

ENGLAND AND WALES / JUDGMENT

# Andrew John Martin v Daniel Brian Wilkinson & Ors

Source: caselaw.nationalarchives.gov.uk · Research copy typeset by Esheria. Not court-issued or certified.

Neutral citation number: [2025] EWHC 3574 (Ch) IN THE HIGH COURT OF JUSTICE BUSINESS AND PROPERTY COURTS IN MANCHESTER PROPERTY, TRUSTS AND PROBATE LIST (ChD) Case No: PT-2023-MAN-000150 Manchester Civil Justice Centre, 1 Bridge Street West Manchester M60 9DJ Date: Monday, 10 November 2025 Before: HIS HONOUR JUDGE HODGE KC Sitting as a Judge of the High Court IN THE MATTER OF WILLIAM ROBERT WILKINSON, Deceased Between: ANDREW JOHN MARTIN (in his capacity as the executor of the estate of William Ribert Wilkinson, Deceased)

- v -

(2) JODI ANN WILKINSON

(1) DANIEL BRIAN WILKINSON

(3) WILMART PROPERTIES LIMITED

(4) MARTIN WILKINSON Claimant Defendants MISS S. L. HARRISON (instructed by Brabners LLP, Preston) appeared on behalf of the Claimant MR JAMES FRYER-SPEDDING (instructed by Burnetts Solicitors LLP, Carlisle) appeared on behalf of the First, Second and Fourth Defendants THE THIRD DEFENDANT was not represented APPROVED JUDGMENT (Approved on 19 February 2026 whilst sitting in Liverpool)

-----

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved. HIS HONOUR JUDGE HODGE KC: 1. This is my preliminary extemporary ruling on an issue that has arisen at the start of this three day trial, which is proceeding in the Property, Trusts and Probate List of the Business and Property Courts in Manchester under claim number PT-2023-MAN-000150. 2. This case concerns the estate of the late William Robert Wilkinson, deceased. The claimant, who is a nephew of the deceased, is the sole proving executor of his estate under the deceased's last will, dated 23 November 2018. The deceased died on 4 June 2022 and probate of his estate was taken out by the claimant on 1 June 2023, with power being reserved to the other named executor, who is Mr Christopher Dougal Kyle. 3. In short, the issue that falls to be determined at this trial is whether the shares in a property investment company, Wilmart Properties Limited, the third defendant, of which the deceased was the sole director and

shareholder up until the time of his death, devolve as part of the deceased's residuary estate, or whether they were held on any, and if so what, trusts for third parties. 4. To understand this case, one has to go back to the family tree of the deceased. He married, fairly late in life, a lady called Elsie who had had a previous marriage. That marriage had produced two children, Martin Wilkinson and Nicola Little. Nicola died suddenly, aged only 47, in 2020. She has an infant daughter, Abigail, who I think is now 11 years of age. They play no part in the immediate picture. Elsie's other child of her first marriage was Martin, who is the fourth defendant. He is now in his mid-50s. Martin married a lady called Linda in 1993. They are now divorced, but there were two children of that marriage, now adults. The elder is Daniel, who is now, I think 28, and the younger is Jodi, who is now 25. 5. These proceedings started by way of a claim form issued in the Business and Property Courts of England and Wales at the Rolls Building on 14 November 2023. They were immediately transferred to Manchester by an order of Master Kaye, whence they have been proceeding in Manchester. There was a costs and case management order made by District Judge Matharu on 22 April 2024; and on 7 June 2024 the matter was listed for trial to start on 7 January 2025, with a trial estimate of three days. On Christmas Eve last year, 24 December 2024, an application was made by the now fourth defendant, who had not previously been a party to the proceedings, to be joined as a party to the proceedings. 6. Prior to that time the claim had been proceeding against Daniel and Jodi, and (as a nominal defendant) against the company, Wilmart Properties Limited. At that time, the issue had been whether the shares in the third defendant that had belonged to the deceased had been the subject of a declaration or declarations of trust in favour of Daniel and Jodi. What they say is that the investment properties within the third defendant had been intended to benefit Elsie's side of the enlarged family, with the other properties falling within the scope of the deceased's estate, and devolving separately under the deceased's last will. 7. Just before Christmas of last year, however, the fourth defendant says that he discovered an annual return of the company dating back to November 1993 which, he says, constituted a declaration of trust of half the shares in the company in his favour. He therefore applied to be joined as a party to the proceedings, on the footing that rather than there being a trust of the shares solely in favour of Daniel and Jodi, 50% of the shares had already been the subject of a declaration of trust in his favour. 8. That application came on before me as a matter of urgency on New Year's Eve, 31 December 2024. All parties were in agreement that the trial, then listed to commence on 7 January 2025, should be vacated. With some reluctance, I made an order to that effect. I then addressed the parties and the statements of case. I directed that Martin Paul Wilkinson should be joined to the proceedings as fourth defendant. I gave permission for the claimant to amend the claim form and particulars of claim, which were to be filed by 10 January 2025, with formal service being dispensed with. I directed that the fourth (and new) defendant was to file and serve a defence and particulars of any Part 20 claim in the form of the draft enclosed with his application, together with initial disclosure, by 4 o'clock on 10 January 2025. I directed that the first and second defendants were to file and serve amended replies and defences to counterclaim and Part 20 claim by 4 p.m. on 17 January 2025. Finally, the claimant was directed to file and serve an amended reply and defence to counterclaim by 4 p.m. on 31 January 2025. I then gave directions for the disclosure of any further relevant

documents in the possession or control of the parties by 4 p.m. on 11 February 2025. 9. I then dealt with evidence of fact. Paragraph 8 of my order provided that the first and second defendants, and/or their solicitor, were to file statements verified by a statement of truth setting out when, and how, the documents which had been exhibited to the fourth defendant's witness statement of 24 December 2024 made in support of his joinder application (as exhibit MW1) had come into their possession. That was to be done by 4 p.m. on 17 January 2025. I gave the parties permission to file and serve any further witness evidence upon which they intended to rely by 4 p.m. on 25 February 2025. That produced a second witness statement from the fourth defendant, dated 25 February 2025. I made provision for revised costs budgets, and for listing for trial. 10. In due course, on 6 May 2025, notice of a new trial date, starting today (10 November 2025), was given to the parties. In the meantime, there had been a further case management hearing before District Judge Richmond at which counsel now appearing for the parties were present. That costs budgeting order involved the grant of relief from sanctions to the claimant in respect of a revised costs budget.

11. By that time, the amended claim form, the amended particulars of claim, and the amended defence had all been served. The amended particulars of claim, settled by Miss Harrison (of counsel) are dated 8 January 2025. Paragraph 8 set out the claimant's case. That includes a denial that at any time the deceased had validly declared that he held the shares in trust for the first and second defendants. It also denies that any annual returns could constitute a declaration of trust, being administrative forms only.
12. There were then three further paragraphs on which this judgment now focuses. Paragraph 8.3 pleads that: "If, which is denied, the deceased purported to declare some form of trust, whether orally or in writing, in relation to the shares in favour of the first and second defendants, at all material times the control of the deceased thereafter over the shares was so extensive that he never parted with the beneficial ownership of them." 13. Paragraph 8.4 pleads that: "Further, or in the alternative, if which is denied the deceased purported to declare a trust, whether orally or in writing, in relation to the shares in favour of the first and second defendants, it is denied that he intended such trust to take effect in his lifetime, and it is averred that he intended it to take effect only on his death and in the event of his death. Any such declaration will be void for non-compliance with the requirements of the Wills Act 1837." 14. Finally, paragraph 8.5 pleads, in further alternative, that: "If, which is denied, the deceased purported to declare a trust, whether orally or in writing in relation to the shares in favour of the first and second defendants, it is averred that such declaration was not genuine and was a sham. As the deceased had no intention of creating such an immediate trust, it was never intended to be acted upon by the deceased, it was not acted upon by the deceased, and the deceased intended to remain the beneficial owner of the shares."

15. The first and second defendants' amended defence and counterclaim, settled by Mr James Fryer-Spedding (of counsel) is dated 17 January 2025. The defendants took a point as to the propriety of the amendments set out in paragraphs 8.3, 8.4 and 8.5 of the amended particulars of claim. They asserted that the claimant had no permission to amend to bring in these new arguments against Daniel and Jodi. They said: (a) That the permission to amend the particulars of claim that I had given in paragraph 3 of my order did not give any such permission; rather it dispensed with service of the amended particulars of claim so that it was apparent that no substantive amendments to the particulars of claim, aside from naming the fourth defendant as a new party, were permitted. (b) Similarly, as concerns Martin, by paragraph 4 of my order he was only permitted to serve a defence and Part 20 claim in the form of the drafts he had already by then produced. That was said to further demonstrate that no such substantive amendments, as just mentioned, were permitted. If they had been, then the December 2024 order would have allowed for Martin to respond to any such substantive amendments to the particulars of claim. (c) Daniel and Jodi will only agree to the particulars of claim being amended by the introduction of the new paragraphs 8.3, 8.4 and 8.5 if the claimant agrees to pay their costs of and occasioned by those amendments. (d) In order to save time and expense, in this amended defence Daniel and Jodi plead to paragraphs 8.3, 8.4 and 8.5 of the amended particulars of claim on the assumption that the claimant will agree to pay those costs. If he does not, then Daniel and Jodi will say that the particulars of claim have not been effectively amended under CPR 17.1.2 so as to introduce these three new paragraphs. 16. So, the propriety of the three sub-paragraphs of paragraph 8 which are now in issue was raised on 17 January 2025, but then nothing more was ever said about it. The claimant made an application for relief from sanctions in relation to cost budgets at the hearing before District Judge Richmond, but nothing was said about those three paragraphs.
17. The matter was raised obliquely in a footnote, numbered 4 at page 4 of the skeleton argument for trial, from Mr Fryer-Spedding, dated 3 November 2025. At paragraph 2.9 of that skeleton, Mr Fryer-Spedding stated that after Martin had been joined as fourth defendant, the other parties made consequential amendments to their statements of case. After the phrase "consequential amendments", there is a footnote (numbered 4) which reads: "Martin, Jodi and Daniel say that Andrew's amendment of his particulars of claim was not permitted in certain respects" and referred the court to paragraph 1.7 of the amended defence and counterclaim. Again, nothing more was said about that in the skeleton. Miss Harrison tells me that the matter was not further ventilated prior to the start of this hearing.
18. Mr Fryer-Spedding has, however, now raised the point at the start of this trial. He says that there are two questions for the court. First, whether the court is prepared to entertain the arguments advanced in sub-paragraphs 8.3 to 8.5 of the amended defence; and, if so, what order for costs should attach to that. He particularly takes issue with the allegation of 'sham' in sub-paragraph 8.5. He submits that any allegation of sham involves an allegation of dishonesty. On that footing, it ought to be explicitly pleaded to reflect the seriousness of the allegation, directed to the deceased's conduct and character. Moreover, apart from the

fairness of explicitly pleading any allegation of illegality, he says that it is necessary for the first and second defendants - and indeed the fourth defendant - to be able to understand the case they have to meet on all three aspects. He says that sham would appear to involve a false impression, intended to have been created in the mind of the Revenue, on the part of the deceased, who had arranged his tax affairs so as to avoid paying tax. That, Mr Fryer-Spedding says, is an allegation of illegality. He points out that the relevant tax regime ended in 2016, and it is therefore unclear how the allegation of sham relates to matters thereafter. Essentially, he says that there is no permission to rely on these three allegations, nor are they sufficiently pleaded.

19. Miss Harrison, in response, emphasises how the claimant had been ambushed on Christmas Eve last year. She submits that my order was simply intended to deal with issues arising from the late joinder of the fourth defendant. She points out that the new allegations were raised right from the outset in the amended pleading; and nothing more has been heard of any objection to those points since the defence was served. She makes the point that, apart from a brief allusion in a footnote to the skeleton argument, the matter has not been ventilated since. There is no formal application before the court to exclude the amendments. She invites the court to proceed on the basis on which everyone has pleaded, and prepared, for trial. 20. I enquired of Mr Fryer-Spedding why no point had been taken on the lack of any substantive permission for these amendments at the hearing before District Judge Richmond. His response was that it had been for the claimant to make an application for permission to pursue the three points once he had taken the point in the pleaded defence.
21. Those are the submissions. 22. I have to deal with the matter in accordance with the overriding objective of dealing with the case proportionately fairly, justly, and at proportionate cost. This is a matter that was fully pleaded out some 10 months ago. Nothing more has been heard of the point since the objection was taken at paragraph 1.7 of the defence. Had Mr Fryer-Spedding sought further information as to how the allegation of sham was being pursued, particularly in relation to the period after 2016, then the first, second, and fourth defendants could have made a request for such information in accordance with CPR 18. That has not been done.
23. The matter was not raised by either party at the hearing before District Judge Richmond as long ago as May of last year. In my judgment, it is now too late for the point to be raised. If it has any costs implications, then they can be dealt with at the end of the trial, when the court considers the issue of costs. But, it seems to me that the matter having been addressed in the defence as long ago as mid-January of this year, it is now far too late to be raising the matter at the start of this trial. It is much better for the court to hear evidence, including cross-examination, directed to these issues rather than to disallow the amendments at this late stage, and run the risk of that being challenged on appeal. 24. I am satisfied that equality of arms is satisfied here so far as the defendants are concerned. They have been on notice, for 10 months or so, that this point is now being pursued, and they are ready to deal with it at trial. So, I refuse to disallow the amendments at paragraphs 8.3 to 8.5. I incline to the view

that Mr Fryer-Spedding is right; that it was implicit in my order of 31 December 2024 that permission was only being given for amendments to the statements of case consequential upon the addition of Mr Martin Wilkinson as fourth defendant to the proceedings. But even though there was no permission for the further amendments, they have been extant on the court record for some 10 months. The first, second and fourth defendants have responded to them. There has been no prior formal objection to the court about the existence of the amendments; and justice dictates that the court, in the exercise of its case management powers, should allow the matter to proceed to trial on the basis of the pleadings as they have stood since January of this year. 25. So, that concludes this extemporary ruling.

-----

### Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

**ORIGINAL SOURCE**      <https://caselaw.nationalarchives.gov.uk/ewhc/ch/2025/3574>

**CASE PAGE**              <https://chat.esheria.ai/case-law/england-and-wales/Amendmentofpleadings-court-unknown--6a3ea5033b1caa9129801c44>

Prepared on 23 October 2026 · Esheria