoff Kertesz and Luca del Panta, Stewarts

In England and Wales and overseas jurisdictions, trends are emerging that may lead to a greater volume of and complexity in disputes being brought concerning trusts and estates. These are caused by both changing attitudes and demographics of trustees and the actions of the courts themselves.

Capacity disputes on the rise, particularly in the trusts context

Challenging a will on the basis the testator lacked testamentary capacity is a fairly common line of attack. Recently, we have seen not only the establishment of trusts challenged on the basis of lack of capacity but also decisions made by trustees and power holders. Setting up a trust is a complicated process that draws in concepts of ownership, tax consequences and control (or lack thereof) over assets. It is often far more complicated than executing a will and therefore requires a higher level of mental capacity to be able to understand the transaction.

For example, we find that settlors frequently do not fully understand that letters of wishes are non-binding, particularly in jurisdictions that do not follow common law. A settlor establishing a trust needs to foresee the consequences of setting up the trust, and focus on understanding that the assets no longer legally belong to the settlor but rather to the trustee. These are not always straightforward concepts.

Beneficiaries are also now more inclined to challenge decisions of trustees and other power holders on the basis that the person making the decision lacked the mental capacity to do so. Reacting to this requires an analysis of what the decision is – is it an affirmative decision requiring weighing up of pros and cons, expert advice, and considering the interests of the beneficial class as a whole? Or is it a more straightforward 'sign off' decision? The requisite capacity depends very much on the type of decision.

As settlors and power holders age, these types of disputes are only going to become more frequent.

An increased emphasis on transparency

There is a tension between individuals' expectations of privacy in their personal or family affairs and the principle of open justice. In trust and probate cases in England and Wales, the starting point is that there is no general exception to the principle of open justice. Accordingly, applications for privacy are likely to be rejected.

Where minor beneficiaries or vulnerable adults are involved, the courts will weigh the open justice principle against the risk of harm to their interests. Although the courts appear unlikely to allow private hearings, they may order reporting restrictions or anonymise judgments to avoid minors being identified. However, it is now clear that anonymity is not the default position even where minors are involved.

That is the position in England and

That is the position in England and Wales – however, the relevant trust will often be governed by the law of an offshore jurisdiction. We frequently work alongside local lawyers in such jurisdictions and recent judgments in Bermuda, Jersey, and the Cayman Islands illustrate that offshore courts are far more willing to anonymise judgments and hear matters in private. This is because these courts are more likely than English courts to take the view that the interests of the beneficiaries and the trustee's ability to administer the trust outweigh any public interest in open justice.

So while open justice is viewed as a fundamental principle by all common law jurisdictions, courts seem to accept to varying degrees that exceptions should apply in certain circumstances. The scope of the exceptions varies, as does the extent to which judges appear willing to exercise their discretion and the importance attributed to relevant factors.

Generational change creates tension in existing structures

As the second or third generations of wealthy families become the primary objects of benefit in dynastic trusts set up decades ago, both the growing number of beneficiaries and their changing attitude to wealth can create tension within these structures – tension that is intergenerational, intragenerational and between beneficiaries and trustees.

There often comes a time when the custodians of many structures, even those with a certain amount of flexibility built in by prescient settlors, struggle to accommodate the increasingly divergent wishes of their beneficiaries as well as the changing wishes of the settlors themselves.

Courts in England and Wales and offshore jurisdictions with substantial trust industries are accordingly seeing an increase in applications relating to trust restructurings. While these are not necessarily contentious, in many cases the interested parties agree that the trust(s) should be restructured but cannot agree on how that should be done. In such cases the process of consultation with beneficiaries and court approval (sometimes in two or more stages) can take years before the trustees are finally able to implement their proposals.

Similarly, litigators are seeing more trustees who seek proactive advice due to concerns about the potential for disputes to arise because of inherent vulnerabilities in their structures, or the obsolescence of certain provisions due to changes in law, regulation or practice. Once the issues have been identified, many of them can be addressed pre-emptively. This can help to prevent (or at least gives the trustees a degree of protection against) possible attacks by beneficiaries, creditors or government authorities.

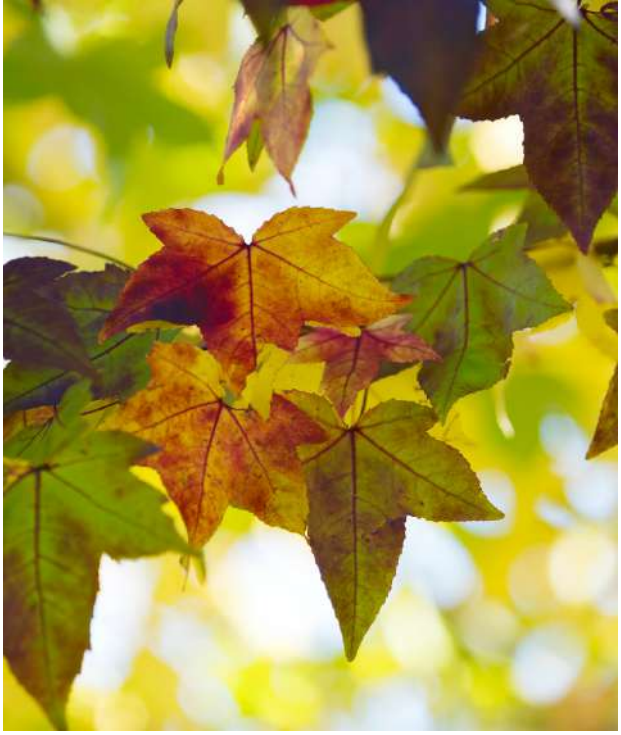
Courts are focussing on substance over form when it comes to trust disputes

Another after-effect of the rise of the bespoke offshore family trust has been that courts have had to grapple with issues which do not always allow a straightforward application of traditional trust law principles. These relate to both the drafting and the administration of such trusts. The courts have shown a notable willingness to look beyond the form of trust instruments and consider the practical effect or application of provisions and the wider context of the offshore trust industry.

This is not a new trend – precedent-setting example cases TMSF and Pugachev are twelve and five years old respectively – but it is one which characterises many of the latest significant judgments coming out of principal trusts jurisdictions. See for example the recent Bermuda Court of Appeal judgment in X Trusts, where the practical considerations of a protector's role feature prominently in the construction of a protector power; or the Privy Council's judgment in Grand View v Wong, where the Board looked beyond the literal scope of a trustee power to the wider context of the trust in its application of the proper purpose rule. ■

RECTIFICATION: CLARIFYING THE NATURE OF THE TEST

Hugh Gunson, Charles Russell Speechlys



Introduction

A recent decision of the Jersey Royal Court ("the Court") in The Representation of Vistra Fiduciary Limited re the Maria Trust [2022] JRC 164 has clarified the nature and application of the test for rectification in Jersey, and in doing so has departed from the shift towards the English law test that had been endorsed by the Jersey Court of Appeal. In his judgment, the Deputy Bailiff analyses the development of the test under both English and Jersey law and reaffirms the proper approach to be taken by the Jersey Court. The decision, in offering a detailed review and assessment of the development of the test for rectification in Jersey, provides greater clarity and certainty to the Court and practitioners in this area (both onshore and offshore) in future. This article reviews the Jersey Court's articulation of the legal test for rectification and application in the specific circumstances of this case, followed by an analysis of the implications of the judgment for future cases and for practitioners in the UK and offshore. The Court's decision is of particular relevance to UK-based individuals who utilise offshore trust structures as well as the fiduciaries that administer them. Applications for rectification are not uncommon where complex structures holding significant assets are involved, and where the tax and other consequences of an unrectified mistake can be severe.

Background

The Court was asked to consider an application by Vistra Fiduciary Limited ("the Trustee"), the trustee of a discretionary settlement governed by Jersey law known as the Maria Trust ("the Trust"), to rectify the Trust instrument to include the settlor within the definition of Excluded Person in clause 1 of the Trust instrument. The settlor and her husband, both non-domiciled individuals for UK tax purposes, had two children, F and G. In 2008, F, who lived and worked in the UK, wished to buy property in the UK for him and his family to live in. F's parents expressed a wish to purchase a property for him and to set up trusts for the benefit of the children, going so far as to identify a property suitable for F and his family to live in. F's father died in 2009 before the property was purchased. However, it remained the intention of F's mother (the settlor) to provide for him in this way.

Advice was sought from a local firm of solicitors, HMG Law, on how the purchase of the property could be structured to give effect to the settlor's wishes, at the same time as mitigating the settlor's exposure (as a non-domiciled individual) to UK inheritance tax ("IHT"). HMG Law advised that the property could be purchased through an offshore discretionary trust, with the trust assets used to purchase the property, rather than a direct purchase by the settlor, and that this would mitigate any IHT exposure for the settlor or her estate. F instructed HMG Law to set up this discretionary trust, who in turn contacted the Trustee regarding the establishment of the

Trust. A draft trust instrument was provided by the Trustee to HMG Law, which HMG Law reviewed, amended and approved. The beneficiaries of the Maria Trust were F, his wife, and their issue; the Trustee was named as the only excluded person. Crucially, the settlor was not listed as an excluded person. The purchase of the property then proceeded and completed in October 2009.

Several years later, in November 2016, the Trustee instructed solicitors (Charles Russell Speechlys LLP, "CRS") to review the Trust structure. In their review, CRS identified that the trust assets may be subject to IHT as although the settlor was not included within the discretionary class of beneficiaries, under the terms of the Trust instrument she was not expressly excluded from the class, and could therefore be added as a beneficiary. In those circumstances, it was likely that HMRC would determine that the settlor had made a gift with reservation of benefit (a "GROB"), such that the value of the trust assets (i.e., the property) would form part of her estate for IHT purposes and so be subject to IHT on her death. The assets in the trust were also subject to a separate IHT charge of 6% every 10 years under the relevant property regime. However, this aspect did not form part of the application.

The settlor died in 2019, thereby giving rise to the IHT charge referred to above. Following her death, the Trustees brought this application seeking an order to rectify the terms of the Trust instrument to include the settlor within the definition of excluded persons ab initio. If successful, the application would eliminate the GROB charge such that no IHT would be payable on the settlor's death.

The law on rectification

In its judgment, the Court first set out the three-stage test for rectification in Jersey in Walbrook Trustees v Amethyst Trust [2002] JRC 186 and R.E. Sesemann Will Trust [2005] JLR 421, namely:

- The Court must be satisfied to the civil standard, on the balance of probabilities, that a mistake has been made such that the settlement does not carry out the true intention of the parties, particularly the settlor;
- There must be full and frank disclosure; and
- There should be no other practical remedy.

In R.E. Sesemann Will Trust, in respect of the first requirement, Birt DB distinguished the "transaction itself" from "the objective behind the transaction," and confirmed that while the court can rectify a deed that does not reflect the transaction the parties intended to achieve, it cannot rectify a deed as a means of permitting the parties to achieve a different transaction to the one intended simply to achieve a more fiscally desirable outcome.

The Court then went on to consider the Jersey Court of Appeal decision in B & C v Virtue Trustees (Switzerland) AG [2018] JCA 219, in which the Court of Appeal relied on the slightly different 4-stage test for rectification of a voluntary settlement summarised in Lewin on Trusts ("Lewin") and applied by English courts because the 3-stage test set out above was "too summarily expressed":

- There must be convincing proof to counteract the evidence of a different intention represented by the document itself;
- There must be a flaw (that is an operative mistake) in the written document such that it does not, on its true construction, give effect to the settlor's intention;
- The specific intention of the settlor must be shown; it is not sufficient to show that the settlor did not intend what was recorded; it must also be shown what he did intend; and
- There must be an issue capable of being contested between the parties affected by the mistake notwithstanding that all relevant parties consent.

The Court considered Murray v Camerons Limited [2020] JRC 179 to conclude that it was not bound by the propositions of law considered by the Court of Appeal in B&C, as these propositions were not the subject of argument. The Court identified various inconsistencies in the 4-stage test proposed in B&C as compared to the preferable 3-stage test adopted in Walbrook Trustees v Amethyst Trust [2002] JRC 186 and R.E. Sesemann Will Trust [2005] JLR 421. In particular, the Court found that:

- The reference to "convincing proof" in the first stage of the test in B&C appeared to be inconsistent with the usual civil burden of proof;
- The second element of the test in B&C was captured by the first element of the three-stage test; and
- The third element of the test in B&C, namely, a consideration of the parties' intentions, would naturally form a part of the Court's analysis as to whether a mistake has resulted in the settlement failing to carry out the true intention of the parties, the first element of the three-stage test.

The Court dissected the fourth limb of the test set out in B&C, which is often referred to as the Whiteside v Whiteside principle, from the English Court of Appeal case from which it derives ([1950] Ch. 65). It expressed criticism at the approach employed by the English Courts to try to "fit" applications for rectification within the fourth limb of the test. The Court identified cases where English courts considered that to satisfy the fourth limb of the test, there simply needs to be "practical consequences of benefit to one or more parties to the application." The Court considered that such a broad approach to the fourth limb rendered it completely "unnecessary," as all decisions of the Court will naturally have practical consequences of benefit for one or more of the parties. The Court, therefore, upheld the three-stage test from Walbrook Trustees v Amethyst Trust [2002] JRC 186 and R.E. Sesemann Will Trust [2005] JLR 421 as the correct test to apply in Jersey cases concerning rectification.

Application in Re the Maria Trust

Applying the three-stage test, the Court found that a mistake had been made with the effect that the Trust instrument did not carry out the true intention of the settlor. The Court identified that the settlor's intention was not only to gift property to her son, F, via a discretionary trust, but also not to benefit from the Trust, which, upon receiving advice, also resulted in an intention to be excluded from receiving any future benefit from the Trust. The Court was assisted in this respect by the evidence documenting the settlor's intention and understanding, which it described as "extremely clear" and evinced in HMG Law's file notes from meetings with the settlor. These notes recorded that the settlor appeared to understand that she would have "no future access" to the assets being settled onto the Trust and that the alternative of an outright gift was explored and swiftly rejected. The Court held that the settlor's desire had been to effect the purchase of the property in a way that excluded her from the benefit of the property and in the most tax-efficient manner.

As to the third limb, after briefly considering whether the Trustee would have a cause of action against HMG Law in professional negligence, the Court reaffirmed that litigation against professional advisers can generally not be regarded as a practical remedy, especially when compared with "the clear and clean outcome of an application to rectify an instrument." The Court exercised its discretion and ordered that the definition of "Excluded Persons" in Clause 1 of the Trust instrument be rectified to include the settlor. The effect is that there was no IHT liability on the settlor's death.

Legal analysis

The Court's criticism of the "issue capable of being contested" limb of the test, as set out in Lewin is not the first time this criterion has been heavily scrutinised. The principle that "equity will not act in vain," revisited in the leading case on mistake, Pitt v Holt [2013] UKSC 26, is considered to be one of the foundations for the fourth limb of the test whose principle was first articulated in Whiteside. However, as noted in Re the Maria Trust, the requirement for there to be an issue between the parties has been relaxed in English courts over the years. In Racal Group Services Limited v Ashmore [1995] S.T.C. 1151 the Court of Appeal accepted that it is sufficient if there is an issue capable of being contested between the parties and that rectification could still be granted even if all parties involved are agreed on rectification.

Nevertheless, the Jersey Court's conclusion that there is no merit in maintaining the fourth limb of the test is striking, particularly in view of the comments made by the Jersey Court of Appeal.

The Court's view was that the types of applications this limb seeks to exclude from the court's consideration (namely applications for rectification motivated solely by fiscal considerations) can easily be identified by the court without the need for such a rigid and long-winded test. This assessment may be difficult in certain cases, although the approach allows the court greater flexibility in exercising its discretion, particularly where there are no parties contesting the application (as is not uncommon in cases of this nature). In fact, in this case, as in many other similar cases, HMRC (as a potentially interested party) were notified of the application. However, they declined to participate actively, instead asking to be notified of developments in the proceedings and requesting for certain cases to be brought to the attention of the Court.

Practical considerations

In one sense, the decision in Re the Maria Trust serves as a clear steer to practitioners preparing or contemplating an application for rectification in Jersey on the test that the Jersey Court will apply and which will need to be satisfied in order for rectification to be granted. Conversely, although at face value the refined test has removed a hurdle that is required to be overcome, the Court in Re the Maria Trust emphasised that the Jersey Court will continue to scrutinise cases brought purely on tax grounds (which the now defunct fourth limb sought to address) and will exercise its discretion as to whether there is evidence of a specific intention which has failed to be put into effect. In that sense, the decision brings the fourth limb of the test expressly within the realm of the Court's discretion, which although offering more flexibility, may be less straightforward for practitioners to address in preparing an application for rectification. In Re the Maria Trust, the evidence of the relevant intention was easily identifiable in the contemporaneous documents. However, there are many cases resulting from defective tax planning where the intention will not be as clear-cut.

In other respects, by the refinement of the test for rectification in Re the Maria Trust the Court has sought to negate the requirement for the Court to contrive the definition of an "issue capable of being contested" to grant a particularly meritorious application for rectification. In practical terms, this should reduce the hesitation of practitioners, counter-intuitive though it may seem, to immediately put right errors requiring rectification without or prior to the involvement of the Court, solely to ensure that an issue remains between the parties so as not to prejudice the fourth limb of the former test.

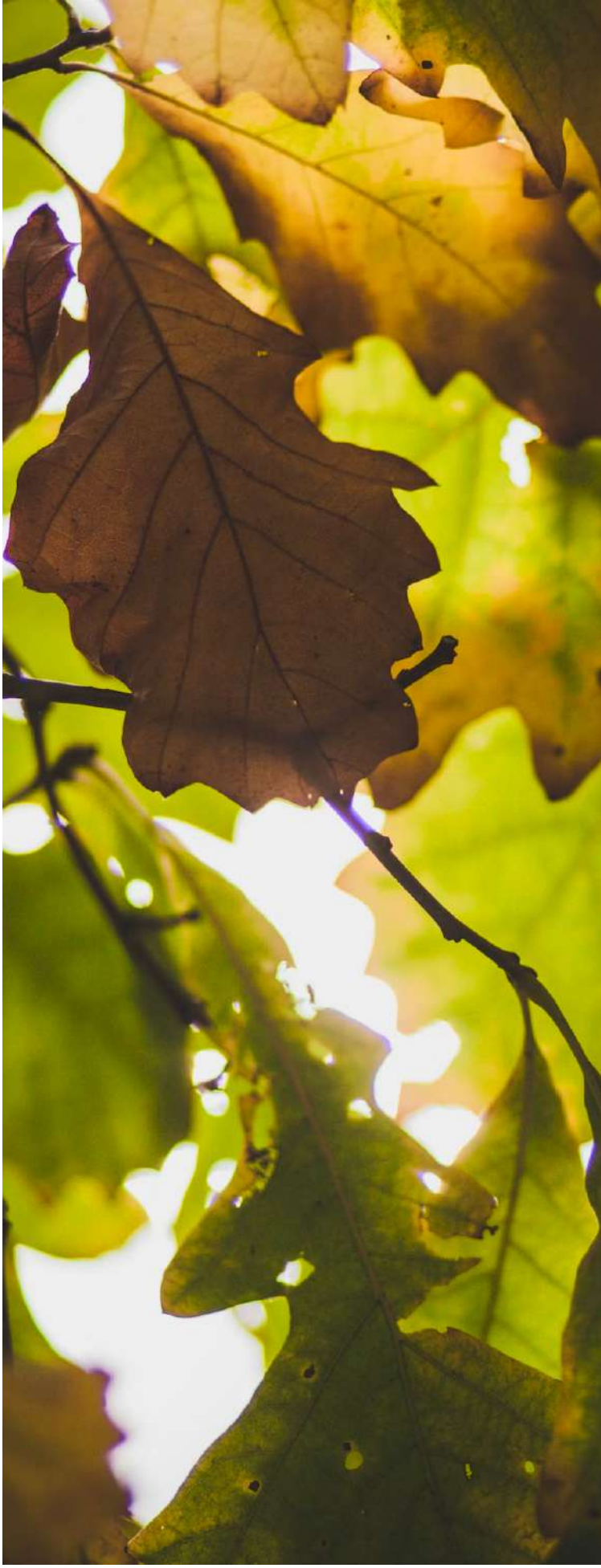
Whether the English courts could adopt a similar approach and dispense with the fourth limb of the test for rectification under English law remains a matter for discussion. As noted above, the fourth limb of the test in English law came to be established following the decision in Whiteside v Whiteside. The principle derived from that case is that if the sole motivation for seeking rectification is a fiscal advantage, the Court should not grant rectification because there is no issue before the Court. In the authors' view, it could be argued that the Court in Whiteside could simply have declined to exercise its discretion to grant rectification in the circumstances of the case rather than adding a further limb to the test.

Equally, however, there are cases where the fourth limb has helped the English Court identify the purpose behind applications for rectification and justify the exercise of its discretion or a refusal to do so. In MV Promotions Ltd and Michael Vaughan v Telegraph Media Group Ltd and HMRC [2020] EWHC 1357 (Ch) the Court rejected an application for rectification of a bilateral contract on the grounds that the deed of rectification entered into by the parties after their discovery of the mistake had resolved all issues between the parties. The fourth limb in this case arguably assisted the Court in reaching its conclusion that, in the absence of any live issue between the parties, the sole purpose of the application was to ensure the tax benefits of the deed of rectification applied retrospectively to the original contract. Ultimately, it remains to be seen whether the fourth limb might be entirely dispensed with in England in a future case.

Separate to the Court's findings on the fourth limb of the test, which has drawn most attention to this case in the industry, the Court gave helpful confirmation on the third limb of the test and the requirement to establish that there is no other practical remedy. Specifically, the Court reiterated that the availability of a professional negligence claim from the same set of circumstances giving rise to the rectification application would generally not be viewed as another "practical remedy", in view of the uncertainty, time and costs that such claims involve versus the certainty that a rectification application affords, if successful. That said, careful thought will still need to be given around how to pursue such a claim in conjunction with a related negligence claim (both from a strategic and timing perspective).

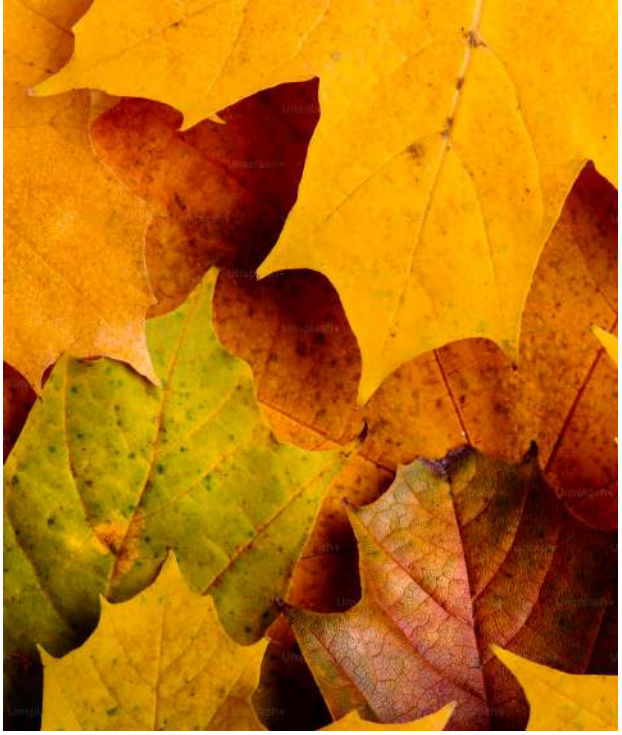
Conclusion for practioners

In addition to its significance as an instance of the Jersey Court departing from the views expressed in the Jersey Court of Appeal, Re the Maria Trust serves both as a clear and unequivocal restatement of the test for rectification under Jersey law as well as a reminder to practitioners of the key hurdles that need to be overcome in order for a rectification application to succeed. One might wonder whether the English courts will follow a similar path in due course. ■



Q&A WITH RICHARD AND SOPHIE ROGERSON OF RFR

Richard Rogerson, CEO, RFR, and Sophie Rogerson, Managing Director, RFR



RFR is a leading property advisory firm in London. The firm advises private client buyers on finding and acquiring high value homes in London. RFR has discreetly advised on some of the most high-profile, high-value and highly sensitive transactions in London. According to one senior lawyer "their commitment to finding and securing the best properties for their clients is astonishing". Described by one Macfarlanes' Partner "as good as it gets in advising private clients" and by Chambers HNW Guide as the "leading buying agents in the UK" with "a client service that is second to none", we sat with the founders and husband-and-wife team Richard and Sophie Rogerson to ask about their journey.

How hard is it to build a new private client firm from scratch?

Very! Don't believe anyone who tells you otherwise! It involves immense hard work, a lot of trust in your fellow founders, a conviction and belief that is prepared to get tested and resilience to face the unknown unknowns (of which there have been many in the last decade). However, it is also incredibly rewarding – you experience an immense sense of achievement, meet extraordinary people who help you on your journey, and the learning never ever stops. Whilst we would never dare to compare ourselves to Maurice Turnor Gardner, both firms began at a similar time and have many shared experiences as we've grown alongside one another. Clare, Ceris and the team have always been very kind, honest and supportive. That shared entrepreneurial spirit is so important, especially in the more challenging moments.

Twelve years on, has RFR delivered on your original vision?

Yes, no and maybe ask us that again in 12 years! Yes, in the sense that we had one clear ambition at the outset – we wanted to build a market leading firm whose service was on a par with the very best professional service firms (like Macfarlanes and Allen & Overy, where we trained). We have achieved that in our industry.

No, in a sense that all businesses and business plans evolve. At the outset we tried to achieve too many things for clients - in addition to buying advisory, they needed property management, project managers and designers which spread us too thin and took us away from our core expertise. Thankfully, a very wise mentor told us to focus solely on acting for buyers – a role where we were pre-eminent and add the most value. This was pivotal advice and has shaped the firm over the last six years. This focused speciality has given us our edge and enabled us to focus on the job we love, and where we excel.

As for the future, the next chapter is to sustain our position at the top and build the next generation of RFR Partners. We made a decision to train younger recruits rather than seek lateral hires – in this way we create the 'stick of rock' in terms of quality and values throughout the firm. In the years to

come (some way off yet – as we hope to remain in our prime!) we want to ensure that there is a transition to a second generation that ensures RFR's longevity in the professional service world.

What are some of the most enjoyable elements of the role and some of the most challenging?

The most enjoyable element is absolutely the people. We are very fortunate to work for some of the world's most exceptional and extraordinary high-profile individuals and families. Since our role is ultimately to find and secure them their home, it is deeply personal – we always have a direct and meaningful relationship with the client, often in some of the most extraordinary moments of their lives. Unfortunately, these are never stories we can share (as we never ever disclose details about our clients), but, needless to say, they are hugely rewarding and often very inspiring moments for us. There are also important relationships with the professional private client community, as well as the selling agents and property professionals across London – such a myriad of individuals, firms and characters, many of whom we are fortunate to call good friends. You have to love people to do this job – loving football also helps! Sophie and I are committed Spurs fans (through the bad and good!) This brings a constant conversation which is always a source of connection to bind and unite.

The biggest challenge – sometimes also the people, I suppose. Not every relationship is straightforward as anyone working in the private client arena knows. Being able to dig deep, to find the service in your heart and work through those challenging moments is never easy, but it is important to who we are as a firm, and to who we are as people.

What has changed the most since you founded RFR in 2012?

Wow – so much. Stamp Duty was barely a footnote in 2012; Brexit and Covid weren't yet words; Trump, Ukraine, Inflation, Interest Rates, Coalition, Corbyn, Boris, King Charles III. It feels like it has been the most extraordinary, unpredictable period. In many ways, we have to credit our Chairman, William Drake, in those moments. He has always been reassuringly steadfast: "don't worry, keep doing what you do, there will always be a need for good advisors", which has proved true at every turn.

I suspect one of the biggest changes is the realisation of how important a buying advisor is, and perhaps that not all buying advisors/agents are equal! When we started RFR, we were one of a handful. Now there are hundreds of so-called buying agents, or property consultants or runners (titles vary). The perception is that barriers to entry are low, and the rewards are high. Thankfully that is not the reality. It's immensely hard work and the trust and respect of the private client community is earned over decades.

At the outset, there was a perception that a buying agent just "saved you time" but did little else. I think this has fundamentally changed. Clients and their advisors now understand that the leading buying advisors have an exceptional knowledge of the London market, have access to the best properties which all now trade discreetly, can advise on value and win out in competitive offer situations (we haven't lost a competitive situation since long before the pandemic) whilst also undertaking extensive due diligence to protect buyers in a system where recourse to a seller is non-existent. These transactions are now typically in the tens of millions, very occasionally in the hundreds of millions, and consequently prove to be very significant investments. With stamp duty at nearly 17% and a market that is illiquid and where value is very subjective, making a mistake has very significant financial consequences (not to mention emotional ones). Having an adviser who sits on the buyers' side of the table, without conflicts of interest (sadly too many buying agents also sell) – is invaluable.

How do you approach conflicts of interest – do these arise?

This is very important. Our legal backgrounds mean that avoiding potential conflicts is part of our DNA. To this end, from the outset, we made incredibly important commitments as a firm, that we have never wavered from:

- We only ever act for buyers. We believe that also acting for sellers creates the risk of a conflict.
- We never accept fees from anyone but our clients. Lots are offered by property sellers, selling agents, insurers, contractors which inevitably risk a conflict of interest.
- We never take on two similar mandates at the same time. The market is too small and good stock too scarce to have two competing mandates within the same firm. Thankfully, we are at a size and with financial resources that we can afford to turn away work.
- Finally, we keep at least 12 months of working capital in reserve. This ensures that the firm's financial position never bares on our advice. Too many advisors live hand to mouth, meaning the next deal is critical for their survival.

I suspect pro bono work is less relevant to your specialism, so how do you give back?

It's a fair point, and yes, pro bono doesn't really work in our sector. Instead, we tend to encourage the team to do something off their own back to give back (in combination with donations we make as a firm). For us, Richard recently became a trustee of The Rainbow Children's Trust - an amazing charity that supports families with a child who has a life-threatening illness. For Sophie, it has been to become a Prince's Trust mentor, helping to mentor young people with business ideas of their own.

Are you excited by returning to Villa d'Este?

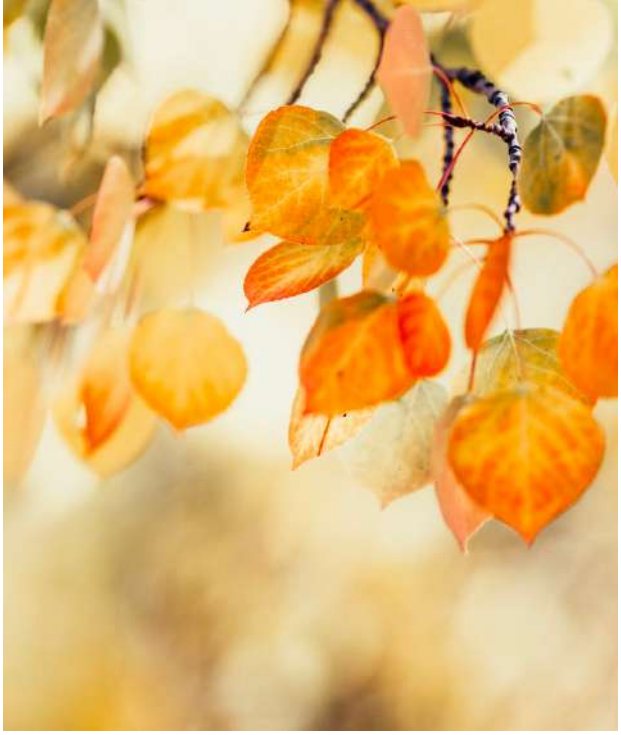
We are very selective in conferences we attend but Villa d'Este is one we are absolutely committed to. The setting is truly stunning, the attendees are all exceptional (many of whom are now friends), and the agenda is thought-provoking long after you leave. I am particularly excited this year as Sophie is hoping to join me and we are sponsoring a tennis break out on the free afternoon!

What next for RFR?

I think we are quietly enjoying where we are. We have great chemistry in the team, a strong position in the market, a full client roster and ever-growing demand for our services. Spurs are even second in the league. For now – that is enough! ■

THREE TOP TIPS FOR GIFTING DIGITAL ASSETS TO CHARITIES

Henry Wickham, Ogier



In today's digital age, a significant amount of our lives is stored online. It's important to ensure these digital assets can be dealt with in the event that we're unable to do so. This concern was recently at the centre of an illuminating campaign by STEP on how to preserve your digital legacy. [1]

STEP focused on how digital assets can be accessed by loved ones. In particular, social media profiles which often store sentimental items such as photos and videos. However, digital assets also increasingly include items of monetary value, such as cryptocurrencies. Often individuals and families want to use these monetary digital assets to make charitable legacies.

Here are three top tips for donating such legacies upon death to charities.

1. Understanding digital assets

It's crucial to understand the nature of cryptocurrencies, non-fungible tokens, and other monetary digital assets. Broadly, these are digital assets stored in digital wallets and secured by private keys. It's vital that if said assets are intended to be gifted, the ability to transfer is provided in a secure way. This, for example, could involve the use of a seed phrase or private key.

Cryptocurrencies are unique assets because of their volatility. They have the potential to appreciate. However, there can also be significant fluctuations in value over the holding period.

2. Charitable organisations capability

Consider whether the intended beneficiary has the necessary knowledge and resources to manage the cryptocurrency. Does the charity have the capability and resource to manage the digital assets? If not, alternative arrangements may need to be made.

3. Legal documentation

It is important to consult with a lawyer to prepare a will which includes a digital assets clause or add such a clause to an existing will. This should detail your digital assets, provide access and specify how you want the assets to be handled. It should be noted that some digital asset exchanges have policies that prohibit the transfer of accounts upon death. As such, it is advisable for a lawyer to check the terms and conditions of the exchange.

Planning for the management of your digital assets is a crucial aspect of estate planning in the digital age. But by taking measures now, you can ensure that your digital life is handled in accordance with your philanthropic wishes. ■

PRIVATE CLIENT

GLOBAL ELITE