Re Horley Town Football Club [2006] EWHC 2386

Facts

In 1948 a Major Jennings gave to the President of a football club ('the club') a piece of land known as 'The Defence'. His aim in doing so was to secure a permanent ground for the club. The club used The Defence to play football matches on it and hold social events in the clubhouse. The only people who were entitled to use The Defence were the members of the club, and over time the definition of who was a member of the club expanded to include 'temporary members' – who were members of visiting football teams and people who had paid to use the clubhouse for a specific event – and 'associate members' – who were members of a society that paid an annual subscription to the club in return for being given limited rights to use the clubhouse. In 2002, The Defence was sold for £4m and the officers in charge of the club used some of the money to buy a new football ground. The question arose as to who was entitled to the proceeds of the sale of The Defence.

The decision

Lawrence Collins J held that when The Defence was given to the President of the club, Jennings intended to make a gift of The Defence to the full members of the club, subject to their contractual rights and duties among themselves as laid out in the rules of the club. This meant that whenever someone stopped being a member of the club, they lost any rights that they might have had over The Defence. So Lawrence Collins J held that the proceeds of the sale of The Defence belonged to the current full members of the club (i.e. those members who were not temporary or associate members) subject to their contractual rights and duties as set out in the rules. It followed that the full members could at an Annual General Meeting call for the proceeds of the sale of The Defence to be transferred to them (para [128]). Lawrence Collins J held that if this happened the proceeds should be distributed in accordance with the rules of the club, and that 'in the absence of any rule to the contrary, there is to be implied into the rules of the Club a rule to the effect that the surplus funds of the Club should be divided on a dissolution amongst the members of the Club, and this distribution will normally be per capita among the members (irrespective of length of membership or the amount of subscriptions paid) but may reflect different classes of membership…' (para [129]).

Points

(1) The decision isn't very surprising. The club existed for the benefit of its full members, so finding that a gift to the club amounted to a gift to the members (albeit subject to their contractual rights and duties, as set out in the rules of the club) was a bit of a no-brainer. There is absolutely nothing in the decision to indicate that a similar analysis would be adopted in the case of a gift to an 'outward looking' society – i.e. one that does not exist for the benefit of the members of the society. So if we set up a society to campaign for the abolition of end of year exams in Cambridge and get a load of donations, there is nothing in the *Re Horley* decision to indicate that those donations will be interpreted as being gifts to us. It is more likely that the courts will

interpret those donations as having been given to be held on a non-charitable purpose trust, which failed ab initio, with the result that the donations were held on resulting trust for the donors (or bona vacantia, if a resulting trust would be impractical/unfair) as soon as they were handed over.

(2) The judge's sense of puzzlement over *Re Denley* comes through very strongly in the decision in *Re Horley*. At para [99], Lawrence Collins J held that Goff J in *Re Denley* 'reinterpreted' the gift in that case (of a sports ground to be used by a company's employees) as amounting to a 'trust for the benefit of individuals'. But if the sports ground in *Re Denley* was held on trust for the employees of the company, then it would seem to follow that the employees could have demanded that the sports ground be handed over to them under *Saunders* v *Vautier*. But at paras [99] and [131], Lawrence Collins J acknowledged that there are 'difficulties' with that view. (On the McBride analysis of *Re Denley* – under which the sports ground in *Re Denley* was held on a non-charitable purpose trust which was valid because there were people who would directly and immediately benefit from that purpose being fulfilled who could be given standing to enforce the trust – the employees could not have demanded the sports ground be handed over to them because they did not have a beneficial interest in the sports ground and therefore no *Saunders* v *Vautier* rights under the trust.) It was for this reason that he refused to find that the football ground in *Re Horley* was held on a *Re Denley*-type trust (at para [131]). He did not know whether the members of the club would be entitled to demand that the proceeds of the sale of The Defence if those proceeds were held on a *Re Denley*-type trust. All this indicates that it might be best in the exam not to mention *Re Denley*, or if you do, do so with great caution, making it clear that you are aware that the nature of the trust in *Re Denley* (was the sports ground held on a fixed trust for the employees? or a discretionary trust for the employees (Vinelott J's analysis in *Re Grant's WTs*)? or a valid non-charitable purpose trust) is very controversial and unclear at the moment. So say you get a problem which goes something like this:

A gave money to B to be held on trust and used for the education of C. C has now graduated and of the money A gave to B, £10,000 is still left over. Discuss.

In response you might say something like this,

'Who is entitled to the £10,000 left over depends on how the money for C's education was held when A gave it to B. The most straightforward analysis is that when A gave the money to B, he intended it to be held on trust for C, with the result that C will be entitled to the £10,000 left over as that money will still be held on trust for C. On this view, A's words directing how the money should be used would be regarded as merely precatory in nature. If, however, A's words were intended to impose a binding obligation on B to use the money for C's education and nothing else, we cannot say that A gave the money to B simply to be held on trust for C; some other analysis must be adopted.

'Some would argue – on the basis of the controversial decision of Goff J in *Re Denley* – that we can say that when A gave the money to B, the money was held on a valid non-charitable purpose trust for C, the purpose of the trust being to further C's education. What makes the trust valid, even though it is a non-charitable purpose trust, is that there exists someone who directly and immediately benefits from the purpose of the trust being fulfilled and who can therefore be given standing to enforce the trust. Because of this, holding that there was a valid non-charitable purpose trust

here would not violate the mischief of the 'beneficiary principle', which holds that a trust cannot be valid unless there exists someone who can enforce it. On this view, now that C's education is complete, the purpose trust on which B was holding the money given to her by A has collapsed and the surplus money should go back to A on a resulting trust.

'However, it must be noted that many other commentators and judges do not regard *Re Denley* as having created a new exception to the rule against non-charitable purpose trusts and simply analyse the trust in *Re Denley* as a simple trust for the benefit of individuals (*Re Horley*) or a discretionary trust (*Re Grant's WTs*). Such commentators and judges take the view that if a trust is for a non-charitable purpose it must be invalid unless it falls within the antiquated and (after *Re Endacott*) firmly closed list of exceptions to the rule against non-charitable purpose trusts. If this view is right, it is not possible to analyse the money that A gave B as having been held on a valid non-charitable purpose trust (as the purpose of the trust here – furthering C's education – does not fall within any of the exceptions – trusts for animals, masses, and graves – to the rule against non-charitable purpose trusts). So if this view of *Re Denley* is correct, but it remains the case that A's directions as to how the money he gave to B was to be used were not merely precatory, how then can we analyse the gift to B?

'There are three possibilities.

'On the first – the mandate theory – we can say that when A gave his money to B, the money was still A's in law. A merely gave B possession of that money, directing him to use that money as his agent to further C's education. A retained the power at all times to require him to repay that money to him, and now that C's education is complete, A can now ask B to give him back the £10,000. (It should be noted that this analysis of what happened when A gave B the money cannot be advanced if the money was given by A to B in A's will: A could not make B his agent to use his money in a particular way if he was already dead.)

'The second possibility involves an adaption of Lord Millett's analysis of what happened in the *Quistclose* case. We could argue that when A gave B his money, A intended that B should hold that money on trust for him, subject to a power to use that money for C's education. Now that C's education is complete, A can exercise his rights under *Saunders* v *Vautier* and demand that B give him the surplus £10,000 back.

'The third possibility is that when A gave the money to B he intended it to be held on a purpose trust, the purpose of the trust being to further C's education. That trust – per the commentators mentioned above – was invalid, and so as soon as A gave B the money, it was held on a resulting trust for A. (This does not mean that B committed a breach of trust in using the money for C's education, as clearly A wanted the money to be used in that way.) Now that C's education is complete, A can exercise his rights under *Saunders* v *Vautier* and demand that B give him the surplus £10,000 back.

'So whichever analysis we adopt, we will reach the same conclusion: A is entitled to the surplus money, either in law (on the mandate theory) or in equity (under the last two analyses). And this is the same result that we would have reached if we had found that when A gave the money to B, B held that money on a valid non-charitable purpose trust under *Re Denley*.

'Our conclusion, then, is that if, when A gave the money to B, his words directing B as to how to use the money were merely precatory, then C is entitled to the £10,000. The money, when it was given to B, was intended to be held on trust for

C and so the surplus £10,000 is still held on trust for C. If, on the other hand, when A gave the money to B, he intended that B should take the money subject to a binding obligation to use the money only for the purposes of C's education, then A will be entitled to the £10,000. There are a variety of ways of analysing how the money was held in this alternative, but whichever analysis is adopted, the conclusion is always the same: A is entitled to the surplus £10,000.'