

Cristiana Crociani v A (by her Guardian ad Litem, Nicholas Delrieu)

Jurisdiction:	Jersey
Judge:	J. A. Clyde-Smith, Jurats Nicolle, Sparrow
Judgment Date:	18 April 2016
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Text

[2016] JRC 85

ROYAL COURT

(Samedi)

Before:

J. A. Clyde-Smith, **Esq., Commissioner, and** Jurats Nicolle **and** Sparrow

Between
Cristiana Crociani
First Plaintiff
A (by her Guardian ad Litem, Nicholas Delrieu)
Second Plaintiff
B (by her Guardian ad Litem, Nicholas Delrieu)
Third Plaintiff
and

Edoardo Crociani
First Defendant
Paul Foortse
Second Defendant
BNP Paribas Jersey Trust Corporation Limited
Third Defendant
Appleby Trust (Mauritius) Limited
Fourth Defendant
HRH Princess Camilla De Bourbon Des Deux Siciles
Fifth Defendant
Camillo Crociani Foundation IBC (Bahamas) Limited
Sixth Defendant
BNP Paribas Jersey Nominee Company Limited
Seventh Defendant
GFIN Corporate Services Ltd
Eighth Defendant

Advocate A. D. Robinson for the First, Second and Third Plaintiffs.

Advocate W. A. F. Redgrave for the Third and Seventh Defendants.

Advocate N. M. Santos-Costa for the Fourth Defendant.

Advocate A. J. Clarke for the Fifth Defendant.

Authorities

Crociani -v- Crociani [\[2013\] \(2\) JLR 369](#) .

Crociani -v- Crociani [2014] (1) JLR 426 .

Crociani -v- Crociani [2014] (2) JLR 508 .

Crociani -v- Crociani [2014] UKCP 40 .

In re Skeats' Settlement [1889] 4 [2 Ch D 522](#) .

In re Bird Charitable Trust [\[2008\] JLR 1](#) .

Service of Process Rules 1994.

Ketteman v Hansel [1987] A.C. at 220 .

Cunningham v Sinel [\[2011\] JLR 54](#) .

Trust — retirement of 4th defendant as trustee and appointment of new trustee in its place and various other matters relating to the trust.

THE COMMISSIONER:

- 1 This hard fought and well advanced litigation has taken a surprising turn in that on 29th January, 2016, the fourth defendant purported to retire as trustee of the Grand Trust, the subject matter of the proceedings, and to appoint another Mauritius based company, GFin Corporate Services Limited ("GFin") as trustee in its place ("the 2016 appointment"). This was done without prior notice to the other parties, apart from the first defendant (and possibly the fifth defendant), and without prior notice to the Court.

Background

- 2 The background to the Jersey proceedings and the relief being sought by the plaintiffs has been summarised in a number of judgments but it is helpful for us to briefly summarise it again to set the current developments in context.
- 3 The Grand Trust was created by the first defendant on 24th December, 1987, under Bahamian law, the initial trust fund comprising a secured long-term promissory note issued by Croci International BV in favour of the first defendant. The intended beneficiaries included the first defendant's two daughters, namely the first plaintiff and the fifth defendant, for whose benefit the promissory note was to be held in two equal shares. Thereafter various other assets accrued to the Grand Trust.
- 4 The trust deed conferred various powers over the trustees, including the right to pay income from their respective shares to the daughters, or, in each case, the sixth defendant, as well as the right to pay capital to the daughters from their respective shares. There were also provisions for each daughter's share to pass to their respective issue on their respective deaths. In the event of both daughters dying without leaving living issue the first defendant is the default beneficiary and failing her the sixth defendant.
- 5 There were various changes of trustees and proper law but from October 2007, the trustees were the first, second and third defendants ("the Jersey trustees") and the proper law was that of Jersey.
- 6 Between 2007 and 2011, various distributions were made by the Jersey trustees from the Grand Trust. On 9th February, 2010, the Jersey trustees executed a deed ("the 2010 deed") appointing all of the assets of the Grand Trust, except the promissory note, to another trust called the Fortunate Trust, of which the first defendant was both a trustee (together with the third defendant) and a beneficiary.
- 7 Relations between the first defendant and the first plaintiff deteriorated in early 2011 and the first plaintiff moved out of her mother's home. In June 2011, the first defendant revoked

the Fortunate Trust and withdrew all of its assets for her benefit. Before the end of 2011, the first plaintiff raised allegations that the Jersey trustees had acted wrongly and threatened to take steps against them. On 10th February, 2012, the Jersey trustees executed a deed ("the 2012 deed") under which they resigned as trustees, appointed the fourth defendant, a company incorporated and registered in Mauritius, as sole trustee and changed the proper law to that of Mauritius.

- 8 The first plaintiff's lawyers complained about the appointment of the fourth defendant following which, on 2nd August, 2012, the Jersey trustees and the fourth defendant executed a deed ("the Agate appointment") appointing the assets the subject of the 2010 deed into the Agate Trust, a Jersey trust whose terms had been declared the same day by the second and fourth defendants.

- 9 The Jersey proceedings were brought by the plaintiffs on 18th January, 2013, against the first to fourth defendants. In the original proceedings, the plaintiffs allege that:-

The plaintiffs also seek various heads of consequential relief including the appointment by the Court of new trustees in place of the fourth defendant.

The Order of Justice has now been amended to include a claim for breach of trust over the alleged failure of the Jersey trustees and the fourth defendant to collect the interest payable under the promissory note.

(i) certain payments amounting in total to around €6.6M and \$1.2M were wrongly made by the Jersey trustees to the first plaintiff but re-directed to the first defendant and that these monies should be reimbursed to the Grand Trust;

(ii) the 2010 deed was executed in breach of trust and that its effect should be reversed;

(iii) the execution of the 2012 deed was a fraud on the trustees' powers and that its effects should be reversed; and

(iv) the Agate appointment ought to be reversed.

- 10 The Order of Justice was served on the third defendant, which was incorporated in Jersey, but no application was made to serve the proceedings on the first, second and fourth defendants, who reside outside of Jersey, because service was accepted on their behalf by Mourant Ozannes, who then acted for them.

- 11 The first to fourth defendants then sought a stay of the Jersey proceedings on the grounds that Mauritius, where they had commenced proceedings of their own, was the more appropriate forum. That application was refused by the Royal Court on 2nd October, 2013, (*Crociani -v- Crociani* [\[2013\] \(2\) JLR 369](#)) and that refusal upheld by the Jersey Court of

Appeal, on 7th April, 2014, (*Crociani -v- Crociani* [2014] (1) JLR 426) and the Privy Council, on 26th November, 2014, (*Crociani -v- Crociani* [2014] (2) JLR 508 and *Crociani -v- Crociani* [2014] UKCP 40). Those Mauritius proceedings have since been adjourned *sine die*.

2016 appointment

12 Moving on to the current developments, the 2016 appointment contained the following provisions:-

“2 In the exercise of the powers in the Twelfth Clause of the Grand Trust Deed and of every and any other power enabling them to do so under the Trust, the parties hereby expressly declare that:

(a) the proper law of the Trust shall be and continue to be the laws of Mauritius, which is the forum for the administration of the Trust, and the trusts of the Trust shall be read and take effect according to the laws of Mauritius;

(b) all disputes which may arise out of, or in connection with (whether, in each case, wholly or partially, directly or indirectly) this Instrument and/or the Grand Trust Deed or (whether, in each case, wholly or partially, directly or indirectly) the interpretation, application, implementation, validity, breach or termination of this Instrument and/or the Grand Trust Deed or any related instrument, agreement or document, or any other provision hereof or thereof, shall be subject to the exclusive jurisdiction of the Mauritius courts; and

...

7 This Instrument and the trusts of the Trust shall be governed by and construed in accordance with the laws of Mauritius.

8 For the avoidance of doubt and notwithstanding any provision to the contrary, all disputes which may arise out of, or in connection with (whether, in each case, wholly or partially, directly or indirectly) this Instrument or (whether, in each case, wholly or partially, directly or indirectly) the interpretation, application, implementation, validity, breach or termination of this Instrument or any related instrument, agreement or document, or any other provision hereof, shall be submitted to the exclusive jurisdiction of the courts of Mauritius.”

New Mauritius proceedings

13. GFin has declined to be made a party to the Jersey proceedings and, on the basis of the declarations contained in the 2016 appointment, has now made two applications to the courts of Mauritius:-

(i) Seeking interlocutory injunctions restraining and prohibiting the plaintiffs from joining GFin as a party to the Jersey proceedings, from pursuing/continuing the Jersey proceedings and from enforcing any judgment of this Court against GFin; and

(ii) Seeking a number of declarations from the courts of Mauritius including declarations that the 2016 appointment is governed by the laws of Mauritius and is lawful valid and enforceable and that since the 2012 deed (by which the fourth defendant became sole trustee), and more so since the 2016 appointment, the Grand Trust has been governed by the laws of Mauritius and all disputes arising in relation to the Grand Trust are subject to the exclusive jurisdiction of the Mauritius courts.

14. The combined effect of GFin asserting that all disputes concerning the Grand Trust since 2012 (i.e. before the Jersey proceedings commenced) are subject to the exclusive jurisdiction of the courts of Mauritius and seeking an interlocutory injunction against the plaintiffs continuing with the Jersey proceedings, is to attempt to argue (once again) that Mauritius is the appropriate forum for the subject matter of the Jersey proceedings, an argument that has been settled finally and conclusively by the Privy Council in its judgement of the 26th November, 2014.

15. In his affirmations of 9th March, 2016, in support of the Mauritius proceedings, Sheekumar Gujadhur, a director of GFin, acknowledges the decision of the Privy Council but says this at paragraph 19:-

“19 The matter was referred before the Judicial Committee of the Privy Council, which, in a decision dated 26 November 2014, held that even if clause 12 of Trust Agreement conferred exclusive jurisdiction on the Mauritius Courts, no stay should be granted in respect of the proceedings in the Jersey Courts.”

16. This is a misreading of the Privy Council's judgment. At paragraph 4, the Privy Council identified two issues for determination, namely firstly whether the effect of Clause 12 of the Grand Trust deed was to bestow exclusive jurisdiction on the courts of Mauritius and secondly, if so, the appropriateness of permitting the proceedings to continue in Jersey.

17. On the first issue, the Privy Council found that the effect of Clause 12 was not to bestow exclusive jurisdiction on the courts of Mauritius. Quoting from paragraph 30:-

“30 In the Board's view, (i) the Court of Appeal was right in concluding that no part of clause 12(6) of the 1987 Deed was concerned with identifying which country's courts should have jurisdiction to determine disputes relating to the Grand Trust, but (ii) if that conclusion is wrong, (a) it may well be that the clause would only confer non-exclusive jurisdiction on the

courts of the country to which it refers, and (b) there would seem to be a strong case for saying that its effect was that the Jersey courts had jurisdiction in relation to three out of the four principal claims brought in these proceedings.”

18. That made it unnecessary for the Privy Council to consider the second issue, but because it raised points of interest it did so. Quoting from paragraphs 32 and 48:-

“32 This conclusion means that it is unnecessary to consider the second issue. However, it was fully argued and it raises a point of some interest. Accordingly, the Board proposes to address it.

...[Having addressed it]

48 For these reasons, even if clause 12 conferred exclusive jurisdiction on the courts of Mauritius in relation to the four claims raised by the respondents, the Board considers that no stay should be granted in respect of the Proceedings in the Royal Court.”

19. Sheekumar Gujadhur also said this in respect of the Jersey proceedings at paragraph 17:-

“17 The Applicant has been advised that the Jersey Proceedings have been fixed for 16 January 2017 over a period of 15 weeks. However, the parties are still exchanging particulars and no defence has yet been filed by any of the defendants in the Jersey Proceedings.”

20. It is simply incorrect to say that no defence (answer) has yet been filed by any of the defendants in the Jersey proceedings. In order to assist the courts of Mauritius, we attach to this judgment a schedule showing the extensive procedural steps that have been taken in the Jersey proceedings, but in very broad summary:-

- (i) The fifth, sixth and seventh defendants have been added as parties.
- (ii) Amended Answers (and Amended Replies) have been filed, which include a counterclaim by the first defendant seeking the setting aside of the Grand Trust on the grounds of mistake and a third party claim by the third and seventh defendants against the first defendant for an indemnity.
- (iii) General discovery has been ordered and substantially completed.
- (iv) A trial date has been fixed, namely 17th January, 2017, (estimated 12 weeks) and directions given for mediation.
- (v) Extensive directions have been given to enable the trial to proceed on

that date for *inter alia* the filing and exchange of the evidence of witnesses of fact (by 15th June, 2016,) and of expert witnesses on US, Dutch and Italian tax issues and on the laws of the Bahamas, Mauritius, British Virgin Islands and Guernsey (by 30th September, 2016).

Representation

21. Up until May 2015, Carey Olsen had represented the first to fourth defendants, and once joined, the seventh defendant. It is not in dispute that the first defendant was paying the legal costs incurred on their behalf. From that time, Baker & Partners have represented the third and seventh defendants who have been paying their own legal costs.

22. On 2nd February, 2016, Carey Olsen gave notice that it had ceased acting for the fourth defendant, which is now represented by Collas Crill. Subsequent documentation indicates that this was a decision taken by Carey Olsen. Advocate Robinson, for the plaintiffs, surmises that this was as a result of the fourth defendant's decision to retire and appoint GFin.

23. On 17th February, 2016, Carey Olsen gave notice that it was no longer acting for the first and second defendants, a decision it would seem taken by the first and second defendants. Collas Crill have been instructed to act for them, but they are not as yet on the record pending resolution of a dispute over the fees claimed by Carey Olsen. In order to allow Collas Crill to represent the first and second defendants (together with the fourth defendant), the fifth defendant has moved to Le Gallais & Luce.

Current Jersey application

24. On the 24th February, 2016, the Master ordered the fourth defendant to file by the 9th March, 2016, a full affidavit explaining all the circumstances leading to and its reasons for retiring as trustee of the Grand Trust. All of the defendants were ordered to produce by the 9th March, 2016, all documents in their possession, custody or power relating to the 2016 Appointment, other than those over which privilege is claimed.

25. The plaintiffs issued a summons dated 17th March, 2016, that came before the Court on 21st March, 2016. In that summons, they sought the following relief:-

(i) Leave to amend the re-amended Order of Justice to challenge the validity of the 2016 appointment and to join GFin as a party to the proceedings (with leave to serve GFin out of the jurisdiction).

(ii) For an order that the fourth defendant takes all necessary steps to apply to the courts of Mauritius for a stay and/or for an adjournment *sine die* of the new Mauritius proceedings.

(iii) To the extent that the first, second, third, fifth, sixth and seventh defendants appear in the new Mauritius proceedings, and submit to its jurisdiction, to take all necessary steps to support the fourth respondent in its application for a stay and/or adjournment.

(iv) Unless they comply with the Master's order of 24th February, 2016, (disclosure in relation to the 2016 Appointment) by close of business on 25th March, 2016, the first, second, fourth and fifth defendants should appear before the Court on 6th April, 2016, to show cause why they should not be debarred from defending these proceedings.

(v) An order that the defendants shall produce all documents in relation to the changes in the terms of the promissory note, which comprises the main asset of the Grand Trust, apparently undertaken by the fourth defendant prior to its retirement by close of business on 25th March, 2016.

(vi) An order restraining the fourth defendant and/or GFin from dealing in any manner whatsoever with the promissory note other than to collect interest due thereon.

26. In common with the plaintiffs, the third and seventh defendants are concerned that in the face of the Privy Council's judgment, GFin has commenced substantive proceedings in Mauritius to which the third defendant is a party and immediately upon receipt of notice of those proceedings, Advocate Redgrave, on their behalf, wrote on 14th March, 2016, to the Mauritius court expressing the third defendant's clear view that the issue of the correct forum had already been determined by the Privy Council and that GFin was bound by that judgment. It is worth quoting the penultimate paragraphs of that letter:-

"As I have already said, my client was amongst those parties to the Jersey Proceedings which sought to establish that the appropriate forum for the resolution of the issues being litigated in the Jersey Proceedings was Mauritius in the 2013 Forum Application. However the 2013 Forum Application was dismissed by two appellate courts (the latter of which, the Privy Council, is the highest court of appeal in both Jersey and Mauritius). BNP Jersey consider that GFin is bound by that judgment.

Very large sums have already been expended on litigating the issues raised by Cristiana and her children in the Jersey Proceedings in the Royal Court. My client is concerned that the effect of the orders which GFin seek would be to further increase expense and delay the determination of the dispute between the parties. I wish to take this opportunity to urge GFin and each of the Respondents to GFin's application to accept the determination of the Privy Council as to the proper forum for this dispute and to

concentrate on the proper resolution of the issues therein.”

27. Advocate Redgrave supported the joining of GFin to the Jersey proceedings, but resisted the third and seventh defendants being made the subject of any of the further relief sought by the plaintiffs, as there is no evidence to suggest that they would attempt to subvert the jurisdiction of the Royal Court or support any attempts by GFin to do so, or that they had any documents to discover. Advocate Redgrave reminded the Court of their ongoing general discovery obligations in any event.

28. Advocate Clarke, for the fifth defendant, had no instructions and therefore no submissions to make to the Court. Advocate Santos-Costa, whilst instructed by the first and second defendants, could not go on the record as representing them as a result of the fee issue with their former legal advisors Carey Olsen and was therefore only able to make submissions on behalf of the fourth defendant. He had no submissions to make on the joining of GFin as a party to the Jersey proceedings, but resisted an order that the fourth defendant shall forthwith take all necessary steps before the Mauritius court to apply to stay and/or adjourn *sine die* the new Mauritius proceedings.

29. The fourth defendant, whilst named as a respondent in the Mauritius proceedings, had not been served with those proceedings and it was difficult, he said, to know what was meant by “*take all necessary steps*” – how could such an injunction be policed by the Court and how would the fourth defendant know what the extent of its obligations were, bearing in mind any failure to comply would sound in contempt. The plaintiffs had failed to provide any authority for such an unusual and draconian order. In all the circumstances, he submitted that it was logical and appropriate for the Court to await the explanation of all the parties as to why the trust assets had been transferred from the fourth defendant to GFin, and therefore beyond the reach of the Court, before the Court considered making oppressive and draconian orders against the parties at this stage.

Reasons for the appointment of GFin

30. Whilst the Court is not at this stage considering the validity of the 2016 appointment, it has a responsibility for ensuring the just and proper conduct of the proceedings before it. For that purpose we set out sequentially the reasons put forward by the fourth defendant for the steps it has taken:-

(i) On 9th February, 2016, the fourth defendant wrote directly to the Judicial Greffier advising that Carey Olsen had ceased to act for it and expressing regret for Carey Olsen's decision. It said it had been placed in a very embarrassing situation:-

“Moreover, given the fact that our integrity and independence as trustee have been challenged for reasons we perceive are totally frivolous by one of the beneficiaries of the Grand Trust, we also wish to inform the Court

that we have retired as trustees of the Grand Trust as of 29 January 2016.”

(ii) On 11th February, 2016, the fourth defendant e-mailed Bedell Cristin saying this:-

“Our resignation as trustee has been made in good faith following a realignment of our business model.”

(iii) The Court was informed by Advocate Robinson that at the hearing before the Master on 24th February, 2016, Advocate Santos-Costa explained that the fourth defendant had retired as trustee because it was *“sick of the litigation”*. Advocate Santos-Costa did not demur from that in the hearing before us.

(iv) In an affidavit of Lee Mo Lin Lee Chee Kiong Noel Patrick, a director of the fourth defendant, dated 9th March, 2016, filed in response to the Master's order of 24th February, 2016, he gave these reasons for the fourth defendant retiring:-

“4 That there have been recent changes to the composition of the Board of Directors of the Fourth Defendant and as a consequence we have reviewed our client relationships.

5 The decision of the Fourth Defendant to retire as trustee of the Grand Trust, has been motivated mainly by the fact that its independence as trustee has been challenged by one of the beneficiaries of the Grand Trust for reasons which the Fourth Defendant perceives to be totally frivolous.

6. The Fourth Defendant further states that in order to defend those allegations made by the Plaintiffs towards it, considerable costs and fees have been incurred so far.

7. Further, the Fourth Defendant wishes to draw the Royal Court's attention to prayer nine of the Re-Amended Order of Justice dated 08 July 2015 order, whereby the Plaintiffs request the appointment of new trustees in place of the existing trustees of the Grand Trust, that is the Fourth Defendant.”

(v) Exhibited to that affidavit was a copy of the 2016 appointment and of the written resolution of the fourth defendant (the only documents disclosed by the fourth defendant in response to the Master's order), which gives these reasons for its retirement:-

“IT IS NOTED THAT:

(a) we have an international reputation as a highly professional, competent and independent service provider with a large client base worldwide and we have acted as trustees and are acting as trustees

on numerous trusts without any issues;

(b) our integrity and independence as trustee has now been put into question by one of the beneficiaries of the Grand Trust, namely Cristiana Crociani ("Cristiana") in the re-amended order of justice that she has filed in certain court proceedings in Jersey ("the Jersey Proceedings");

(c) one of the prayers of Cristiana in the Jersey Proceedings is that we should retire as trustee of the Grand Trust and that another trustee should be appointed;

(d) pursuant to the Twelfth Clause of the Trust Deed, we are entitled to retire as trustee and to appoint a new trustee subject to the terms of the Trust Deed;

(e) for the above reasons, we are proposing to retire from the Grand Trust and to appoint GFin Corporate Services Ltd ('GFin') as the new trustee;"

(vi) Mr Patrick expanded on this in a further unsworn affidavit filed with the Court shortly before the hearing on 21st March, 2016:-

"Reasons for retirement

2. The Fourth Defendant in the aforesaid matter wishes to reiterate that the reasons behind its decision to retire and appoint a new trustee. That there have been recent changes to the ultimate shareholding of the Fourth Defendant and the composition of its Board of Directors. The new Board has imposed stricter compliance obligations on the management of the Fourth Defendant.

3. As a consequence, the Fourth Defendant had to review its client relationships. The management has taken the view that the Grand Trust constitutes unnecessary reputational risk to the Fourth Defendant in the light of the allegations made by the Plaintiffs. The new Board and the management of the Fourth Defendant have opted for a more prudent approach in respect of this matter and their compliance team have resolved to cease providing services to the Grand Trust and instead spend more time and effort on its business and non-litigious matters.

4. The Fourth Defendant expected that the litigation before the Royal Court, which is essentially a family dispute, would be managed reasonably and could be determined either by way of a settlement or, at worst, following a hearing within reasonable terms. Instead, the litigation, in terms of discovery process, time and resources required, excessive costs, gratuitous allegations and excessive and

unnecessary issues and details, has ran out of proportion. From the perspective of the Fourth Defendant the present matter is a private family trust and subjected to a family dispute. Therefore, the discovery and other pre-trial processes and the trial time should be a matter of days as this would have been in case of comparable litigation in Mauritius. As an indication, the Fourth Defendant has been advised and verily believes that the present dispute would not have taken more than four or five days to be heard. Instead about 12 weeks of trial time has been earmarked, which the Fourth Defendant believes goes far beyond a reasonable assessment of the time and resources required for such a case.

5. That disproportionate manner of litigating the present dispute has brought up significant costs issues and the First Defendant has progressively expressed her reluctance to bear those costs. That lead to a level of frustration and eventually to disagreement with former counsel, Carey Olsen, which, in the opinion of the Fourth Defendant was litigating the dispute too aggressively and disproportionately both in terms of the volume of work required and the corresponding legal fees. The Fourth Defendant was unable to influence counsel to focus on the relevant defences, which, from its perspective, should have been quite straightforward.

6. The Fourth Defendant is trustee company registered and regulated in Mauritius. The Grand Trust is a trust governed by the laws of Mauritius. The Fourth Defendant took the view that it was not conducive to the interests of all stakeholders of the Grand Trust to continue to litigate a family dispute which ran the risk of consuming the family wealth and resources of the beneficiaries before the Royal Court.

7. Furthermore, the decision of the Fourth Defendant to retire as trustee of the Grand Trust was also motivated by the fact that its independence and impartiality as trustee has been challenged by one of the beneficiaries of the Grand Trust. The Fourth Defendant felt that it was no longer in a position to perform its duties as trustee given that any action or inaction on its part would be construed to be without independence thereby restricting it from exercising its discretion as would be expected from a trustee in normal circumstances.

8. For those reasons, the Fourth Defendant decided to retire and appoint a new trustee. The Fourth Defendant has been advised and verily believes that such retirement and appointment is in accordance with the laws of Mauritius, the governing law of the Grand Trust.

9. The Fourth Defendant imparted to its attorneys at law in Mauritius

that it wished to retire as trustee and to appoint a new trustee. The lawyers made arrangements via other legal advisers to identify and appoint a new trustee as this is now known to all parties. The arrangements for the change in trustee were done mainly in the form of meetings with the relevant legal advisers and the Fourth Defendant considers that the details of those meetings are legally privileged and subject to the exclusive jurisdiction of Mauritius.”

- 31 It would seem fair to observe from this that in retiring as trustee and appointing GFin in its place, the fourth defendant was primarily concerned with its own interests, as opposed to those of the beneficiaries, but leaving that aside it appears to have taken the decision that it was not in the interests of the beneficiaries (the stakeholders) as a whole to continue with the Jersey proceedings and this apparently without any consultation with those beneficiaries. It then went on to make declarations in the 2016 appointment (set out above) which created the platform upon which GFin has launched the new Mauritius proceedings. The fourth defendant will have to explain how these actions could be said to be in the interests of all the beneficiaries. We can see that it might be that some of the defendants would regard these actions on the part of the fourth defendant to be in their interests, but there can surely be little doubt that if the plaintiffs had been consulted as beneficiaries, they would have raised the most serious objection.
- 32 In making the declarations contained in the 2016 appointment that the courts of Mauritius will have exclusive jurisdiction over all disputes in relation to the Grand Trust, the fourth defendant was purporting to exercise its powers under the Twelfth clause of the trust deed, but on examining that clause we note that it applies only where a new trustee is appointed “outside the jurisdiction at that time applicable to the trusts”- our emphasis. On its appointment GFin was within the jurisdiction at that time (on the face of it) applicable to the Grand Trust. In any event the Privy Council had held definitively that this clause does not confer exclusive jurisdiction upon the courts of Mauritius and the fourth defendant, which is directly bound by the decision of the Privy Council and which as the retiring trustee exercised the power, will need to explain how it could take it upon itself to declare otherwise.
- 33 The only communication the Court has seen emanating from GFin is its e-mail of 11th March, 2016, to Advocate Santos-Costa. It draws his attention to the declarations contained in the 2016 appointment and states as follows:-

“3 You may wish to note that GFin has agreed to the appointment as Trustee subject to the specific condition that the Deed of Retirement and Appointment (“the Deed”) is governed by Mauritius law and that the Mauritius courts shall have exclusive jurisdiction in relation with any matter arising in connection with the Deed and the Grand Trust.

4 Your attention is drawn to clause 2 of the Appointment Deed pursuant to which: (a) the proper law of the Trust is the laws of Mauritius, which is the forum for the

administration of the Grand Trust, (b) the Grand Trust will be read and take effect according to the laws of Mauritius, and (c) all disputes which may arise out of, or in connection with the Appointment Deed and/or the Trust Deed will be subject to the exclusive jurisdiction of the Mauritius courts.

5 On the basis of the above, GFin sees no reason why it should be joined as a party to the Jersey Proceedings and in any event if there is any dispute to be resolved, same must be submitted to the Mauritius courts for determination in accordance with Mauritius laws.

6 In the above circumstances, GFin has made an application to the Supreme Court of Mauritius requesting an anti-suit injunction to restrain the parties in the Jersey Proceedings from joining GFin to the Jersey Proceedings. I hereby attach a copy of the application and the order of the Supreme Court of Mauritius. You may wish to apprise the Jersey Court and the parties to the Jersey Proceedings of the proceedings initiated by GFin.”

- 34 GFin will need to explain the basis upon which it purported to make it a condition of becoming trustee that, notwithstanding the decision of the Privy Council, the courts of Mauritius should, after all and in defiance of that decision, have exclusive jurisdiction over the subject matter of the Jersey proceedings and this apparently without any consultation with the beneficiaries as to whether it was in their interests for such a condition to be accepted. The fourth defendant will need to explain how, directly bound as it is by the Privy Council decision and in the exercise of its fiduciary powers, it could accept such a condition, again apparently without consultation with the beneficiaries.
- 35 The first defendant wrote to the Court on the 29th March, 2016, in response to the Master's orders of the 24th February, 2016, in which she says this about her involvement in the appointment of GFin:-

“ Appointment of GFin

2. I wish to inform the Jersey Court that I had no involvement whatsoever, save and except as specified below, in the appointment of the new trustee of the Grand trust, GFin Corporate Services Ltd (“GFin”).

3. I was contacted by a director of GFin in or about the end of January 2016 and informed that GFin and Appleby Trust (Mauritius) Ltd had been in communication regarding the appointment of GFin as the new trustee of the Grand Trust.

4. GFin wanted specifically during our telephone conversation that I ascertain my intention, at the time the Grand Trust was created, regarding the tribunal that would have jurisdiction to hear any disputes relating to the Grand Trust.

5. I confirmed that at the time that I created the Grand Trust, I intended that all disputes arising in relating to the Grand Trust, including in relation to its administration, should

be heard by the courts of the place where the Grand Trust is administered from time to time. GFin requested that I confirm my statement in writing. I herewith attach a copy of the letter sent to GFin to that effect on 28 January 2016.

6. I also had other telephone conversations with GFin regarding, inter alia, an indemnity agreement that GFin wanted me to enter into, as has been the practice with the previous trustees of the Grand Trust. I agreed to provide an indemnity to GFin and I herewith attach a copy of the indemnity agreement dated 29 January 2016."

36 The first defendant is the settlor of the Grand Trust and, on her case, an intended (rather than just a default) beneficiary. The trust fund comprises the benefit of a promissory note under which some €23M is due to be paid by a company she controls. It might be thought, therefore, that a change of trustee would be of considerable importance to her and a matter over which she would have been consulted and very much involved. According to her letter, however, her involvement was minimal, implying that the fourth defendant and GFin took these actions upon themselves, unprompted by anyone connected to the beneficial class. The first defendant was not, apparently, consulted over (i) the fourth defendant's wish to retire (ii) the identity and suitability of the proposed new trustee and (iii) the condition upon which GFin was prepared to act as trustee, a condition which would potentially have a direct impact on the Jersey proceedings in which she was involved.

37 As can be seen, a number of issues arise out of these documents and explanations which will need to be addressed:-

(i) Our understanding of the evidence given as to Mauritius trust law in the forum challenge is that the fundamental principles of English trust law would apply and under English trust law (as under Jersey trust law), it is well established that the power to appoint new trustees is a fiduciary power which must be exercised in good faith in the interests of the beneficiaries as a whole (see *In re Skeats' Settlement* [1889] 4 [2 Ch D 522](#) and *In re Bird Charitable Trust* [2008] [JLR 1](#)). We do not think that a trustee can be criticised for expressing a desire to retire as trustee. Indeed, we are sure many a trustee, finding itself embroiled in trust litigation, would wish to do so. The problem relates to the exercise of the retiring trustee's power to appoint a new trustee, a fiduciary power which we suggest can only be exercised in the interests of the beneficiaries as a whole. As we have already observed, the explanations put forward make no reference to any consultation with the beneficiaries as to whether it was in the interests of all of them for GFin to be appointed. We do not know whether the fifth defendant was consulted but it seems clear that the plaintiffs were not. According to the first defendant's letter she does not appear to have been consulted over whether it was in the interests of the beneficiaries of the Grand Trust for GFin to be appointed. She appears to have been consulted only over where, in 1987, she intended disputes to be heard and over giving GFin an indemnity.

(ii) In addition to exercising its fiduciary power to appoint GFin as trustee, the fourth defendant has selected a new trustee which (according to GFin's e-mail of 11th

March, 2016,) would only act as trustee on the basis that, notwithstanding the decision of the Privy Council, all disputes concerning the Grand Trust should be subject to the exclusive jurisdiction of the Mauritius courts, hence the declarations made in the 2016 appointment set out above, a document, according to the written resolution of the fourth defendant, prepared on its behalf. Again, as we have already said, there is no reference to any consultation with the beneficiaries whether the appointment of a new trustee on this basis was in their interests. It was a matter of very considerable importance as it potentially had a direct bearing on the Jersey proceedings in which they were all heavily involved.

(iii) One of the issues in the Jersey proceedings is the validity of the 2012 appointment by which the fourth defendant was appointed as sole trustee of the Grand Trust and the proper law changed to Mauritius. Pending resolution of that issue, there is uncertainty therefore as to whether the fourth defendant is the duly appointed sole trustee of the Grand Trust and, indeed, whether the Grand Trust is subject to the proper law of Mauritius. The fourth defendant will need to explain why it has purported to exercise its power to appoint a new trustee in the face of that uncertainty as to its status, its powers and the applicable proper law.

(iv) The Grand Trust is illiquid. Its sole material asset is the benefit of the promissory note under which interest is not currently being collected. Shortly before retiring as trustee, the fourth defendant agreed to extend the repayment date from the 31st December, 2017, to 12th December, 2022, because of an apparent lack of liquidity within the payor, Croci International BV, a company controlled by the first defendant. GFin has therefore accepted trusteeship of a trust embroiled in hostile litigation which in the short to medium term would seem to have no ability to pay for GFin's professional services. Furthermore, GFin has now launched proceedings in Mauritius through lawyers in that jurisdiction. On the assumption that GFin would not be providing its professional services gratuitously or using its personal funds to pay for the new Mauritius proceedings, GFin must presumably be receiving funding from another source. Attached to the first defendant's letter to the Court is a copy of a "*Fee Agreement and Indemnity*" dated the 29th January, 2016, under which the first defendant gives GFin a wide indemnity for acting as trustee, as she says she has done with previous trustees. The preamble to that indemnity also anticipates litigation for which it says she has agreed to pay. The clear implication is that the first defendant is the source of GFin's funding. Indeed, it is our understanding, and not we believe in dispute, that the first defendant has been paying or procuring the payment of the fees and outgoings of the fourth defendant to date.

38 This Court is very concerned at the picture that is emerging from the documents and explanations so far provided. The fourth defendant and GFin, possibly funded by the first defendant, appear to have procured:-

(i) The removal of the remaining but still substantial trust assets beyond the reach of this Court, and

(ii) The creation of a platform, the declarations in the 2016 appointment, from which GFin has launched the new Mauritius proceedings in defiance of the Privy Council decision, proceedings which may have been contemplated when it was appointed trustee by the fourth defendant.

39 We raise these concerns because they arise on the documents and explanations provided to us but we acknowledge that the first defendant, the fourth defendant and GFin, have not had an opportunity to respond to those concerns. These actions must have given rise to a substantial body of documentation over which the fourth defendant is claiming privilege but which may well throw greater light upon what has transpired. Whether it is entitled to do so will need to be determined by the Master as part of the discovery process initiated by him pursuant to his orders of the 24th February, 2016.

Decision

40 The hearing before this Court took place on 21st March, 2016, at very short notice in the light of GFin's application before the Supreme Court of Mauritius for interlocutory injunctions against the plaintiffs being scheduled for the following Wednesday, 30th March, 2016. The Court made a number of orders reserving its position on others and we take them in turn.

Amendment of Order of Justice and joining of GFin

41 Although the application to amend the Order of Justice is brought late in the day, it has been brought about because of the actions of the fourth defendant in appointing GFin as trustee in January of this year. The circumstances in which that appointment took place as set out above makes it inevitable in our view, that the plaintiffs would seek to challenge it. None of the counsel present raised any objection to that amendment and to the joining of GFin for that purpose.

42 The application for leave to serve the amended Order of Justice on GFin outside of the jurisdiction was supported by an affidavit by Ben Thorp of Bedell Cristin dated 18th March, 2016, which complies with RC15/01. The application was brought under Article 7(c) of the Service of Process Rules 1994 which is in these terms:-

“Service out of the jurisdiction of a summons may be allowed by the Court whenever –

(a) ...

(b) ...

(c) the claim is brought against a person duly served within or out of the jurisdiction and a person out of the jurisdiction is a necessary or proper party thereto;”

- 43 There is no question that the first to seventh defendants have all been duly served within or out of the jurisdiction as the case may be.
- 44 GFin is a proper party to the Jersey proceedings, because its appointment as trustee is being challenged by the plaintiffs and because it holds the trust assets in respect of which the Court may ultimately seek to make orders.
- 45 In the circumstances, we gave leave for the Order of Justice to be amended, for GFin to be made a party and for it to be served out of the jurisdiction.

Disclosure of documents

- 46 This related to the changes in the promissory note agreed by the fourth defendant shortly before retiring as trustee. The Court accepted Advocate Redgrave's submissions that no such order was required against the third and seventh defendants as there is no evidence that they had any involvement in this, but the Court determined it was appropriate for the remaining defendants to provide the disclosure sought.

Interlocutory Injunctions over assets of Grand Trust

- 47 Whilst Advocate Santos-Costa was correct to say that there was no order preventing the fourth defendant from retiring and appointing GFin as the new trustee, it was not in the contemplation of the Court that it would seek to do so, certainly without prior notice. The fourth defendant has accepted the jurisdiction of the Jersey Court, albeit that it joined in with the first, second and third defendants in unsuccessfully applying for a stay on the grounds that Mauritius was the more convenient forum. By its actions taken this January, the fourth defendant has now purported to place the trust assets beyond the reach of this Court and has made declarations which have created the platform upon which the new Mauritius proceedings have now been launched.
- 48 The Court was not prepared to countenance any further changes in the trusteeship of the Grand Trust without its prior approval and therefore granted the interlocutory injunctions sought by the plaintiffs. It was not clear whether the promissory note had yet been assigned to GFin and whether the formalities, if any, required under the laws of the Kingdom of the Netherlands (by which the promissory note is subject) for an assignment, had been complied with and therefore the interlocutory injunction was extended to both the fourth defendant and GFin.

Interlocutory Injunctions in relation to the new Mauritius proceedings

- 49 The Court reserved its decision in respect of the interlocutory injunctions sought by the plaintiffs in relation to the new Mauritius proceedings. The precise orders sought were as follows:-

“4 In relation to the proceedings which have been commenced by GFin in the Supreme Court of Mauritius by Plaintiff with Summons dated 24 February 2016 and a subsequent application for injunctive relief issued by GFin dated 9 March 2016 (together the “New Mauritius Proceedings”):

a) The Fourth Defendant shall forthwith take all necessary steps before the Mauritius Court to apply to stay and/or adjourn sine die the New Mauritius Proceedings with immediate effect, pending the determination of the Jersey action (including any appeals). For the avoidance of doubt, the Fourth Defendant shall take no other steps in the New Mauritius Proceedings other than for the purpose of securing the aforementioned stay/adjournment.

b) To the extent that they enter an appearance at any hearing in the New Mauritius Proceedings and submit to the jurisdiction of the Mauritius court, the First, Second, Third, Fifth, Sixth and Seventh Defendants shall take all necessary steps to support the Fourth Defendant's application to stay and/or adjourn sine die the New Mauritius Proceedings with immediate effect, pending the determination of the Jersey action (including any appeals). For the avoidance of doubt, the First, Second, Third, Fifth, Sixth and Seventh Defendants shall take no other steps in the New Mauritius Proceedings other than for the purpose of supporting the Fourth Defendant's application to stay those proceedings and/or adjourn them sine die.”

50 In 2013, the Royal Court and the Court of Appeal made orders against the first to fourth defendants not to take any steps in the Mauritius proceedings that they had commenced at that time. The Court has personal jurisdiction over the fourth defendant and Advocate Robinson submitted that we can therefore require it to apply to have the new proceedings brought by GFin in Mauritius stayed. He saw no difference between the orders made against the first to fourth defendants in respect of the proceedings in 2013 and what is sought now. He cited no authority to assist the Court.

51 The Court was concerned that there may be a difference between ordering a party to stay proceedings it has commenced in another jurisdiction and ordering a party to apply for proceedings brought by others in another jurisdiction to be stayed i.e. to take an active role in those proceedings. The former application would, by definition, be consented to and the outcome therefore assured. The latter application may well be contested and the outcome uncertain. What, precisely, would the fourth defendant be required to do and how far would it be required to go in dealing with that contested application? How is this Court to avoid the danger of trespassing on the jurisdiction of the courts of Mauritius by seeking to control, through orders, the conduct of a party in a contested case before it? These are issues that require careful consideration with the benefit of full skeleton arguments and authority, but that is not to say that this Court will not act decisively to ensure the just and proper conduct of the Jersey proceedings.

- 52 However, we would very much hope that such further argument will prove unnecessary for this reason. The Privy Council is the ultimate Court of Appeal in both jurisdictions (as we understand it) and it has ruled definitively on where the matters in dispute in the Jersey proceedings should be heard and determined, namely Jersey. Very substantial procedural steps have been taken in reliance upon that ruling at great cost to all the parties concerned and the action is scheduled for a final hearing to commence in January of next year.
- 53 Courts have to bear in mind the strain litigation imposes on litigants, particularly if they are personal litigants and, as here, members of a once close family, and the anxiety occasioned by facing new issues. Following the Privy Council decision there is, or should be, a legitimate expectation on the part of all of the parties that the Jersey proceedings will determine the issues before the Jersey Court one way or another. It is also in the interests of the community as a whole that proceedings should proceed efficiently and expeditiously (see the comments of Lord Griffiths in *Ketteman v Hansel* [1987] A.C. at 220 cited with approval in *Cunningham v Sinel* [2011] JLR 54).
- 54 The bringing about of a second bout of parallel proceedings in Mauritius can only increase the strain upon the parties, considerably increase the costs that they must all bear and threaten the efficient and expeditious resolution of the issues before the Jersey Courts. Quite apart from that it seems to us that there is an element of futility in bringing about a second bout of parallel proceedings in Mauritius in that, whatever orders GFin might hope the courts of Mauritius may make, the Privy Council is their ultimate court of appeal and it is hard to see how the Privy Council would do anything other than to act in a manner which is consistent with the decision it has already made as to where these disputes should be heard.
- 55 The new Mauritius proceedings have now been adjourned to 22nd April, 2016, and we anticipate that the Supreme Court of Mauritius will be as concerned at these developments as this Court is and will wish to take all steps it properly can to uphold the decision of the Privy Council, by which all of the parties in the Mauritius proceedings, including we would respectfully suggest GFin as successor trustee, are bound.
- 56 This Court's only concern is to ensure that justice is done between the parties in the proceedings before it and for that purpose the current trustee, GFin (on the plaintiffs' case a *trustee de son tort*), is a necessary party. To the extent that the Supreme Court exercises a supervisory jurisdiction over GFin, it would be of assistance to this Court if GFin could be directed to submit to the jurisdiction of the Royal Court of Jersey.

Unless orders

- 57 Finally, we need to comment on the application for unless orders following the alleged non-compliance with a number of orders made by the Master. As we have separately ordered these matters should be referred back to the Master, who has the ongoing

management of these proceedings.

58 In the premises, having already granted the applications as set out in paragraphs 25 (i), (v) and (vi) above, we decline to grant the applications as set out in paragraphs 25 (ii), (iii) and (iv) above.