

IN THE GRAND COURT OF THE CAYMAN ISLANDS
 HOLDEN AT GEORGE TOWN, GRAND CAYMAN

CAUSE NO. 252 OF 1989

12-04-90

BETWEEN:	BARRY STANLEY BRIGGS	Plaintiff
AND:	INTEGRITAS TRUST MANAGEMENT (CAYMAN) LIMITED	First Defendant
AND:	GEMMA BRIGGS (A Minor) by Sherri S. Bodden her guardian ad litem	Second Defendant
AND:	CLARE BRIGGS (A Minor) by Sherri A. Bodden her guardian ad litem	Third Defendant

JUDGMENT

In my judgment of 20th October, 1989, I adjourned a decision on rectification of the life interest settlement because, on the information before me then, there appeared to be a convenient alternative remedy available in the shape of the execution of a deed of appointment. However it was then unknown whether the trustees would be prepared to execute such a deed and I considered they must be given the opportunity to do so.

The position now is that the opinion of senior counsel has been obtained and he expressed a fear, no more, that there may be unforeseen tax consequences to the trust if a deed of appointment is executed. In these circumstances the trustees, not unreasonably, asked that the London solicitors responsible for the exclusion of Kerry Dale's name from the list of principal beneficiaries, give a full indemnity for any such possible tax consequences. That indemnity is not forthcoming and there is nothing this Court (or anyone else for that matter) can do to ensure such an indemnity is given, even if it were minded to do so. The trustees have therefore, refused to execute a deed of appointment in order to protect the trust assets.

In James Jeremy Bond and Others v. Integritas Trust Management and Others (CC 40, 41, 58, 59, 66 and 67 of 1988) Collett CJ. considered resettling funds upon fresh trusts as an

alternative to rectification but concluded that to do so would subject the settlors to severe taxation disadvantages. He concluded that the solution, although practical, was not convenient. In this case the taxation disadvantages are potential only. However, I recite again the passage from Snell, The Principles of Equity 28th Edition at p. 611, which I adopted in my earlier judgment:

"Rectification will not be decreed if the desired result can conveniently be achieved by other means."

The desired result is to place the trusts in a position as originally intended by the settlor. Disregarding whether an alternative remedy is available at all in view of the trustees' refusal to execute a deed of appointment, there is a danger that the settlor's intention can not be achieved if a deed of appointment is executed. Tax disadvantages may result from the execution of that alternative remedy which would not have attended execution of the settlor's intention at the date of settlement.

In the circumstances, therefore, I do not now think I should withhold an exercise of my discretion on the grounds that there is a convenient alternative remedy. Had I been aware of the potential tax disadvantages to the trust assets on the earlier hearing I would have exercised my discretion in favour of rectification.

I order rectification of the life interest settlement instrument in the terms sought, by an endorsement of a copy of this order on the settlement instrument.



Schofield J.

12th April, 1990