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## TRUST & ESTATES CASE NOTE: SULLIVAN V SULLIVAN [2025] EWHC 1072 (Ch)

■ Laura Webster

### SUMMARY

Master Marsh (sitting in retirement) handed down judgment last month in the case of *Sullivan v Sullivan* [2025] EWHC 1072 (Ch) in which he had to decide **whether in the circumstances a declaration of trust should be rescinded on the grounds of mistake**. A copy of the judgment can be found here:

<https://www.bailii.org/ew/cases/EWHC/Ch/2025/1072.pdf>

### THE FACTS

The trust in question had been made by Patrick (deceased) on 31 July 2009 in respect of the property 24 Stanley Road, Bromley BR2 8JE (“**the Trust**”). The claim for rescission of the Trust was brought by Susan, whom was Patrick’s widow and the executrix of his estate.

Patrick had four children, two with Priscilla (his first wife with whom he had separated in the 1970s but remained married to until her death in 2008), and two with Susan whom he had met in 1976 and married in 2009.

Priscilla died intestate in 2008. At the time of Priscilla’s death 24 Stanley Road was held by Patrick and Priscilla as beneficial joint tenants and as such it passed to Patrick by survivorship. Priscilla’s sons were unhappy that their mother’s half share of 24 Stanley Road had passed to Patrick, and in order to “get them off his back” Patrick wanted to provide a non-binding assurance to his sons about his intentions when he died.

Susan happened to work at a firm of solicitors, although she had no legal training or experience, and she approached a Legal Executive who worked in the firm’s property department. The idea of a Declaration of Intent was talked about and the Legal Executive agreed to do the work. However, in a subsequent email to Susan, the Legal Executive stated that she had drafted a Declaration of Trust as she considered a Declaration of Intent to be meaningless and that it would not stand up in court and would probably do more harm than good. The Legal Executive had also prepared a draft will in which 24 Stanley Road was divided between Patrick’s four children. Susan did not recall having any discussions with Patrick regarding the Legal Executive’s email or the Trust, and it was her evidence that:

- a. at no stage was any legal advice provided that the Trust would result in a binding trust of 24 Stanley Road; and
- b. it was not explained that if the Trust was executed that the part of the draft will which dealt with 24 Stanley Road would not be effective.

Indeed, Master Marsh found that it appeared that the Legal Executive did not appreciate the effect of the Trust.

Subsequently Susan and Patrick married in August 2009, and on 20 November 2009 Patrick executed a will which left his entire estate to Susan with a gift over to all his children if she predeceased him, the motivation appearing to be inheritance tax considerations. In addition, Patrick signed a memorandum of wishes on the same date requesting that 24 Stanley Road be divided as to 30% for each of his sons and 20% for each of his daughters. After executing the Trust, Patrick treated 24 Stanley Road as his own and Susan said she was in no doubt that Patrick believed the entire property was his. They converted the loft of 24 Stanley Road into flats and the house was also let, with the rental income supporting their lifestyle.

## THE DECISION OF MASTER MARSH

Master Marsh applied the law relating to equitable mistake as clarified by the Supreme Court in *Pitt v Holt* [2013] AC 108 and summarised in *Kennedy v Kennedy* [2015] WTLR 837.

At [28] Master Marsh highlighted the need for:

- a. a distinct mistake;
- b. one that is about the legal character or nature of the disposition;
- c. a mistake that is central to the transaction; and
- d. an examination of the injustice (or unfairness or unconscionableness) and seriousness of the consequences of the disposition looked at objectively.

In addition, Master Marsh observed at [29] that there must be “*an issue that is capable of being contested between the parties to the claim seeking rescission of mistake despite the fact that they all consent*”.

Master Marsh found that the evidence as to Patrick having made a relevant mistake was “compelling”. Master Marsh found that the mistake was about the legal character and nature of the document that he signed and that it was clear that Patrick did not appreciate that he was executing a document with unequivocal legal consequences. In addition, there were “compelling reasons” to conclude that the mistake was a serious one and it would be unjust to leave the Trust in place, these included:

- a) the mistake resulted in him disposing of an asset worth around £1 million at the time when he had no intention to do so;
- b) Patrick and Susan were reliant on income from the 24 Stanley Road to fund their lifestyle up until to Patrick's death;
- c) the Trust had significant consequences for Susan's financial stability; and
- d) the Trust had significant tax consequences.

## CONCLUSION

This case is a useful example of the circumstances in which the court will consider there to be a “compelling” case for rescission upon the grounds of mistake, and it is also a reminder of the importance of obtaining legal advice before executing documents in relation to valuable assets.



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