

UK Legal News Analysis

## Court Clarifies Quistclose Trust

LNB News 18/05/2012 67

### Published Date

18 May 2012

### Jurisdiction

UK

### Related Cases

*Bieber v Teathers Ltd (in liq)* [2012] EWHC 190 (Ch), [2012] All ER (D) 117 (Feb); *Barclays Bank Ltd v Quistclose Investments Ltd* [1970] AC 567, [1968] 3 All ER 651

### Abstract

**If the claimants had succeeded this would have represented a considerable subversion of the law of insolvency, says Jody Atkinson, barrister at St John's Chambers. He talks to Evelyn Reid about a recent decision of the High Court**

### Analysis

In *Bieber v Teathers Ltd (in liq)* the central issue was whether a *Quistclose* trust had arisen and investors could claim a tax concession.

### Case Background

The defendants, Teathers, marketed an investment vehicle ("the Take Partnerships") in which the claimants invested, which sought to exploit a tax concession. The expectation was that the investment vehicle would make money and investors would be able to claim substantial tax relief as investors in British film productions. There were complicated investment criteria that defined how the investors' money would be spent in a manner that ensured they benefited from the tax concession.

The Take Partnerships failed to make money and furthermore often did not allow the claimants to qualify for tax relief. Teathers became insolvent.

### Issues Considered

The claimants sought to recover their moneys by arguing that the defendants held their investments on trust, specifically a *Quistclose* trust (after *Barclays Bank Ltd v Quistclose Investments Ltd*). If the claim succeeded this would mean they could recover their investments before the other creditors in the insolvency.

Jody Atkinson explains: "A *Quistclose* trust comes into existence where a person advances money to another for a specified purpose. The classic example is where a bank advances funds to a solicitor for the specified purpose of acquiring title and a charge over a particular property. In the event that the solicitor becomes insolvent before the purpose is achieved, the funds will be held on resulting trust to the bank, and the bank will be able to recover its money prior to the other creditors."

### Courts Conclusions

"This case clarifies that in order for a *Quistclose* trust to come into existence it must be objectively clear from the transaction that the funds transferred should not be part of the general assets of the recipient, but should be used exclusively for the particular purpose, so that if the money cannot be so used then it is to be returned to the payer.

"Importantly, the purpose must be sufficiently clear so that at the time of the application of the money it is possible to know definitely whether the purposes have been achieved. Accordingly, the previous example works, because at the time the solicitor applies the bank's money, it will be clear either whether he has spent it on buying the particular property, or has, in breach of trust, failed to do so."

According to Atkinson a stipulation to pursue profitable investments cannot create a *Quistclose* trust because, at the time the money is applied, it is not known for certain whether or not the investments would be profitable.

In this case the court held that initially Teathers held the claimant's funds on a *Quistclose* trust to invest in the Take Partnerships but when the money was "contributed as capital to a constituted partnership" and could be used for "any purpose authorised by the partnership deed" it was no longer a *Quistclose* trust.

Atkinson notes: "Although the parties had agreed investment criteria, at the time the money was paid into the Take Partnerships it could not be known for definite whether the investment criteria (eg the tax relief) would be available or not. Accordingly, Teathers did not hold the money on a *Quistclose* trust to use it only in accordance with the investment criteria. Furthermore, once the money was paid into the partnerships it ceased to be held under the *Quistclose* trust, and instead was held in accordance with the partnership deeds."

### **Points for Practitioners**

Was this a predictable development of the rules around *Quistclose* trusts? "Yes," says Atkinson "and a welcome decision for practitioners dealing with insolvency, tax and partnership law. If the claimants had succeeded this would have represented a considerable subversion of the law of insolvency. It would mean that investors would be able to invest money in risky ventures and if the venture failed, and the investors could show that the investment vehicle had not complied with agreed investment criteria, a trust would arise and the investors would be able to recover their money to the prejudice of other creditors.

"I would expect to see the courts continue to hold the line taken by Norris J in this case and restrict *Quistclose* trusts to the clearest cases."

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