IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
BEFORE THE HON. MR. JUSTICE SCHOFIELD

05-90 049/90

BETWEEN: ROGER AUSTIN LEARMONTH — PLAINTIFF

AND: INTERTAS TRUST MANAGEMENT (CAYMAN) LTD — DEFENDANT

Mr. Charles Quinn – for the Plaintiff
Mr. Angus Foster – for the Defendant

JUDGMENT

This settlement is expressed to be subject to the laws of the Cayman Islands. The plaintiff/settlor seeks rectification of the deed of settlement to bring it within the Cayman Islands law as it relates to the rule against perpetuities. In these Islands we follow the Common law rules whereas the deed was drawn up with the English rules and a Bermudian precedent in mind. This inadvertently produced a deed which offends the perpetuity rules in Cayman. The result is that the settlement deed does not give effect to the settlor's intentions because many of its clauses are void.

The Grand Court has jurisdiction in Equity to grant the remedy of rectification of a voluntary settlement (see James Hennessy Bond and others v. Integritas Trust Management and others CO 40, '88, 59, 66 and 67 of 1988). The remedy may be granted to give effect to the true intentions of the settlor and conclusive proof is required that intention (see Joscelyne v. Nissen [1970] 1 All ER 1213 as followed by this Court in Barry Stanley Bricks v. Integrities Trust Management (Cayman) Ltd and others CO 252 of 1989).

In this case we have convincing evidence from the settlor who succinctly states that he intended to enter into a valid settlement but useless sheets of paper. The sheets of paper seem, in fact, not to be entirely useless because certain clauses in them appear to be valid, but the settlor probably means that they are useless for this purpose. I am convinced by the settlor's testimony

8th May, 1990

Dear Judge

I grant the orders as prayed in paragraphs (1) and (2) of the originating summons filed on 20th April, 1990.

In this case the trustees consent to the application. It is in the interests of all parties for the deed to be rectified. The alternative remedies are convenient. Furthermore, it may well be that the settlor's intentions are completely, or substantially at least, frustrated by pursuing those avenues.

> "It cannot be said in these circumstances that the possible alternative avenues of approach with a view to achieving the settlor's intentions and I have heard evidence from Christopher Robert Bailey, an English solicitor specialising in this field of law, on the settlor's tax liabilities in the United Kingdom. There are two alternative remedies available to him (see Barry Stanley Briggs v. Inspector of Taxes (Supra)). The trust was set up legitimately to minimise tax and could well lead to the attraction of high tax penalties in the United Kingdom. It cannot be said in those circumstances that those alternatives. He has satisfied me that both those alternative avenues are potentially costly and are fraught with difficulties and alternative remedy available to him (see Barry Stanley Briggs v. Inspector of Taxes (Supra)). The trust was set up legitimately to minimise tax and could lead to the attraction of high tax penalties in the United Kingdom. It cannot be said in those circumstances that the possible alternative avenues of approach with a view to achieving the settlor's intentions and I have heard evidence from Christopher Robert Bailey, an English solicitor specialising in this field of law, on the settlor's tax liabilities in the United Kingdom. There are two alternative remedies are convenient. Furthermore, it may well be that the settlor's intentions are completely, or substantially at least, frustrated by pursuing those avenues."

Giving rise to Re Bond (Supra). In Re Bond the remedy was readily granted and I see no reason to withhold it in the present case.

> "Being convinced that the deed does not give effect to the settlor's intentions should I then exercise my discretion to order rectification? The remedy must be cautiously watched and jealously exercised" (per Evershed M.R. in Whiteside v. Whiteside [1950] Ch. 65 at p. 71). I should not order rectification if there is a convenient alternative remedy available to him (see Barry Stanley Briggs v. Inspector of Taxes (Supra)). The trust was set up legitimately to minimise tax and could well lead to the attraction of high tax penalties in the United Kingdom. It cannot be said in those circumstances that the possible alternative avenues of approach with a view to achieving the settlor's intentions and I have heard evidence from Christopher Robert Bailey, an English solicitor specialising in this field of law, on the settlor's tax liabilities in the United Kingdom. There are two alternative remedies are convenient. Furthermore, it may well be that the settlor's intentions are completely, or substantially at least, frustrated by pursuing those avenues. It is in the interests of all parties for the deed to be rectified. The case falls within the same framework of circumstances as the cases

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Those of his solicitors, Andrew Garth Pollard and Anthony George King, that the deed as presently drafted does not give effect to his true intentions and that the invalid clauses render the trust unworkable for his purposes.