EXTRA DIVISION, INNER HOUSE, COURT OF SESSION

[2026] CSIH 26
P239/25

Lord Malcolm
Lord Tyre
Lord Clark

OPINION OF THE COURT

delivered by LORD TYRE

in Petition of

HARPER MACLEOD LLP

Petitioner

for

Directions

Petitioner: D Welsh; Harper Macleod LLP

29 May 2026

Introduction

[1] The petitioner is the holder of funds deposited by a number of investors in a property development scheme that was to consist of the renovation and leasing of a former nursing home in Paisley. The scheme did not proceed, and the property was sold to a third party who had no intention of carrying out the proposed development. The petitioner seeks directions from the court as to whether the funds which it holds are held on resulting trusts for the investors by whom they were contributed and, if so, when such a resulting trust arose or will arise.

The proposed investment scheme and the Declaration of Trust

[2] In 2016 a Gibraltar incorporated company named Abbeytown Associates Limited acquired Speirsfield House, a former nursing home in Paisley. Abbeytown intended to renovate the property and create individual en-suite rooms. These were to be sold to investors with a view to renting them to international students. The funding model envisaged each investor purchasing an individual room by staged payments. The first payment was due on or around the date of conclusion of missives for the sale of the relevant room. Further sums would be payable as the renovation progressed with the last payment being due on or around the date of completion of the room renovation, when a leaseback arrangement with Abbeytown would commence. The investment proposal proved to be popular with investors from the UK and overseas. Each investor used the same independent firm of solicitors to represent their interests.

[3] The sale process for each room began with a reservation form being sent to the petitioner by an independent financial adviser. The reservation form detailed *inter alia* (a) the price agreed for the relevant room; (b) a reservation fee of £3,000 to be paid immediately by the investor as a condition of the reservation being accepted; (c) a percentage of the price to be paid as a deposit; and (d) a standard contribution of £120 to the fees of the investor's solicitors, to be deducted from the price of the room. The petitioner would then send missives in a standard form for the sale and leaseback arrangement to the investor's solicitors. Annexed to the missives was a draft Declaration of Trust to be executed in due course by Abbeytown. The investor would sign and return the missives to the petitioner via his or her solicitors. The petitioner would thereafter countersign, as agent for Abbeytown, to conclude the missives between Abbeytown and the investor. At or shortly

after the date of the conclusion of the missives, the investor's solicitors would pay the deposit (less the reservation fee already paid) to the petitioner. In accordance with the missives, half of this sum was transferred into a single, designated client bank account, to be held by the petitioner in accordance with the Declaration of Trust. From the remainder of the funds received from the investor's solicitors, the petitioner would deduct a fee payable to the financial adviser who introduced the scheme to the investor, leaving a balance of free proceeds which was paid over to Abbeytown.

[4] The Declaration of Trust was signed on behalf of Abbeytown but not dated; the petitioner avers that it was executed on or about 19 June 2018. The petitioner was described therein as the "Escrow Agent". Clause 2.1 provided that every deposit payment received by the Escrow Agent was to be paid into an interest-bearing bank account ("the Escrow Account") in the name of the Escrow Agent, subject only to deduction of any applicable Escrow Agent's fees. Clause 2.3 stated the purpose of the trust as follows:

> "The Escrow Agent shall hold the Deposit in the Escrow Account for the purpose solely of making payments in accordance with this Deed or until termination of the Escrow Agent's appointment."

In terms of Clause 3.1, payments were only permitted to be made out of the Escrow Account upon receipt by the Escrow Agent of a "Project Manager's Notice", being a notice signed by an independent quantity surveyor certifying work done or materials purchased in connection with the development of the property.

[5] During the first half of 2018, missives were entered into for the sale of a large number of rooms in the proposed development. Deposits were received by the petitioner, with half thereof being paid into the Escrow Account in accordance with the terms of the respective missives.

The failure of the trust purposes

[6] In June 2018, the petitioner received notification of a petition to Glasgow Sheriff Court for the winding up of a company known as DCR (Series 2) Ltd, which was owned and controlled by two individuals who also owned and controlled Abbeytown. The petition contained averments to the effect that funds used by Abbeytown to purchase a property were likely to have derived from funds raised through a fraudulent scheme promoted by DCR 2. Having acted for Abbeytown in the purchase of Speirsfield House, the petitioner was able to confirm that the purchase price of that property had come from Diamond Global & Trading Investments Limited ("DGTI"), a company registered in the Republic of Ireland and owned and controlled by the same two individuals. The petitioner carried out further investigations, including discussing the source of the funds with the two individuals concerned. In the light of those investigations, the petitioner decided that it was unable to continue to act in relation to the development and notified Abbeytown of its withdrawal from acting on or around 20 June 2018, ie very shortly after execution of the Declaration of Trust. The petitioner's appointment as Escrow Agent has not, however, been terminated.

[7] DGTI went into administration in May 2018, with Grant Thornton being appointed as administrators by the High Court of Justice for Northern Ireland. Abbeytown entered administration on 18 September 2018, with Moorfields being appointed as administrators by this court. On or about 23 August 2021, Speirsfield House was sold to a third party on terms which imposed no obligation upon the purchaser to carry out the renovation scheme pursuant to the missives between Abbeytown and the investors. Development of the property will obviously not now be undertaken by Abbeytown. No Project Manager's Notice, as provided for in the Declaration of Trust, will be received by the petitioner.

[8] In August 2018, the petitioner received an order granted by Belfast Crown Court under the Proceeds of Crime Act 2002, requiring it to produce material related to its instruction by any company or entity associated with the two individuals previously mentioned. The petitioner was restrained from disbursing funds in the Escrow Account. In the course of the administration of DGTI, Grant Thornton filed progress reports stating that the administrators had been advised that DGTI had no proprietary interest in the funds in the Escrow Account. In view of these statements, and it being clear that Abbeytown had no interest in the funds, the petitioner applied for a variation of the Northern Irish court order to permit release of the funds from the Escrow Account. Neither of the administrators objected to the application. An amendment to the court order was granted by the High Court of Justice for Northern Ireland on 20 November 2023, providing as follows:

> "Harper McLeod Solicitors are permitted to discharge the funds held in its escrow account to the investors in the Spiersfield (*sic*) House Scheme. The precise terms upon which such funds shall be discharged to such investors and in what amounts, shall be determined through an Action of Multiplepoinding to be determined by the Court of Session, Scotland and in accordance with Chapter 51 of the Rules of the Court of Session. The Scottish Court of Session will be provided with a copy of this Order and the PPS [the Public Prosecution Service in Northern Ireland] correspondence confirming its consent to it in order to inform the said Court of the reasons why the escrow fund is being unrestrained."

The reference in the order to an action of multiplepoinding followed upon advice having been received by the petitioner that such an action would be necessary because it was not possible to identify the contributors to the Escrow Account. The petitioner now considers that the basis of that advice was incorrect, in that it is able to determine for each individual investor (i) the amount that was received by the independent solicitor, (ii) what deductions were made from that amount, and (iii) the amount that was placed into the Escrow Account. As such, the petitioner considers that there is no competition of claims for the funds in the account and that an action of multiplepoinding is unnecessary.

[9] In these circumstances, the petitioner considers that the purposes of the trust established by the Declaration of Trust have failed. On this analysis, a resulting trust has arisen in favour of the investors, in proportion to their respective contributions to the Escrow Account. However, given the background narrated above, including a court order granted in another jurisdiction, the petitioner is unwilling to proceed to distribute the funds until the correctness of the above analysis has been determined. If distributions were made, it would be impracticable to reverse them in the event that the analysis proved to be incorrect. The petitioner intends to seek the authorisation of the Northern Irish court to distribute the funds without having pursued an action of multiplepoinding as envisaged in the Northern Irish court order.

Directions sought by the petitioner

[10] The petitioner seeks directions on the following questions:

1. In the circumstances outlined in this petition, are the assets in the Trust Account held by the petitioner on resulting trust as a matter of law?
2. In the event that the answer to question one is in the affirmative:
    a. does such a resulting trust operate in favour of the respective investors who contributed thereto and in proportion to such contributions so as to make such investors the absolute owners of their respective proportion of the assets in the Trust Account?
    b. does such a resulting trust operate as a matter of law only (i) when the administrators of each of DGTI and Abbeytown have formally disclaimed any interest in the funds, (ii) when each of DGTI and Abbeytown has been formally wound up, or (iii) at some other point in time?

At the outset of the hearing, counsel for the petitioner indicated, in relation to question 2b, that his submission was that the resulting trust operated at the time when the trust purposes failed, ie, in the circumstances of this case, when the property was sold by the administrators of Abbeytown to a third party.

[11] The petition was served on the respective administrators of DGTI and Abbeytown, the Lord Advocate, the Chief Constable of the Police Service of Northern Ireland, and all of the investors. No answers have been lodged. As already noted, the administrators of DGTI have indicated in their progress reports that they make no claim on the funds in the Escrow Account. In a letter to the court dated 1 October 2025, the administrators of Abbeytown confirmed that they claimed no interest in the funds and that they would abide by the decision of the court. No question arises in the circumstances of this case of the funds falling to the Crown as *ultimus haeres*. The averments in the petition are vouched, where necessary, by documentary evidence. A schedule was produced showing the amounts respectively contributed by the various investors to the sum standing at credit of the Escrow Account, and the court was advised that no further deductions (other than the expenses of this application) will be made from those sums before repayment is made to the investors. We are content to deal with the petition in the absence of a contradictor, and without appointment of a reporter or an *amicus curiae*.

Argument for the petitioner

[12] On behalf of the petitioner it was submitted that Scots law clearly recognised the concept of a resulting trust arising as a matter of law, in circumstances where there had been either a fulfilment or a failure of the trust purposes. As a matter of generality, the trust arose in favour of the original contributor of the trust funds. Even where no provision was made

in the trust provisions for return of surplus funds to the contributor, such a requirement arose by operation of law. The resulting trust was not subject to restrictions arising out of the terms of the deed or declaration of trust.

[13] In the circumstances of the present case, a resulting trust arose on 23 August 2021, being the date of entry in the sale of the property to a third party by Abbeytown's administrators without any condition requiring completion of Abbeytown's proposed development. At that time, fulfilment of the trust purposes for which the funds were held in the Escrow Account became impossible. Questions 1 and 2a should be answered in the affirmative, and the answer to question 2b was that the resulting trust operated immediately upon failure of the trust purposes when the property was sold to the third party.

Decision

[14] As is stated in Menzies, *Trustees* (2nd Edition, 1913) at paragraph 1044:

> "The truster has a radical beneficial interest in the trust estate. When the execution of all the practicable purposes of the trust fails to exhaust the estate, this radical beneficial interest comes into play, and a resulting trust in favour of the truster emerges."

A resulting trust commonly arises where the purpose of the trust has been fulfilled, leaving a surplus of funds in the hands of the trustee which is not required for the trust purposes: see eg *abrdn (SLSPS) Pension Trustee Co Ltd, Petitioner* [2023] CSIH 31; 2023 SLT 791. It may, however, also arise where the trust purpose has failed: Menzies, *Trustees*, paragraph 1046.

[15] Where a resulting trust comes into force, the beneficiary of that trust will normally be the truster or, if he has died, his legal representatives: Menzies, *Trustees* paragraph 1053. That, however, is merely the most common application of the principle that the provider of

the trust funds retains a radical beneficial interest in them. In *Connell* v *Ferguson* (1857) 19D 482, Lord Deas observed at page 487:

> "Where parties join in a subscription to effect a particular object, and place the money subscribed in the hands of certain persons to carry out that object, I think the *quasi* trust, thereby created, is for the alternative purpose of either carrying out the object of the subscription, or, if that cannot be done, of paying back the money."

Another example of the principle, in an obsolescent social context, is provided by the failure or satisfaction of the purposes of a marriage contract, in either of which eventuality the estate conveyed to secure the provisions of the marriage contract becomes the property of the person who conveyed it (*Murray's Trs* v *Murray* (1901) 3F 820 at page 827).

[16] In the present case there is no need to resort to the concept of a *quasi* trust because there is in existence an express trust whose terms direct the application of the funds in the event of the trust purposes being fulfilled, but are silent as to their application in the event of failure of those purposes. The radical beneficial interest in the latter situation rests with the providers of the funds, namely the investors, part of whose deposits were paid into the Escrow Account. The resulting trust arising out of the failure of the trust purposes accordingly emerges in their favour.

[17] As to the proportion of the funds due to each contributor, we note from the schedule lodged by the petitioner that the sums lodged in the Escrow Account on behalf of each investor (consisting of 50% of the deposits) remain intact and available for repayment in full, subject only to deduction of the expenses of this application. (We assume that the funds in the account have been earning interest as provided for in the Declaration of Trust.) There is accordingly no competition of claims and, in contrast to the circumstances of *Connell* v *Ferguson* (above), no need for a multiplepoinding to fix the entitlement of each investor.

[18] We answer the questions in the petition as follows:

1. Yes.

2a. The resulting trust operates in favour of the respective investors who contributed thereto and in proportion to such contributions. Ownership of the trust assets remains vested for the time being in the Escrow Agent as trustee, but the investors have a radical beneficial interest in their respective proportions thereof and are entitled to have such a proportion of the trust assets made over to them by the Escrow Agent.

2b. The resulting trust arose when the trust purposes failed, ie when the administrators of Abbeytown disponed the property to a third party in pursuance of missives of sale containing no condition requiring implementation of the development scheme envisaged when the investors paid their deposits.

[19] We find the petitioner entitled to the expenses of the petition, to be paid out of the assets held in the Escrow Account.