

## Court of Appeal rules that property is not held on trust (North v Wilkinson)

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**Private Client analysis:** The Court of Appeal has ruled on the facts that there were considerable difficulties in the way a sole trader attempted to create a trust of a share of his business. Mark Fitch, partner at Hatch Brenner solicitors, who acted for the successful appellant, comments on what lessons can be learned from this case and considers the wider implications for these types of cases.

*North v Wilkinson* [\[2017\] EWCA Civ 161](#), [\[2018\] All ER \(D\) 112 \(Feb\)](#)

### What are the practical implications of this case?

*North v Wilkinson* emphasises the requisite presence of the three certainties (namely of intention, subject matter and object) when claiming to be the beneficiary of a trust. A court will be prepared to take on a degree of exploration to satisfy itself of the certainty but, without clear evidence, no trust will be found. Bearing in mind the significant and generally irreversible consequences of being party to a trust, this reminder is likely to be welcomed by practitioners across the profession.

### What was the background?

Steven and Peter North's late father was an inventor who was a sole trader until his death. He had entered into a confidentiality agreement with a manufacturer in respect of a drilling device, which became applicable to vacuum cleaners. He later sued the manufacturer for breach of contract and recovered substantial damages. The nine defendants and respondents to the appeal were all investors in that business. Those investors claimed that the terms on which they had agreed to invest entitled them, in addition to the repayment of their investments and agreed returns, to a share of those damages.

HHJ Pelling QC at first instance held that the late Mr North had created a trust in favour of those investors in undivided shares in his business. The trial judge also ruled that the money used to repay Mr Peter North's mortgage on a property occupied by him was trust property and that the investors were entitled to maintain a tracing claim for the value of the property.

The late Mr North had signed a 'contract of agreement' with Mr Wilkinson, but this document had been prepared without the benefit of legal advice. It provided for Mr Wilkinson to have a 5% equity interest in either a holding company or any subsidiary company subsequently formed. It also provided that the 'equity position will cover the activities of any company or corporate vehicle, trust, partnership or similar'. The other investors relied on letters signed by the late Mr North, which referred to investments and equity positions in 'the company'.

### What did the court decide?

Having found that the difficulties in identifying the so-called trust assets were in fact surmountable, her Ladyship and his Lordship turned to the question of whether a sufficient intention on the part of Mr North to create a trust of shares in his business could be found in the agreements or letters relied on by the investors.

In his judgment, David Richards LJ commented that the trial judge had correctly directed himself that for the documents to create a valid trust, the words used by Mr North must show an intention to create a trust.

Having considered the documents relied on, David Richards LJ reached the view that although an intention to create a trust does not require the use of the word trust or similar language, there must be, as Scarman LJ said in *Paul v Constance* [\[1977\] 1 All ER 195](#), 'a clear declaration of trust and that means there must be clear evidence from what is said or done of an intention to create a trust.' In this case, there was no such clear evidence.

His Lordship finally confirmed that admissions (as to the existence of the alleged trusts) by Mr North in previous proceedings brought by the investors did not bind anyone in these proceedings against Mr North's sons (as indeed the trial judge had found).

*Mark Fitch practices in various fields of litigation, including contested probate, property disputes and professional negligence. He is also an accredited CMC mediator.*

*Interviewed by David Bowden of David Bowden Law.*

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