

## Re Pinto Settlement Representation of Kleinwort Be

<b>Jurisdiction:</b>	Jersey
<b>Judge:</b>	P. R. Le Cras
<b>Judgment Date:</b>	16 March 2004
<b>Neutral Citation:</b>	[2004] JRC 47
<b>Reported In:</b>	[2004] JRC 47
<b>Court:</b>	Royal Court
<b>Date:</b>	16 March 2004

**vLex Document Id:** VLEX-793710353

**Link:** <https://justis.vlex.com/vid/re-pinto-settlement-representation-793710353>

### Text

[2004] JRC 47

ROYAL COURT

(Samedi Division)

Before:

P. R. Le Cras, **Esq., Commissioner, sitting alone**

In The Matter Of: The George Richard Pinto Voluntary Settlement

Between

Kleinwort Benson (Jersey) Trustees Limited and Kleinwort Benson International Trustees  
Limited

Representors

and

George Richard Pinto  
1st Respondent

and

Ann Catherine Marks  
2nd Respondent

and

Simon Richard Marks  
3rd Respondent

and

Naomi Anne Marks  
4th Respondent

and

Sarah Elizabeth Marks  
5th Respondent

and

Advocate Timothy John Le Cocq appointed to represent the interests of infant and  
unascertained beneficiaries of the Trust  
6th Respondent

**Advocate J. P. Speck for the Representor.**

**Advocate T.J. Le Cocq, the Sixth Respondent.**

**The other Respondents did not appear and were not represented.**

### **Authorities**

*Pilkington and Anor v Inland Revenue Commissioners* [\[1964\] AC 612](#).

*Inglewood and Anor v Inland Revenue Commissioners* [\[1983\] 1 WLR 366](#).

*Ex parte Wimborne* [\(1983\) JJ 17](#).

Underhills and Hayton: Law Relating to Trusts and Trustees (15<sup>th</sup> Edition): pp.699–707;  
717–726.

*Philean Trust v Taylor and Ors* [\[2003\] JLR 61](#).

**Application by the Representor for an Order empowering the Trustee to pay capital  
from the Settlement into a Trust established for the benefit of the children of a  
beneficiary of the Settlement; such children not being themselves beneficiaries.**

**The Trust Deed as drawn did not permit the addition of further beneficiaries.** Although under Clause 6A(i) of the Trust Deed the Trustees were empowered to pay away capital for the benefit of any one or more of the beneficiaries, Clause 6A(ii) provided only for the appointment of new or other trusts for the benefit of all or any one of the beneficiaries (but not so as to benefit any other persons). Clause 6A(iii) contained a similar provision with regard to existing trusts.

**Held, that although benefit is a large word (per Pilkington) the Deed (per Wimborne) had to be construed as a whole and that, following re Philean, the words were clear and admitted of only one construction.** The application was therefore refused.

**Per curiam, Counsel raised a point as to the deviation of the Trust, but a decision on this point being unnecessary, the Court declined to express an opinion.**

#### **THE COMMISSIONER:**

1 This is an application by the Trustees of the George Richard Pinto Voluntary Settlement which was established in 1964.

2 The Trust period is defined in clause 2(b) of the Trust:

*“2(b) “the Trust Period” shall mean the period from the date of execution of these presents until whichever shall occur the soonest of the following dates namely*

*i) the First day of December Two thousand and fourteen*

*ii) the date of the death of the last survivor of the following persons namely the Settlor Gladys Pinto mother of the Settlor Ann Catherine Marks sister of the Settlor Simon Richard Marks nephew of the Settlor and Naomi Anne Marks and Sarah Elizabeth Marks nieces of the Settlor and the descendants now living of His late Majesty King George the Fifth”.*

3 The beneficiaries are defined in clause 2(c) which will follow. There is no power to add further beneficiaries.

*“2(c) “the Beneficiaries” shall mean and include all and any of the following persons namely*

*(i) the Settlor*

*(ii) the said Gladys Pinto*

*(iii) the said Ann Catherine Marks*

*(iv) the said Simon Richard Marks*

(v) *the said Naomi Anne Marks*

(vi) *the said Sarah Elizabeth Marks*".

4 At the expiration of the Trust, any funds remaining are to be divided between the heirs at law, as then defined, of the Settlor. According to how long they live this may comprise the beneficiaries or if they are deceased, their issue, that is the "unascertained beneficiaries" (represented by Mr Le Cocq).

5 The trustees are minded ( *vide* paragraph 6 of the Representation):

"... in the exercise of their discretion to exercise their power under clause 6A(i) of the Trust to make an appointment ("Appointment") of part of the Trust to another trust or trusts proposed to be established, the principal beneficiaries will be ..... the children of a Beneficiary, ..... The Trustees would consider this exercise of its powers to be for the benefit of ..... a Beneficiary.

6 The ability of the Trustees to do this depends on the construction of clause 6 of the Settlement, *viz*:

*(A) Notwithstanding the trusts and provisions hereinbefore declared and contained the Trustees may subject as hereinafter provided at any time or time during the Trust Period if in their absolute discretion they shall so think fit*

*(i) raise any sums or sum out of the capital of the Trust Fund and pay or apply the same to or for the benefit of all or any one or more exclusive of the others or other of the Beneficiaries and in such respective amounts if more than one and generally in such manner as the Trustees shall in their like discretion think fit*

*(ii) by any deeds or deed revocable or irrevocable (but not so as to be revocable after the expiration of the Trust Period) appoint such new or other trusts powers and provisions of and concerning the Trust Fund or any part or parts thereof with such powers of appointment vested in any person or persons and such provisions for maintenance advancement and otherwise at the discretion of any person or persons and generally in such manner as the Trustees may think fit for the benefit of all or any one or more exclusive of the others or other of the Beneficiaries (but not so as to benefit any other persons) and for the purpose of giving effect to any such appointment by the same deed revoke all or any of the trusts powers and provisions herein contained with respect to the Trust Fund or the part or parts thereof to which such appointment relates so that in the event of any such appointment the Trustees shall thenceforward hold the Trust Fund or the part or parts thereof to which such appointment relates upon with and subject to the trusts powers and provisions so appointed in priority to the trusts powers and provisions herein otherwise contained and in substitution for any of the trusts powers and provisions hereof so revoked as aforesaid*

(iii) pay or transfer any income or capital of the Trust Fund to the trustees of any other trust wherever established or existing under which any one or more of the Beneficiaries (but not any other persons or person) is or are interested if the Trustees shall in their absolute discretion consider such payment or transfer to be for the benefit of such one or more of the Beneficiaries as is or are interested under the said other trust

(iv) form a company or companies in any part of the world and may at their discretion transfer to that company or companies all or part of the income of the Trust Fund which shall not be distributed to any of the Beneficiaries under the trusts declared in Clause 5 (A) hereof any income to be transferred to such company on or before the expiration of the Year of Assessment and the cost and expenses of forming such a company shall be a charge on the Trust Fund

- 7 The Trust proposed is, as it appears, not yet in being, so the appointment if it is not made under 6A(i) must, as it seems, be made under 6A(ii) or 6A(iii).
- 8 Mr Speck for the Trustees puts his argument in this way viz, that 6A(i) starts by giving wider powers than those provided for in sub clauses (ii), (iii) and (iv), that capital may be applied, that benefit is a large word, see for example, *Pilkington and Anor v Inland Revenue Commissioners* [1964] AC 612 at p.634 *infra*, and that sub paragraphs (ii), (iii) and (iv) give the Trustees powers to do other things than advance capital. The passage in question reads as follows:

**“...or otherwise for his or her benefit” were often added to the word “advancement”. It was always recognised that these added words were “large words (see Jessel M.R. in *In re Breeds' Will* [FN52] and indeed in another case ( *Lowther v Bentinck* [FN5]) the same judge spoke of preferment and advancement as being “both large words” but of “benefit” as being the “largest of all”. So, too, Kay J in *In re Brittlebank* [FN54] Recent judges have spoken in the same terms — see *Farwell J in In re Halsted's Will Trusts* [FN55] and *Danckwerts J in In re Moxon's Will Trusts*. [FN56] This wide construction of the range of the power, which evidently did not stand upon niceties of distinction provided that the proposed application could fairly be regarded as the benefit \*635 of the beneficiary who was the object of the power, must have been carried into the statutory power created by section 32, since it adopts without qualification the accustomed wording “for the advancement or benefit in such manner as they may in their absolute discretion think fit.”**

- 9 He put it in this way that, logically, it must follow that if the Trustees can pay away capital under (i) — and it does not matter to whom — so long as it is for the benefit of a beneficiary — then they should not be prevented from doing so by (ii) or (iii) which are not redundant but are there merely to give extra powers to the Trustees, which, in fact, they do.

- 10 Mr Le Cocq, acting for the unascertained beneficiaries, two of whom are minors, conceded, as the Court thinks he was right to do, that were it only a question of paying away capital for a benefit, as widely construed, of a beneficiary, there would be no problem.
- 11 The problem however arises with sub paragraphs (ii) and (iii) which, as drawn, appear expressly to prohibit the Trustees from doing that which they now wish to do.
- 12 It is trite law that the deed must be read and construed as a whole, see for example the following passages in *Ex parte Wimborne* [\[1983\] JJ 17](#) at pp 30, 31:—

**“Instrument construed as whole.** It is a rule of construction applicable to all written instruments that the instrument must be construed as a whole in order to ascertain the true meaning of its several clauses, and the words of each clause must be so interpreted as to bring them into harmony with the other provisions of the instrument, if that interpretation does no violence to the meaning of which they are naturally susceptible. The best construction of deeds is to make one part of the deed expound the other, and so to make all the parts agree. Effect must, as far as possible, be given to every word and every clause.

...

**He also referred to *Cholmondeley (Marquis) v Clinton (Lord)* *English Reports* 2 JAC & W.88 at page 558 where it is stated: “To pronounce on the meaning of a detached part of, or extract from an instrument, without referring to, and comparing it with the other parts of the same instrument, if relating to the same subject, is contrary to every principle of correct interpretation, applied to any written instrument upon any subject; and it is particularly reprobated by all the authorities respecting the constructing of legal instruments.** *Shepherd*, in his *Touchstone*, mentions it as one of the established rules for the exposition of deed, ‘That the construction should be made upon the entire deed, so that one part do help to expound another, and that every part may take effect and none be rejected; that all the parts do agree together, and there be no discordance therein.’ We are to look (as it has been expressed), at the four corners of the instrument, and not to judge *per parcella*.”

Counsel also referred the Court to *Philean Trust v Taylor* [\[2003\] JLR 61](#) at p.69 para 18:

**The words are clear and it seems to the court that what is required (see *Lewin, op. cit.*, para. 6–03, at 160) is the “objective meaning that the words of the document convey to the court when considered as a whole in the light of the surrounding circumstances.”**

- 13 He put it in this way, that taken as a whole, clause 6A has four overriding powers, and the Court should not look for powers which are not expressed on the face of the document when there are words expressly dealing with the point in question.

- 14 The Court accepts this view, and has no hesitation in finding that what the Trustees seek to do is expressly forbidden by the terms of the Trust Deed. The Court orders therefore that the Trustees do not have the power to make the appointment sought.
- 15 A further, and at this stage and in the light of this finding, subsidiary point was raised, that is as to the duration of the Trust and the duration of any trust or appointment made under the terms of the Trust. Although this was not sought in the representation, nonetheless the Court will set out, in general the submissions put to it. Reading the terms of the Trust as a whole the Trust period is defined at paragraph 2(b) (see above).
- 16 Clause 5A deals with what the Trustees may do during the Trust period, when subject to clauses 6 and 7, it is an income Trust.
- 17 When the Trust period ends, then clause 5B comes into play, clauses 6 and 7 disappear, and the Trust becomes a normal discretionary trust in favour of the beneficiaries as defined.
- 18 As for the time during which such a discretionary Trust continues, this it seems to the Court is dealt with by clause 16.
- 19 Although this is not strictly relevant to the present application, the Court, albeit, with some hesitation considers that the trustees have, it would seem, an ongoing responsibility for 21 years after the expiration of the Trust period. Mr Speck however went further and suggested that if a trust were to be set up under, [say 6\(A\)\(ii\)](#) then it would not of necessity expire before 2064, that is after 100 years from the date of the setting up of the original trust. This, however is, in the opinion of the Court, at this stage to take a step too far for it to make an Order and the Court prefers rather at this stage to express no opinion thereon.