

Barclays bank ltd v qusitclose investments ltd law equity essay

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Rolls Razor Ltd confirmed a dividend payment that they were not able to meet in July 1964. The company arranged to borrow the amount of the dividend which was £210, 000 from Quistclose Investments so that they could meet their obligation. The money was transferred into a special account of Rolls Razor which was opened specially for the purpose; it was held at Barclays Bank. The dividend was payable on 24 July but had not been paid when Rolls Razor went into voluntary liquidation. Barclays and Quistclose both maintained the money was theirs. Barclays stated a right of set off against the Rolls razor overdraft, while Quistclose argued that the money was held on trust for them and also to the fact that Barclays were aware of the arrangement, the bank were accordingly constructive trustees of the funds.[1]The House of Lords held that the funds were held in trust and that Barclays had the important notice of the agreement. Quistclose was successful. The summary of this case is a loan for a particular purpose which had failed. According to Clements and Abass (2009) explains that the question worth considering in this case is whether the creation of a loan can form a trust in favour of the lender either in the beginning or later on[2]Barclays Bank v Willowbrook International Ltd.[3]These Authors also noted that if the purpose of which the money was lent out was successful, the loan to be held by the borrower on trust is repayable in debt but if the purpose of the performance was impossible in that case it may be held on trust for the lender.[4]The fact that the transaction was a loan that can be recovered by an action in law did not leave out the implication of a trust. The legal and equitable rights could co-exist. Therefore, since the bank noticed the trust, they could not retain the money against Quistclose.[5]Together,

this would suggest that there is a primary trust in favour of the creditors and if the primary trust fails, a secondary trust in favour of the person who provided the funds, therefore since the primary trust could not be carried out then the money should be returned because the purpose failed. This gave rise to a Quistclose trust. The principle 'Equity fastens on the conscience of the person who receives from another property transferred for a specific purpose only and not therefore for the recipient's own purposes, so that such person will not be permitted to treat the property as his own or to use it for other than the stated purpose'[6] This principle was used in the Carreras Rothmans v Freeman Mathews Treasure[7] it was held that the money in the special account was held for the claimant on a resulting trust, since it had been paid for a specific purpose. Therefore, the money was not part of the defendant's assets and cannot be distributed among the creditors since the claimant was beneficial owner of the money in the account. Based on this, the reasoning in Barclays Bank Ltd v Quistclose investments Ltd was implemented and was stated to apply in any case where property was transferred for a specific purpose.[8] Peter Gibson J tried to distinguish between Quistclose and CR, he said the facts are different, in the Quistclose case, the transaction was a loan with no contractual obligations on the lender's part to make payments prior to the agreement for the loan whereas in CR there was no loan but an antecedent owned by CR. He concluded by saying CR can be compared with the lender in the Quistclose case as having an enforceable right to make sure the primary trust is carried out.[9] The principle also applies where only one part of the money lent is used for the specific purpose while the part not applied is held on trust for the

lender[10]Re EVERT Ltd[11]the Court of Appeal held that Barber was allowed to recover his money, the balance of £48, 536, after deduction, a Quistclose principle was introduced in this case. It was argued that in Re EVERT there was no special funds, in addition, Quistclose trust are used when the trustee is in liquidation.[12]Dillon LJ said that in such a case the lender would be in the position of an unsecured creditor.[13]The Quistclose trust raises several issues and problems. According to Edward and Stockwell (2004) the law generally does not allow trust for purposes as different to trust with human beneficiaries,[14]nevertheless, the trust in this case shows that it is a trust for purpose which was to pay a dividend. Lord Millet Stated that the essence of a Quistclose trusts is not just a situation where money is paid for a particular purpose. He added that the lay question in every case is if the parties had an intention of making the money to be there at the free disposal of the receiver.[15]In Twinsectra Ltd v Yardley[16]held: Lord Millett considered the nature of the Quistclose trust in this case.[17]He furthermore added that ' the undertakers were crystal clear. The money was taken on the basis that it would be used solely for the acquisition of property and for no other purpose and was to be retained by the firm until so applied. Any payment otherwise than for the acquisition of property would constitute a breach of trust'[18]Lord Millet went on to study the nature of Quistclose trust, he referred to Lord Wilberforce's judgement on Quistclose, he added that the passage put forward that there are two successive trusts. A primary trust for payment to specific beneficiaries and a secondary trust in support of the lender should in case the primary trust fails. In Re kayford Ltd [In Liquidation][19]the Court held that the account was without a doubt a trust

as Kayford took appropriate steps to set up the money in a separate bank account. The purpose had failed and so therefore it was held a resulting trust for the customers.[20]The court in Re kayford also added that situations apparently giving rise to a debt in reality formed a trust which did not co-exist with the debt but did not include it. In this case, the trust was imposed by the debtor while in Quistclose, the trust was imposed by the creditors.

[21]The House of Lords accepted that there was both a debt and a trust involved in the same transaction. However, in both cases the intention was that the money was to be used for no other purpose but the agreed purpose. It appears that one important factor the court would look at before coming to a decision that a trust has been created is intention.[22]This is an important factor to ascertain that the money was not intended to form part of the general assets of the borrower. In Re Challoner Club limited[23]this case is an example where the court did not agree to use the Quistclose trust reason being that the terms of the purpose trust were not satisfactorily certain.

Lloyd J said in Quistclose and kayford the terms of the trust were obvious and the conditions in which the money became available should be clear if the money were to be held on a valid trust.[24]According to Kelry C. F Loi's article, it explains that ' when an asset does not belong to a company beneficially, the company cannot grant charge over that particular asset'[25]furthermore, unless statute speaks otherwise, where a company holds funds for the financier, the financier's proprietary interest as beneficiary remains in effect regardless of the trustee's insolvency.

[26]Likewise, Lord Wilberforce's formulations of the Quistclose trust sparks disagreement as to whether beneficial interest was on the financier or

creditors of the company in the period before the trust resulted back to the settler.[27] Those intangible complications have since put aside the authoritative clarification of Lord Millett in *Quistclose* and *Twinsectra* that the trust forced on *Quistclose* was an orthodox resulting trust. It has been established that in the situation of *Quistclose*, the resulting trust occurs since it is usually figured out from the fact that assets were not proposed to vest on the trustee beneficially since they were to be used for an exact purpose and no other.[28] Unlike the express trust which requires a positive intention to benefit the beneficiary, a resulting trust of the *Quistclose* simply needs the lack of intention to benefit the trustee. *Kelry C. F. Loi* concluded. Lord Wilberforce in *Quistclose* set out two express trusts, the first which appears to be for the purpose of paying the creditors and the second for the benefit of the lender.[29] In *Jeremias F. B. Prassl's* article, he stated that academically and judicially it had been shown that in many situations the criterion for the existence of an express trust, namely the three certainties set out in *Knight v Knight*[30] might not probably be met if the *Quistclose* trust was made of express trust.[31] In *Westdeutsche Landmark Girozentrale v Islington London Borough Council*[32] Lord Brown Wilkinson established that the primary trust was an express trust but categorized the secondary trust as a resulting trust under his category. As put forward by Robert Chambers in his book called *resulting trust*, he recommended an approach which is not similar; he suggested a single trust that came up because the purpose failed without the existence of any previous trust. This resulting trust in support of the lender does not come up in favour of the primary trust but from the intention of the lender that any equitable interest should not be

kept by the borrower should in case the condition fails, in this case the reason the money was given.[33]The Court of Appeal in *Twinsectra* supports Chambers approach as regards the nature of Quistclose trust, also with Lord Millet in the House of Lord.[34]Lord Millet strongly opposed with Chambers opinion when it came to the issue of how this trust works, declaring that in 'Quistclose situation there was to be a resulting trust for the lender ab initio, subject only to the borrower's 'minimal' right of specific use, a 'power to carry out the lender's mandate'[35]Jeremias F. B. Prassl came to a conclusion that until a new set of important fact is brought before the court, the difficulty as to when and under which conditions the Quistclose trust may arise is possible to stay unsettled.[36]According to J. A Glister's article, he stated that the situation of the Quistclose is one of those instances where the trustee would be sufficiently aware of the intent and drive of the transferor's as to make him the subject of fiduciary duties.[37]It has been established that in the United States a resulting trust gives rise to some fiduciary obligations at least in relation to the trust property but does not reveal the trustee to the same liabilities as an express trustee in English law. [38]Millet argued that 'while all fiduciaries are subject to fiduciary obligations, they are not all subject to the same fiduciary obligations. An express trust requires intention to create a trust, while a resulting trust analysis requires only that A did not intend B to receive full beneficial title'[39]It is suggested that it would be in the advantage of a lender to be in the position of a beneficiary entitled under an express trust. [40]Nevertheless, express trust for third parties and unrestricted transfers are not Quistclose trust not for the reason that they are unacceptable but

merely because they do not give security for the original lender, express trusts for lenders are Quistclose trusts.[41]It is argued that both express trust and resulting trust are potentially valid, with the vital difference being A's right to either force the application of funds or merely to hold back the funds from being misused Glister concluded.