# Geneva Trust Company (GTC) SA v Equity Trust (Jersey) Ltd

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| **Jurisdiction:** | Jersey |
| **Judge:** | J. A. Clyde-Smith OBE |
| **Judgment Date:** | 26 March 2020 |
| **Neutral Citation:** | [2020] JRC 53 |
| **Date:** | 26 March 2020 |
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| **Court:** | Royal Court |

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**Text**

[2020] JRC 53

ROYAL COURT

(Samedi)

Before:

J. A. Clyde-Smith OBE, **Commissioner, sitting alone**

In the Matter of the Representation of Geneva Trust Company (GTC) SA

and

In the Matter of the ZII Trust

and

In the Matter of Articles 51 and 53 of the Trusts (Jersey) Law, 1984 (As Amended)

Between
Geneva Trust Company (GTC) SA
Representor
and
Equity Trust (Jersey) Limited
First Respondent

and

E, in his personal capacity and in his capacity as executor of C's estate
Second Respondent

and

Sijar Trust Company Limited, as trustee of the X Trust
Third Respondent

and

Advocate S Chiddicks, as guardian ad litem of A and B
Fourth Respondent

and

K
Fifth Respondent

**Advocate** J. M. P. Gleeson **for the Representor**.

**Advocate** J. Harvey-Hills **for the Second Representor**.

**Authorities**

Trusts (Jersey) Law, 1984 (as amended).

Representation of Geneva Trust Company (GTC) SA (unpublished) dated 15th January 2020.

*Representation of Rawlinson and Hunter Trustees SA re Z Trusts* [2018] JRC 119

*Representation of Rawlinson and Hunter SA re Z Trusts* [2018] JRC 164

*Representation of Rawlinson and Hunter Trustees SA re Z Trusts* [2018] JRC 203

*Representation of Rawlinson and Hunter Trustees SA re Z Trusts* [2019] JCA 106

*In re Berkeley Applegate* [1989] 1 Ch 32

*BNP Paribas Ors v Crociani* [2018] JCA 136A.

*Representation of the Z Trusts* [2015] JRC 214

*In Re Carafe Trust* [2005] JLR 159

*Re Buckton* [1907] TCH 406

Lewin on Trust 19th edition

*In re IMK Trust* [2008] JRC 136.

*Representation of Zedra Trust Company (Jersey) Limited re ZIII Trust* [2019] JRC 069

Practice Direction RC10/01

Trust — decision of GTC to compromise its claim.

**THE COMMISSIONER:**

1 On 24 th January, 2020, I sat to hear an application by the second respondent, Mr E, in his capacity as executor of C's estate, in relation to the funding of the priority appeal and certain other matters adjourned from earlier that day in respect of the representation brought by the representor ("GTC") *Representation of Geneva Trust Company (GTC) SA* (unpublished) dated 15th January 2020.

2 All the matters before me, which the parties agreed I could deal with as a single judge, flowed from the decision of GTC, sanctioned earlier that day by the Court, to compromise its claim against the former trustee of the ZII Trust, VG Trustees Limited ("VTT").

**Priority Issue Proceedings**

3 On 3 rd July, 2018, the Court gave judgment on a point of law in relation to the nature of the equitable rights of a former trustee *Representation of Rawlinson and Hunter Trustees SA re Z Trusts* [2018] JRC 119. The first respondent ("Equity Trust"), which has a claim of £18 million (excluding interest and costs), argued that its rights as the former (and original) trustee of the ZII Trust took priority over the rights of the other claimants to the assets of that trust, which was *"insolvent"* (using that technically inappropriate term). Mr E, in his capacity as executor of his late mother's estate ("the Estate"), had made the contrary argument, which was successful. There was a further judgment dated 10 th September 2018 *Representation of Rawlinson and Hunter SA re Z Trusts* [2018] JRC 164 in which the Court held that Equity Trust could not claim for its costs in proving its claim, and a third judgment of 2 nd November 2018 *Representation of Rawlinson and Hunter Trustees SA re Z Trusts* [2018] JRC 203 in which Equity Trust was ordered to pay the costs of the Estate.

4 In its judgment of 28 th June 2019 *Representation of Rawlinson and Hunter Trustees SA re Z Trusts* [2019] JCA 106, the Court of Appeal overturned those three decisions, finding that Equity Trust was entitled to priority and to recover its costs in making its claim. It awarded Equity Trust the costs of the appeal and the proceedings below against the Estate.

5 On 23 rd September, 2019, *Equity Trust (Jersey) Limited v E (in his capacity as Executor of the Estate of C* [2019] JCA 188, the Court of Appeal gave Mr E as executor unconditional leave to appeal the decision of the Court of Appeal, finding that there were two arguable points of law of general public importance, the first being the priority issue and the second being the status of a trustee's lien in Jersey law. The Court of Appeal said this at paragraph 6:-

> ***"6. We consider that both these issues need to be considered by the JCPC at this time. It is important that the proper way of dealing with trusts where there is a deficiency of assets should be established sooner rather than later, so that present creditors can know where they stand and future creditors can decide on what terms to deal with trustees. It is important also, given the importance of the trust industry to the island, that the law of trusts as it applies in Jersey should be properly understood and that possible conflicts between rules of English trust law and rules of Jersey customary law should be resolved as soon as possible."***

6 Now that ZII Trust has funds available comfortably more than enough to meet the priority claim of Equity Trust, should the Privy Council uphold the Court of Appeal decision, Mr E seeks the following relief, pursuant to his summons of 20 th January, 2020, which is in the following terms:-

> ***"1) GTC be authorised to make the following payments to Mr E in his capacity as executor of the estate of the late C, by payment to the client account of Mourant Ozannes, bank account number 04789506, sort code 30-94-61:-***
>
> > ***(a) the sum of GBP 325,000 in respect of monies on account of the Estate's legal costs of the appeal to the Judicial Committee of the Privy Council in respect of the determination of the order of priority of the creditors of the ZII Trust (the Priority Issue Proceedings); and***
> >
> > ***(b) the sum of GBP 320,694.92 in respect of reimbursement for the costs incurred on behalf of the Estate of the Late C in the Priority Issue Proceedings to date."***

The total sum requested is £645,694.92. The breakdown of the time charges in respect of the costs incurred by the estate to date in the Priority Issue Proceedings was provided by Advocate Harvey-Hills by letter dated 23 rd January, 2020.

7 The creditors of the ZII Trust are listed in the accounts for the period ending 30 th September, 2015, as follows:-

These are all creditors connected to D or trusts associated with them. I will refer to them as "the connected creditors". In addition to the claims of the connected creditors, there is the priority claim of Equity Trust of (at least) £18 million. None of these claims have been proved.

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|---|---|
| Fielden Holdings Limited | £27,500 |
| The trustee [now GTC] of the ZI Trust | £29,317,497 |
| The estate of C | £1,462,465 |
| Prime Office Investments Limited | Nil |
| RBC Trustees (CI) Ltd [now Sijar Trust Company Limited] as trustee of X Trust | £165,568,889 |
| Mr E | £14,629,197 |
| | **£211,025,548** |

8 The assets of the ZII Trust now comprise a claim against the ZIII Trust in the sum of £186 million, bearing interest, of which on current estimates only some £6 million was thought to be recoverable, and the settlement monies. If the appeal by the Estate to the Privy Council were to succeed and Equity Trust is to share the assets of the ZII Trust *pro rata* with the connected creditors, then the distribution to the connected creditors more than doubles, and so it is very much in their interests that the appeal proceed and the issue is whether the assets of the ZII Trust should be used for that purpose.

9 Mr E has filed an affidavit dated 21 st January, 2020, which deals *inter alia* with his financial position and the financial position of the Estate, but in my view, as between the connected creditors, it is not a question of whether Mr E personally or the estate of his mother can afford to fund the costs of the Priority Issue Proceedings, but whether those costs should be shared as between them.

10 The work on the priority issue has been undertaken by the Estate for the benefit of all the connected creditors. It would be inequitable for the connected creditors to take the benefit of that work without contributing to its cost. There is authority for that proposition in the case of *In re Berkeley Applegate* [1989] 1 Ch 32, in which it was held that the Court could make an allowance for costs incurred and skill and labour expended in the administration of property

which had been of substantial benefit to the investors, work that would have had to be done either by the investors themselves or by a receiver appointed by the Court whose fees would have to be borne by the trust property. That principle was followed by the Court in the *Crociani* case, where the costs of the litigation funder for Cristiana's claim was divided between Cristiana's trust and Camilla's trust, because the claim had been brought on behalf of all of the beneficiaries – see Paragraph 177 of the judgment of the Court of Appeal *BNP Paribas Ors v Crociani* [2018] JCA 136A.

11 I conclude that it is not equitable as between the connected creditors that the Estate, which has a comparatively small claim, should bear the whole of the costs of the Priority Issue Proceedings. Those costs should be borne as between the connected creditors pro rata and as I understand it they all agree to that. However these principles can have no application to the Estate's application for funding out of the assets of the ZII Trust, because the Estate has not conducted this litigation for the benefit of all of the creditors i.e. litigation that seeks either to preserve or enhance the value of the assets of the trust for the benefit of all of the creditors. It has undertaken this litigation for the benefit of the connected creditors and against the interests of Equity Trust.

12 Advocate Jordan was not allowed by Equity Trust to attend the hearing, but in her letter of 23 rd January, 2020, she recognised that Equity Trust was conflicted on the issue of the costs of the appeal to the Privy Council as the counter party to that appeal. She did, however, object to the payment to the Estate of the costs that have already been incurred, as she says that would amount to a priority payment to a creditor of the ZII Trust. The Estate had lost the appeal and been ordered to pay Equity Trust's costs and in these circumstances there was no basis for the Estate to receive such a preferential payment. Furthermore she said there was no evidence that the Estate did not have assets available to meet the costs of the appeal to the Privy Council.

13 It is helpful briefly to set this application in context:-

(i) In March 2015 GTC's predecessor as trustee of the ZII Trust had invoked the supervisory jurisdiction of the Court by way of representation, because of the insolvency of the trust. GTC has stepped into its shoes and administers the trust under the directions of the Court.

(ii) The parties agreed in 2015 that the issue of whether Equity Trust's claim took priority over the claims of the connected creditors should be determined in early course – see paragraph 36 of the judgment of the Court of 20 th October, 2015 *Representation of the Z Trusts* [2015] JRC 214. On that date, the Court ordered that issue to be determined as between Equity Trust, the trustee and C, who had established the trust.

(iii) There was no discussion at that stage as to how the costs of the parties would be funded, but in any event there were no liquid assets within the ZII Trust that could have been used for that purpose. In practice, the trustee took no part in the

proceedings which were conducted exclusively between Equity Trust and the Estate. It is the Estate alone that now has a right of appeal.

(iv) When the Estate succeeded at first instance, Advocate Jordan argued that the case came within category 1, or at least category 2, of the categories in the case of *Re Buckton* [1907] TCH 406 (see paragraph 27–139 of Lewin on Trust 19th edition), and that accordingly, the parties should have their costs from the assets of the trust. Advocate Harvey-Hills opposed that proposition saying there was no doubt that these were hostile proceedings in which Equity Trust was advancing a claim in its own self interest, but if there was an analogy to be drawn with trust principles then he said the case clearly came within category 3 of *Re Buckton*, and thus normal cost principles would apply. The claim was not being brought for the benefit of the assets held within the trust, but for the benefit of Equity Trust. The Court agreed, and ordered Equity Trust to pay the costs of the Estate on the standard basis. It would follow that Advocate Harvey-Hills accepts that the Estate resisted Equity Trust's claim to priority not for the benefit of the assets held within the trust, but for the benefit of the connected creditors.

(v) On the 18 th January, 2019 the Court approved a payment out of the ZIII Trust to the Estate of £50,000 by way of an advance on the monies that would be distributable to the Estate out of that trust, in order to help fund the costs of defending the appeal brought by Equity Trust on the priority issue. There had been no time on that occasion for counsel to produce any authority and for there to be argument on the question of whether that would constitute a preferential payment to the Estate and so the decision creates no precedent. The Court noted two things at paragraph 7, firstly that the ZIII Trust was not cash flow insolvent at that time (which remains the current position of the ZII Trust) and secondly:

> ***"It is clear that resolving definitively the priority issue is in the interests of the creditors of both trusts.*** If the Estate had not come forward to fund the opposing case on priority, then it is very likely that the Court would have ordered that case to be put at the cost of the assets of the ZIII Trust, where the only realisable assets are held. Furthermore it is not in the interests of the proper and fair administration of justice that the Estate should be unrepresented before the Court of Appeal on this novel and important issue of law."

(vi) When Equity Trust succeeded before the Court of Appeal in June 2019, it was awarded its costs against the Estate. I am not aware that either party suggested to the Court of Appeal that costs should come out of the assets of the trust.

14 With the ZII Trust now having more than sufficient funds to meet the priority claim of Equity Trust in full, I could see the attraction in (and was initially attracted to) the argument that Equity Trust has no interest in the balance of the monies held, which could be free to fund, through the Estate, the costs of the Priority Issue Proceedings. Advocate Harvey-Hills had made it clear that in having access to the assets of the trust for this purpose, Equity Trust's claim should be *"ring-fenced"* so that whether or not the appeal succeeded, Equity Trust's

entitlement would not be adversely affected. If the appeal failed, then there were more than sufficient funds to meet Equity Trust's priority claim and if the appeal succeeded, the calculation of Equity Trust's *pari passu* entitlement would be made by reference to the value of the trust fund as it would have been had the requested payments to the Estate not been made. He calculated that on the basis of the known claims to date, Equity Trust's *pari passu* share of the £645,694.92 the Estate was seeking was £51,600.

15 The difficulty with this proposal is that however fair it may seem to the connected creditors, Equity Trust has not agreed to any ring fencing of its claim and therefore has an interest in all of the assets held by GTC by way of its equitable lien. The starting point must surely be that neither party in the Priority Issue Proceedings can have recourse to the assets in contention in order to fund their respective claims and Advocate Gleeson did not demur from this. That is the basis upon which the litigation has proceeded to date.

16 The Estate has taken on the priority issue in the interests of the connected creditors on the basis that it is hostile litigation which the parties will fund and accept the usual risk as to costs. Equity Trust has funded its own costs to date, and, save for the advance of £50,000 from the ZIII Trust, so has the Estate. It would only be if one or the other of the parties could no longer afford to fund the litigation that the issue of access to the assets in contention for that purpose could be considered.

17 Advocate Jordan says in her letter that there is no evidence as to the ability of the Estate to fund the appeal to the Privy Council, but that is not the case in that I have the affidavit of Mr E who deposes that the Estate has retained €500,000, held by Mourant Ozannes, to ensure the solvency of the Estate, which I presumed includes its liability to its own legal advisors and to meet the amount of the adverse costs order in favour of Equity Trust. He says that the Estate has received a loan repayment of £11.2 million which, apart from the retention of €500,000, seems to have been distributed out to Mr E (who I assume is the sole beneficiary of the Estate) to meet financial obligations of his, including the payment of €9 million to prevent the foreclosure on his French property, the loss of which he said would be a disaster to his family.

18 The financial disclosure given in relation to the connected creditors is not satisfactory in that:

(i) There is no evidence from the trustees of the major connected trusts, namely the X Trust, which has a claim of £165 million, and the ZI Trust, which has a claim of £29 million, confirming that they are unable to fund the costs of the Priority Issue Proceedings.

(ii) There are no Estate accounts showing its assets and liabilities. It was not clear from Mr E's affidavit the extent to which the past costs of £320,694.92 have been paid by the Estate. It would seem from his affidavit that very substantial sums, some £11.2 million, have been distributed out of the Estate by Mr E as executor to himself, leaving

a retention of €500,000 to meet its liabilities and, it would seem, insufficient to fund the appeal to the Privy Council.

(iii) There is limited disclosure about the assets and liabilities of Mr E, who is a creditor in his own right. He mentions the importance of his French home, which is presumably now mortgage free, but makes no reference to his home in London. He talks in very general terms of having significant financial obligations in particular to his ex-wife.

19 Advocate Harvey-Hills informs me that the €500,000 retained would be nowhere near sufficient to meet the Estate's outstanding legal costs and to meet any adverse costs order. Of the costs already incurred of £320,694.92, the amount outstanding to Mourant Ozannes is £151,266.46. The total amount owed by the Estate to Mourant Ozannes is apparently in the region of £360,000 which includes advice in relation to the ZIII Trust and other matters. He says quite candidly that in retaining only €500,000 it was assumed that the balance of the legal costs would come out of the assets of the ZII Trust *"in which Equity Trust had no interest"*. Without such advances he says that the Estate would not be properly solvent.

20 Given the apparently large sums available to the Estate and on the basis of the admittedly unsatisfactory financial disclosure given to date, I am entitled to assume that Mr E will ensure that the Estate remains solvent and can meet the obligations he has incurred on its behalf, in particular its obligations to Mourant Ozannes and the adverse costs order made by the Privy Council. It was not appropriate for him, in my view, to assume that he could have access to the assets of the ZII Trust in order to meet the obligations of the Estate.

21 I am not in any event prepared to order reimbursement of the costs incurred of £320,694.92 out of the assets of the trust, as I can see no justification in this hostile litigation for preferring the interests of the Estate (and the connected creditors as a whole) over the interests of Equity Trust in assets over which Equity Trust does have an interest by way of its equitable lien.

22 Whilst accepting the findings of the Court of Appeal as to the nature of a trustee's equitable lien, Advocate Harvey-Hills said there must be practical limits to its effect. He referred by analogy to the position of a solvent trust in which a trustee would not be prevented from making distributions to beneficiaries provided sufficient assets were retained to meet the claim of a former trustee. He referred to the case of *In Re Carafe Trust* [2005] JLR 159 which concerned the issue of security for a former trustee and in which the Court held that the retiring trustee was not entitled to security over the entirety of the trust fund by way of security for its disputed fees. He submitted that the same principle would operate in the case of an insolvent trust and there was no reason why GTC, on the Court's direction, could not advance funds to the connected creditors, retaining sufficient funds by way of security to cover the maximum amount of Equity Trust's claim.

23 In this respect he said the Court could be satisfied that although no claims had yet been

proved, the connected creditors had good prima facie claims. They represented 90% of the creditors by value and the payment could be treated as an advance distribution of their putative entitlement, with every connected creditor drawing down its *pro rata* contribution from the assets of the trust and making it available to the Estate.

24 Advocate Jordan responded that although Equity Trust's current claim, including costs and interest, was approximately £20 million, it had been put on notice that its right to an indemnity would be challenged and so its claim will be increased by the costs involved in that exercise, assuming its right to an indemnity was proved. It was incorrect therefore to try and limit its interests to the value of its claim as at today's date. Its equitable lien extends to the entirety of the assets held by GTC as the current trustee for all liabilities whether existing, future, contingent or otherwise incurred in its capacity as trustee and there was no obligation upon it to compromise its rights by agreeing to a ring fenced sum. All of the creditors had to prove their claims and there were no grounds to distinguish between the connected creditors and Equity Trust in this respect. Equity Trust was the only priority creditor and if there was to be a payment out in advance of a final distribution, she said it should be to Equity Trust and not to the connected creditors.

25 In my view the analogy to the administration of a solvent trust is not apt and the case of *Re Carafe Trust* is of no relevance to the issue here, being concerned with security for a retiring trustee and not the nature of a former trustee's equitable lien, which by its very nature provides security without possession. The connected creditors are not in the position of beneficiaries under a solvent trust. They are competing claimants to the assets of an insolvent trust, whose claims have yet to be proved and they are seeking a payment from assets in which Equity Trust, a priority creditor, has an interest by way of an equitable lien. It is not a question of calculating the maximum amount of Equity Trust's claim as of today's date, if that can be done, putting that sum aside and then saying it has no interest in the balance held.

26 However in the context of the future costs of the appeal to the Privy Council, if it can be demonstrated with further evidence that the Estate and the connected creditors as a whole cannot reasonably now be expected to fund the costs, then I would be minded to order that those anticipated costs should be paid out of the assets of the trust, given the importance the Court of Appeal has attributed to the issues in the appeal and because it is arguable that it is in the interests of all of the creditors to have the issue of priority finally determined. Unconditional leave has been granted in terms that indicate that this issue is not yet finally determined. Such a payment can be made in a way that Equity Trust's financial interests are not adversely affected. In order to decide whether the connected creditors cannot reasonably now be expected to fund the costs of the Estate's appeal to the Privy Council, I will need further evidence of their respective financial positions sufficient to demonstrate that to be the case.

27 Advocate Harvey-Hills says that requiring such evidence is draconian. It would be disproportionate, he says, to require the parties to hostile litigation to reveal to their adversary detailed information about their individual financial positions, and their ability or

inability to fund the litigation. This is information to which an adversary normally has no right and would have no right in circumstances where the adversary has no interest *"in the available fund"* and where the only parties who do have such an interest have consented to the advances being made.

28 Advocate Gleeson, for GTC, indicated that there would be no difficulty in GTC, as trustee of the ZI Trust, providing evidence as to its ability to fund the Estate's appeal, and he believed Sijar Trust Company Limited as trustee of the X Trust would have no difficulty doing the same. I have no information in relation to where within the various trust structures Fielden Holdings Limited comes, but again, there should be no difficulty in it providing evidence as to its ability to fund the Estate's appeal.

29 As to Mr E and the Estate, I accept that ordinarily in hostile litigation one party would not be entitled to information about the financial position of the other party, but in this case:-

(i) It is not correct to say that Equity Trust has no interest *"in the available fund"* and that only the connected creditors have an interest in the amounts to be advanced. There is no such fund available to the connected creditors as Equity Trust has an interest in all of the assets held by the trustee and it has not agreed to limit its interest to a particular proportion of those assets.

(ii) Mr E has already given disclosure as to his financial position and that of the Estate, but in a manner which is unsatisfactory.

30 It is because the Estate is seeking access to the very assets that are the subject matter of these competing claims and in which Equity Trust does have an interest that makes it fair that the Estate should provide evidence of its need and the need of the connected creditors as a whole to do so.

31 I will therefore adjourn Mr E's application so that further evidence can be filed assuming the application is to be pursued.

**Insolvency regime**

32 The Court had agreed in principle earlier in the day to the winding up of the ZII Trust and to impose an insolvency regime similar to that imposed on the ZIII Trust, but left over to me the issue of who should conduct the winding up and the precise terms of the insolvency procedure. The issue raised by Advocate Jordan in her letter of 23 rd January, 2020, was that this insolvency process should be conducted by an insolvency practitioner and not by GTC.

33 This issue arose last year in the context of the ZIII Trust, when Mr E, who at that stage had

fallen out with GTC, was proposing that a new private trust company managed by Helm Trust Company Limited should take over the trusteeships of all of the Z Trusts – see the judgment of 26th April 2019 *Representation of Zedra Trust Company (Jersey) Limited re ZIII Trust* [2019] JRC 069.

34 Three methods of proceeding have been canvassed:

(i) for the winding up to be conducted by the incumbent professional trustee under directions from the Court;

(ii) for the winding up to be conducted by an insolvency practitioner under powers delegated by the incumbent professional trustee;

(iii) For the appointment of a receiver.

35 While the Court has the power to appoint a receiver to the assets of the trust, it is a power to be exercised sparingly – see *In re IMK Trust* [2008] JRC 136. None of the parties suggested that a receiver should be appointed to the assets of the ZII Trust.

36 In the case of the ZIII Trust, the Court said at paragraph 20 of its judgment of 26th April, 2019 [2019] JRC 069, in relation to the trustee delegating the winding up to an insolvency practitioner:-

> ***"Nor do I consider it necessary or proportionate to require Zedra to use its powers as trustee to appoint an independent insolvency practitioner.*** Even ***if it did so, it would remain a trustee of the assets and would not unreasonably seek legal advice as to the steps it was advised to undertake by its appointee; the reality is that the appointment of such a practitioner would add another layer of costs to the process, when Zedra was perfectly able to undertake the process itself."***

37 In that case, the Court was not aware of any conflicts of interest which might have inhibited Zedra Trust Company (Jersey) Limited ("Zedra") from properly discharging its duties and obligations in the winding up (see paragraph 19).

38 Advocate Jordan said in her letter that there are conflicts here which militate against GTC conducting the winding up process of the ZII Trust. Of particular concern was the proposal in separate proceedings that GTC should be appointed as trustee of the ZIII Trust, so that it would be conducting the winding up of both the ZII and the ZIII Trusts. Whether or not GTC will be appointed as trustee of the ZIII Trust is the subject of those separate proceedings, but Advocate Jordan expressed concern over the influence of Mr E in this process and she asserted that the independence of GTC had already been compromised due to his influence, an influence which, she said, would affect both the ZII and the ZIII Trusts if GTC takes over the winding up process of both. It would seem to be the case that there is a

background of hostility between Mr E and Equity Trust.

39 Advocate Gleeson informed me that, inevitably, GTC has a working relationship with Mr E, because although he was not a beneficiary of any of the trusts, his two children were, and his company, Buckingham Securities & Investments Plc has historically and continues to act as advisor, but he strongly denied the suggestion that GTC was under the influence of Mr E and said there was no evidence to support that allegation. He pointed out that the claim against VTT brought with it a possibility that Mr E would have been brought in by VTT as a third party. For that reason, the litigation had been pursued successfully and for the benefit of all creditors, independently of Mr E. This, he said, amply demonstrated that GTC was not under the influence of Mr E.

40 In terms of conflicts, Advocate Gleeson acknowledged that GTC had a conflict, in that in its capacity as trustee of the ZI Trust and owner (as trustee) of Fielden Holdings Limited, it had claims against the assets of the ZII Trust. He proposed that this conflict be managed by GTC remitting to the Court and surrendering its discretion in relation to the determination of those two claims in the insolvency process. Express provision for dealing with this conflict in this way was contained within his draft proposed insolvency procedure.

41 Whilst it is possible that Equity Trust may object to claims submitted by the connected creditors, it seems more likely that there will be opposition to the proof of Equity Trust's claim. Equity Trust's concern is that in the process of proving its claim, GTC would be influenced by Mr E to take a more hostile approach than might otherwise be the case if it was dealing with a truly independent insolvency practitioner.

**Decision**

42 When addressing the issue of conflict Advocate Jordan understandably looked at the position of both trusts and it is the case that in a separate application the Court is considering whether GTC should be appointed trustee of the ZIII Trust in the place of Zedra and to continue the winding up of that trust. It is important in my view that the Court should take a holistic approach to the affairs of the two trusts, as it did in October 2015 (see the judgment of 20 th October, 2015 [2015] JRC 214 and ensure that both trusts are wound up in in the interests of the creditors of each trust as a body and in a manner that is consistent and proportionate.

43 I therefore adjourned the issue of who should conduct the winding up of the ZII Trust and the precise terms of the insolvency procedure to the 1 st April, 2020 when the Court (sitting as the Inferior Number) will decide how to proceed in relation to both trusts.

**Postscript**

44 After this judgment was issued in draft, Advocate Harvey-Hills wrote to the Court raising concerns that some of the assumptions made by the Court were not correct, and were inconsistent with or contrary to the oral and written submissions that were made, and that there may have been some misunderstanding as to the proposals of the connected creditors. He said the matter was critical because there was a real danger of the appeal to the Privy Council collapsing. I agreed, therefore, to sit to hear further oral submissions under notice to the other parties, and that hearing was attended by Advocate Harvey-Hills and Advocate Gleeson. Advocate Jordan did not appear, presumably on the basis that Equity Trust did not allow her to do so.

45 Advocate Jordan wrote to the Court protesting at this procedure, complaining that none of the procedural requirements of a *cause de brièveté* had been complied with. She complained that the procedure was irregular in that Advocate Harvey-Hills had written to the Court without leave and Equity Trust had not been given the opportunity of making submissions in writing. It would be an abuse of process, she said, if the Court were to change its decision.

46 Practice Direction RC10/01 provides that a judgment issued in draft remains a draft until formally handed down. It follows that the Court may make any changes which it wishes prior to the formal handing down. That was reiterated when the draft was issued to the parties, namely that the Court can make any changes which it wishes prior to the formal handing down.

47 Clearly, the process of issuing a judgment in draft should not be used by a party in an attempt to re-argue the substance of the matter, but I did not regard Advocate Harvey-Hills' letter as improper in any way. Furthermore:-

(i) Advocate Jordan was given notice of the further hearing, but was not allowed by Equity Trust to appear, and

(ii) Advocate Jordan received a copy of Mr Harvey-Hills' letters and has made written submissions in response.

48 I also have some sympathy with the point made by both Advocate Gleeson and Advocate Harvey-Hills that it is unsatisfactory for a party, well able to fund legal representation, to instruct its legal representative to make written submissions to the Court, but not to appear, so that its submissions cannot be tested and the Court is deprived of the assistance of its legal representative.

49 As it transpires, I have not changed my decision.