

Geneva Trust Company (GTC) SA (Formerly known as Rawlinson & Hunter Trustees SA) v D

Jurisdiction:	Jersey
Judge:	Jurats Christensen, J. A. Clyde-Smith O.B.E., Dulake
Judgment Date:	19 December 2019
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Text

[2019] JRC 250

ROYAL COURT

(Samedi)

Before:

J. A. Clyde-Smith O.B.E., **Commissioner, and** Jurats Christensen **and** Dulake

In the Matter of the Representation of Rawlinson & Hunter Trustees SA

And in the Matter of the D Discretionary Trust, the D Discretionary 'A' Trust, the G Trust and the Connected Trusts Listed in the Schedule to the Representation of Rawlinson & Hunter Trustees SA

And in the Matter of Articles 51 and 53 of the Trusts (Jersey) Law 1984 (As Amended)

Between

Geneva Trust Company (GTC) SA (Formerly known as Rawlinson & Hunter Trustees SA)
Representor
and
D
First Respondent
and
Fort Trustees Limited
Second Respondent
and
Balchan Management Limited
Third Respondent
and
E
Fourth Respondent

Advocate C. J. Swart **for the Representor.**

Advocate P. D. James **for the First, Second and Third Respondents.**

Authorities

Representation of Rawlinson and Hunter Trustees SA [\[2018\] JRC 131](#).

Trusts (Jersey) Law 1984.

Lewin on Trusts 19th edition.

Mubarik v Mubarik [2009] JLR Note 5.

Alhamrani v J P Morgan Trust Company (Jersey) Limited [\[2007\] JLR 527](#).

Costs — reimbursement of costs

THE COMMISSIONER:

- 1 The representor (“Geneva Trust Company”) seeks reimbursement of the costs it has incurred in defending proceedings brought against it in the English High Court by Stephenson Harwood LLP, in respect of legal services provided in connection with a number of trusts associated with the first respondent (“D”), of which it is no longer trustee.

2 There is a considerable history to this matter, which for these purposes can be distilled down to the following:-

(i) Geneva Trust Company (then known as Rawlinson & Hunter Trustees SA) was trustee of some 11 trusts associated with D and his family, all of which are discretionary trusts governed by Jersey law.

(ii) The relationship between Geneva Trust Company and D broke down in 2017, and difficulties were encountered over the terms upon which Geneva Trust Company should retire as trustee in favour of the second respondent, ("Fort") and the third respondent ("Balchan"), two Guernsey based and regulated trust companies.

(iii) The issue was complicated by the fact that Geneva Trust Company, acting as trustee, was a named party in extensive litigation in Guernsey, England and elsewhere, for which it had a significant costs exposure.

(iv) On 25th October 2017 on the application of D, the Court confirmed the appointment of Fort and Balchan as co-trustees of two of the trusts.

(v) On 3rd October, 2017, Geneva Trust Company was removed as trustee of one trust by D exercising his powers as protector and on 8th November 2017, the Court made a number of orders by consent dealing with the retirement of Geneva Trust Company as trustee of the remaining trusts; the relevant orders for our purposes being the following:-

"1. The retirement and indemnity by the Representor from the [trusts] shall be on the basis of the STEP Standard Provisions, Deed of Retirement and Indemnity;

2. The Second and Third Respondents shall use their best endeavours to secure the novation of all liabilities (third party costs) whereupon the Second and Third Respondents shall bear responsibility for the third party costs so that the Representor shall cease to have responsibility for them, other than in respect of adverse cost orders;

3. The Second and Third respondents shall use their best endeavours to secure their substitution for the Representor as parties to any of the extant litigation and the release of the Representor from that litigation."

(vi) On 31st May 2018, the Court declared invalid the subsequent purported removal of Geneva Trust Company from three of the trusts for reasons set out in its judgment of 23rd July 2018 (*Representation of Rawlinson and Hunter Trustees SA* [\[2018\] JRC 131](#)). The Court concluded at paragraph 38 that Geneva Trust Company had been removed from these three trusts precipitously "**for the ulterior purpose of Fort and Balchan avoiding their obligations under the consent order to provide chain Indemnities and they were not, therefore, acting in good faith.**" Fort and Balchan were directed to execute and deliver deeds of appointment and retirement

drawn up in accordance with the STEP standard provisions. The Court also ordered Fort and Balchan to provide a report to the Court of the steps they had taken to comply with their best endeavours obligations. The Court sat to consider that report on 23rd July 2018. There were numerous other matters canvassed at that hearing and directions given, but for these purposes, it suffices to say that the Court was satisfied that Fort and Balchan were then complying with their best endeavours obligations in this respect.

(vii) Stephenson Harwood did not agree to novate its contract with Geneva Trust Company and on 12th October 2018, it wrote to Temple Bright LLP, the English solicitors acting for Geneva Trust Company, claiming its outstanding costs. A formal claim by Stephenson Harwood against both Geneva Trust Company and Fort and Balchan was issued out of the English High Court on the same date, and particulars of claim were filed by Stephenson Harwood on 14th December 2018.

(viii) The total claimed against Geneva Trust Company was £3.6 million and the total claimed against Fort and Balchan was £5.6 million (which included the amount claimed from Geneva Trust Company). Included within the particulars was an assertion that Fort and Balchan had entered into an agreement with Stephenson Harwood in March 2018 by which they agreed to and were contractually liable to pay the amounts due by Geneva Trust Company and/or to indemnify Stephenson Harwood in respect of the same, and in the premises, Stephenson Harwood claimed that it was entitled to the payment of the debt due by Geneva Trust Company by Fort and Balchan.

(ix) Fort and Balchan filed a defence and counter-claim on 25th January 2019, raising a number of issues over the claimed letters of engagement and invoices rendered, denying that there was any liability at that time under the March 2018 agreement the precise terms of which they disputed, and seeking a stay so that the invoices could be subject to a detailed assessment by the Senior Court Costs Office pursuant to their rights under the Solicitors Act 1974. Fort and Balchan also counter-claimed against Stephenson Harwood for the wrongful termination of all of the retainers between Stephenson Harwood and Fort and Balchan on 4th June 2018.

(x) Geneva Trust Company filed its amended defence on 13th February 2019 in which:-

(a) It said it was unjust and oppressive for Stephenson Harwood to seek to make recovery from it without exhausting its avenues of recovery against Fort and Balchan. It reserved its right to apply for a stay, pending the outcome of the claim against Fort and Balchan. It subsequently applied unsuccessfully for a stay and was made subject to an adverse costs order.

(b) It challenged the authority by which Stephenson Harwood had carried out much of the work, denying that certain invoices had been rendered and seeking an abatement or set-off in respect of work that it alleged had not been carried out properly, competently and in accordance with its duties in equity, contract

and/or at common law, including the duties to avoid conflicts of interest and to exercise reasonable skill and care.

(c) It supported Fort and Balchan's proposal for a stay and its rationale for seeking a detailed assessment of the invoices.

(xi) On 10th September 2019, Fort and Balchan through its representatives commenced settlement discussions with Stephenson Harwood and on 2nd October 2019, reached agreement to settle the whole of Stephenson Harwood's claim for £3.85 million. It was a condition of that settlement that Geneva Trust Company, which was aware of, but had not been involved in, the settlement discussions, be a party to the agreement, which Stephenson Harwood required to be completed no later than 4th October 2019.

(xii) Geneva Trust Company was informed of this agreement early on 3rd October 2019, and was given a copy of the draft agreement that afternoon. It was the position of Geneva Trust Company that it would not sign the settlement agreement unless its costs were paid.

(xiii) After numerous exchanges, and the issuing by Fort and Balchan of an urgent summons requiring Geneva Trust Company to sign the settlement agreement, it was agreed that Fort and Balchan would procure the payment of the total amount of the costs of Geneva Trust Company into the client account of Collas Crill, those costs to be summarily assessed by the Court on the trustee Alhamrani basis. The agreement with Stephenson Harwood was executed on 8th October 2019.

3 Much has been excluded from this summary which is aimed at the principal issue before the Court, namely the summary assessment of the costs incurred by Geneva Trust Company in defending the Stephenson Harwood claim.

4 In the background, there is a much wider dispute between the parties over *inter alia*:-

(i) The payment of the fees and expenses of Geneva Trust Company which it claims to have incurred in relation to the various trusts.

(ii) The handing over of trust documents, accounts and records of the various trusts.

(iii) The lifting of the statutory lien of Geneva Trust Company over the assets of the trusts to the extent that they exceed in value the alleged liabilities in respect of the trusts.

5 These are all matters which are the subject of a separate summons issued by the respondents on 4th November 2019 and which is due to be heard before the Court on 3rd March 2020. We have ordered that the case management of this summons be delegated to the Master.

- 6 We should also record that the current summons issued by Geneva Trust Company, which is concerned primarily with the assessment of its costs defending the Stephenson Harwood claim, also seeks orders authorising the disclosure of documents filed in these proceedings into any other proceedings aimed at the recovery of its liabilities and in particular proceedings in Guernsey and England. Advocate Swart, in his skeleton argument, made specific reference to disclosing a confidential agreement known as “the Fulham agreement”, which brought to an end the Grant Thornton proceedings in England, into the current proceedings in Guernsey.
- 7 Advocate Swart also raised in his skeleton argument allegations that Fort and Balchan had sought to gain control of trust assets in breach of orders of this Court.
- 8 In the time available, the Court was not able to address these further issues and Advocate James was not in a position to respond to them. To the extent that Geneva Trust Company wish to pursue them, in our view they should be subject to a fresh and more fully particularised summons, the case management of which we will again delegate to the Master.

Costs incurred by Geneva Trust Company

- 9 The costs incurred by Geneva Trust Company in defending the Stephenson Harwood proceedings can be broken down as follows:-
 - (i) The costs incurred with its English Solicitors, Temple Bright in a total sum of £119,791.74, which includes counsels' fees of £66,545, courier charges, copying expenses and costs consultants' fees.
 - (ii) Provision of an extra £5,000 for Temple Bright's fees in concluding the settlement agreement with Stephenson Harwood and with the evidence for this application.
 - (iii) The costs incurred with Dickinson Gleeson of £33,405.
 - (iv) Re-imbursement of the amount of £37,500 paid in discharging an adverse costs order made on the 21st June 2019 in favour of Stephenson Harwood in respect of the stay application brought by Geneva Trust Company.
- 10 All of this amounts to the sum of £195,696.74 against which Collas Crill are holding the sum of £196,000.

Right of indemnity

- 11 We were not shown the deeds of appointment and retirement by which Geneva Trust Company retired as trustee of the trusts in respect of which Stephenson Harwood had advised. Advocate Swart relied upon the best endeavours orders of 8th November 2017. Advocate James accepted that Geneva Trust Company was entitled to an indemnity on the basis that:-
- (i) under Article 26(2) of the Trusts (Jersey) Law 1984 (“the Trusts Law”) a trustee may reimburse himself or herself out of the trust for and pay out of the trust “***all expenses and liabilities reasonably incurred in connection with the trust***” and
- (ii) the right of reimbursement and exoneration survives the trustee's departure from office (see paragraph 17–036C of Lewin on Trusts 19th edition).
- 12 Advocate James did not dispute that Stephenson Harwood had been properly engaged by Geneva Trust Company in its capacity as trustee of the trusts concerned. Indeed, much of the relationship between Geneva Trust Company and Stephenson Harwood was conducted through Ms Nicole Ann Martin, head of the legal department of R20 Advisory Limited, which provides legal services to the trusts related to D and which is owned by one of those trusts.
- 13 One of the concerns expressed by Geneva Trust Company was that it was Ms Martin who gave instructions to Stephenson Harwood, a process over which it had increasingly little control and which led to it writing formally to Stephenson Harwood on 13th July 2017, reminding it that “*in all matters you act for or represent Rawlinson & Hunter SA (in any capacity), all and any instructions must be obtained from or confirmed in writing with Rawlinson & Hunter Trustees SA (either in its own personal capacity or as trustee – whichever is relevant) without exception.*” (its emphasis). It asked Stephenson Harwood to review all matters or instructions which had purportedly been given that year without its involvement and said that these could be considered and discussed.
- 14 It was not therefore in dispute that Geneva Trust Company had properly incurred a liability to Stephenson Harwood in its capacity as trustee. The issue was whether it had acted reasonably in incurring costs and expenses in defending the claim brought by Stephenson Harwood.

Position of Fort and Balchan

- 15 Advocate James accepted that in facing this claim for £3.6 million, it was reasonable for Geneva Trust Company to incur some legal costs in defending its position and he put those costs at £50,000 in all. However, in seeking to be indemnified for the costs it had incurred, the burden was upon Geneva Trust Company to show that it had acted reasonably in incurring those costs and expenses, and it had not acted reasonably for the following reasons:-

- (i) Geneva Trust Company was told from the outset that Fort and Balchan had its own plan for responding to the claim that had been issued and this was known at all stages.
- (ii) Geneva Trust Company knowingly ran a case that differed from Fort and Balchan's defence without approaching Fort and Balchan about it and without the benefit of any clarification to the Court.
- (iii) The divergence from Fort and Balchan's strategy was clearly occasioned by the desire of Geneva Trust Company to protect what it perceived to be its personal interests. In fact, it had no personal liability because its English solicitors, Temple Bright, were aware of the protection granted by Article 32(1)(a) of the Trusts Law, namely where a transacting party knows that the trustee is acting as trustee, any claim shall be against the trustee as trustee and shall extend only to the trust property.
- (iv) Once the matter had become capable of settlement, Geneva Trust Company sought to withhold its agreement by way of leverage for payment of the very costs which are now at issue, a tactic which risked what was a very good settlement being lost. Geneva Trust Company had justified this as commercial behaviour, which stemmed from its erroneous assumption that the claim gave rise to personal liability.

16 Advocate James submitted that there was an overwhelming case that the vast preponderance of the costs had not been reasonably incurred “*on trust business*”. In particular:-

- (i) The promotion of a case of want of authority and the assertion of professional negligence were likely to have constituted the lion's share of the costs and both these lines of argument were clearly motivated by an attempt to defend against personal liability, in circumstances where this was wholly unnecessary.
- (ii) The effort to strong-arm Fort and Balchan into paying its costs was entirely self-interested and potentially seriously undermined the best interests of the trusts.

17 The costs incurred by Fort and Balchan in getting the agreement of Geneva Trust Company to the settlement with Stephenson Harwood, which included the costs of issuing the urgent summons, should, he said, be deducted from the £50,000. Furthermore, to the extent that the Court did make a summary order in favour of Geneva Trust Company, it was incumbent upon Geneva Trust Company to explain, before payment was made, how that sum should be apportioned between the various trusts concerned.

Position of Geneva Trust Company

18 The claim of Stephenson Harwood was brought in the English High Court and was against Geneva Trust Company personally. Advocate Swart informed the Court that there were four

principals behind Geneva Trust Company, and that this claim, which was not insured, was potentially calamitous for it. The intent behind the “**best endeavours order**” was that Geneva Trust Company should cease to have responsibility for the liabilities it had incurred with Stephenson Harwood (and other firms) and Fort and Balchan failed or refused to honour their obligations in this respect, compelling Geneva Trust Company to defend the claim.

- 19 Advocate Swart submitted that at no stage in the Stephenson Harwood proceedings did Fort and Balchan make any effort to engage with Geneva Trust Company and agree upon the manner in which the defence of the Stephenson Harwood claim would be conducted, how the costs of Geneva Trust Company would be met or addressed or any aspect of the management of the case generally.

Evidence

- 20 The Court had extensive affidavit evidence from Ms Martin, Mr Rodney Hodges of Geneva Trust Company, Ms Courtney Clelland of Collas Crill, Mr Paul Tracey of Grosvenor Law Limited, the English solicitors for Fort and Balchan, and from Ms Kirsten Younger from Temple Bright, in which the conduct of the Stephenson Harwood proceedings had been examined in great detail.
- 21 Whilst it is the case that, as a matter of Jersey law, a claim by anyone dealing with a person known to be a trustee is limited to the trust property, it is very much open to doubt that a trustee of a Jersey trust can rely on this protection when transacting in a foreign jurisdiction in which no such protection is afforded. Under English law, trustees have no such protection.
- 22 We were not shown any of the engagement letters entered into between Geneva Trust Company and Stephenson Harwood, but assume that they did not provide Geneva Trust Company with that protection contractually; if they had done so, then that would have featured prominently in the pleadings, which it did not.
- 23 Ms Younger did raise the issue in her witness statement of 30th April 2019, filed in support of Geneva Trust Company's application for a stay, but it was not formally pleaded. In his judgment of 24th May 2019, dismissing Geneva Trust Company's application for a stay, *inter alia*, Teare J made passing reference at paragraph 6 to Geneva Trust Company wishing to raise a further point as to whether it has any personal liability and noting that there would be an issue as to what English law was on the topic. On 21st June 2019, the English court gave Geneva Trust Company permission to re-amend its answer to plead the protection of Article 32. That amendment was made and in its amended reply, Stephenson Harwood denied that as a matter of English conflict of laws, the English Court was obliged or should give effect to Jersey law in general and in particular any limitation under Jersey law on recourse to the personal assets of Geneva Trust Company.

- 24 In our view, Advocate James is wrong to assert that the claim by Stephenson Harwood gave rise to no personal liability on the part of Geneva Trust Company. The claim against it was, as pleaded, personal. We assume it had no contractual protection, as that would have been pleaded, and whether Article 32 provided it with any protection within proceedings in the English jurisdiction was an issue to be decided. Any judgment against Geneva Trust Company personally would in all probability have been enforced in Switzerland where it carries on business.
- 25 We conclude, therefore, that it was reasonable for Geneva Trust Company to defend the claim brought against it by Stephenson Harwood; indeed, in the circumstances, we agree with Advocate Swart that it was “*compelled*” to do so. Furthermore, in defending those proceedings, it would be reasonable for Geneva Trust Company to raise in its answer any defences that it was advised were open to it and it is clear that it was in this respect guided by both its English solicitors and English counsel. No application to strike out its answer was made by Stephenson Harwood.
- 26 On receipt of notice of the claim from Stephenson Harwood, Advocate Swart e-mailed Advocate James on 12th October 2018, saying this:-
- “Your clients assured the Jersey Court that this debt would be paid. On that basis, inter alia, the Court accepted that your clients had fulfilled their best endeavour obligations until that point in relation to o/s lawyers’ bills in particular. Your clients then did nothing about actually paying the bill.*
- Please confirm by close on Monday that your clients will take immediate steps to settle the debt if they have not already done so.”*
- 27 On 29th November 2018, Advocate James wrote to Advocate Swart dealing with a number of issues, but saying this in relation to the Stephenson Harwood claim:-
- “**Stephenson Harwood:** My client has had discussions with Stephenson Harwood and will be applying to have their costs assessed. Any amount found to be legitimately payable to Stephenson Harwood by the trustees (which does not extend to costs your client may have incurred unnecessarily) will be paid. I note that not all fees claimed by Stephenson Harwood are payable by the trustee of the DDT, the majority are for the account of the DDAT, Edgeworth and the D Settlement. Your client’s claim is in respect of an alleged indemnity given only to them as trustee of the DDT.”*
- That statement would give little comfort to Geneva Trust Company in the face of a potential personal claim of £3.6 million and was not a basis upon which it reasonably could, as Advocate James suggested, take a merely passive role.

- 28 It is clear that there were without prejudice discussions and meetings between the

defendants to this claim about working together, and we have seen an e-mail from Ms Younger to R20 Advisory Limited on 13th June 2019, referring to an apparently positive meeting that had taken place and stating that in principle, Geneva Trust Company was prepared to agree to the defendants' defences running together, with Geneva Trust Company dropping its defences regarding breaches of duty on the part of Stephenson Harwood provided that:-

- (i) Geneva Trust Company's costs for defending the claim were paid;
- (ii) Fort and Balchan paid the amount of the adverse costs order;
- (iii) They would agree a suitable method of Grosvenor Law Limited running Geneva Trust Company's case with suitable protections in place; and
- (iv) Geneva Trust Company received indemnification for any future risk of enforcement of any judgment against it personally.

29 Mr Tracey regarded these conditions as unworkable. We disagree. In the light of its indemnity in law, if not in contract, and the “**best endeavours**” order, it was reasonable for Geneva Trust Company to expect it to be covered in this way, if conduct of its defence was to be handed over to Fort and Balchan. Until it was handed over, it was reasonable to continue with the conduct of its defence as advised by its English solicitors and counsel.

30 Mr Tracey complains at paragraph 39 of his first affidavit that Geneva Trust Company running its own defence made difficulties for Fort and Balchan in that it was divergent with their own defence. These allegations he said went so far as effectively to be an averment that the relevant piece of litigation had been conducted entirely without authority from 2017. The reality was that Geneva Trust Company was seeking to make a personal point at Ms Martin's expense, as she had been the primary point of contact with Stephenson Harwood, and that it did not recognise instructions that she had given to Stephenson Harwood. The obvious and only explanation, he said, for behaving in this way was that Geneva Trust Company was seeking to act in its own personal interests in running these allegations and not in the interests of the various trusts. Its position was fundamentally inconsistent, he said, with expecting to be paid for raising these arguments out of the funds of the trusts. Its arguments were hopeless and should not have been pursued.

31 In our view a former trustee, faced with a personal liability which it has properly incurred when trustee, is perfectly entitled to have regard to its own interests in defending the claim. If it is found to be personally liable, then whether it should be indemnified by the current trustee out of the trust fund is an entirely separate question, and would depend upon whether it had acted reasonably in defending the claim and in incurring the costs of that defence.

32 Geneva Trust Company had issued a summons on the 4th June 2019, described as a

Beddoes application, seeking approval of its action in defending the claim against it. That summons was due to be heard on 24th September 2019, but events overtook it. Whilst it would be wiser, no doubt, for a former trustee in this situation to obtain approval for its action in disputing a liability it had incurred whilst trustee, it is not bound to do so. Without such approval, the burden will be upon it to demonstrate that it was entitled to be indemnified.

- 33 In this case, the current trustees, Fort and Balchan, were co-defendants, and so they were fully aware of and involved in the proceedings. We note that no Beddoes application was made by them for Court approval for their defence of the claim against them for £5.6 million, a claim which includes the amount being sought from Geneva Trust Company. In the light of the best endeavours order made by the Court on 8th November 2017, it seems to us very unlikely that in such an application, the Court would have approved of Geneva Trust Company being left on its own to conduct its defence at its expense.
- 34 In essence, we conclude in the circumstances of this case that until such time that Fort and Balchan agreed to take over the defence of the claim against Geneva Trust Company and to hold it covered against any personal liability it had properly incurred as trustee, it was reasonable for Geneva Trust Company to defend the proceedings in the manner it was advised to do. The costs it incurred in doing so would be costs incurred in connection with the trusts. Until then Fort and Balchan cannot complain that its defence diverged from their own position. As to Mr Tracey's contention that its defences were hopeless, we are not in a position to evaluate the same, but note that they were put forward on advice.
- 35 No criticism of Geneva Trust Company can be made of the adverse costs order made against it. It was advised to apply for a stay, a tactic aimed at reducing costs and hopefully avoiding any liability. The application failed and an adverse costs order was made, but that is all part and parcel of the interlocutory process. Geneva Trust Company did not act unreasonably in making that application.
- 36 Furthermore, no criticism can be made of Geneva Trust Company in the way it reacted to the proposed settlement. Fort and Balchan had seen fit not to involve it in the settlement negotiations with Stephenson Harwood, which were in progress for some weeks. They gave Geneva Trust Company some two days' notice of the settlement, a settlement which did not address the legitimate issue of the costs it had personally incurred in defending the proceedings to that date.
- 37 It was reasonable for Geneva Trust Company, particularly in light of the best endeavours order, to have the issue of its costs and expenses addressed before agreeing to sign the settlement. In the event, Fort and Balchan agreed to procure the payment of the maximum amount of those costs into the clients' account of Collas Crill, so that the Court could make a summary order as to how much should be paid to Geneva Trust Company.

- 38 Turning to the issue of apportionment of any costs ordered to be paid to Geneva Trust Company amongst the trusts concerned, Advocate James is correct in saying that ordinarily, the issue would have to be addressed trust by trust. He said that some of the costs concerned a Guernsey trust, which was not part of the representation brought by Geneva Trust Company and other trusts may be found to have no assets with which to make reimbursement.
- 39 Advocate James was unable to inform the Court how the £3.8 million paid by Fort and Balchan to Stephenson Harwood under the settlement had been apportioned between the trusts of which they were trustee. The settlement agreement itself makes no reference as to how much each trust was to contribute to that sum, but Fort and Balchan must know where the settlement monies came from.
- 40 Not knowing how Fort and Balchan have apportioned the settlement sum paid to Stephenson Harwood between the trusts concerned, it seems to us unreasonable to expect Geneva Trust Company to say how the costs it incurred defending the claim should be apportioned.
- 41 However, irrespective of this, on examining the exchange of e-mails between the parties in the period leading up to the settlement, they reached a compromise on the issue of Geneva Trust Company's costs and expenses under which:-

It was not part of this compromise that Geneva Trust Company should first apportion the amount ordered by the Court between the trusts concerned.

- (i) Fort and Balchan would procure the payment into the client account of Collas Crill in the total amount claimed (£196,000 has been paid in);
- (ii) That sum would be security for the costs and expenses of Geneva Trust Company; and
- (iii) The Court would be asked to determine on a summary basis on 8th November 2019 how much of that sum should be paid to Geneva Trust Company for its costs and expenses in defending the Stephenson Harwood claim.

- 42 Furthermore, asked by the Court where the £196,000 paid into Collas Crill had come from, Advocate James informed us that it had come from R20 Advisory Limited which had in turn been lent the money by what we understood to be a quite separate trust from those under discussion (described by Advocate James as the "X" trust) interest free and unsecured. We presume, therefore, that the trustees of that trust were satisfied that it was in the interests of the beneficiaries of that trust to make that loan for the purpose agreed. The issue of apportionment, therefore, does not, in our view, arise.

Summary assessment

- 43 The parties did not want the amount of Geneva Trust Company's costs to be subject to assessment by taxation, but asked the Court to make a summary assessment. We note from the Court of Appeal's decision in *Mubarik v Mubarik* [2009] JLR Note 5 that the Court has the power to make a summary assessment and should proceed by making an informed and confident judgment as to the amount to be awarded.
- 44 We have found that Geneva Trust Company acted reasonably in incurring costs in defending the Stephenson Harwood claim and in the manner it defended that claim, a claim brought against it in respect of a liability it had properly incurred when it was trustee. As made clear by the Court of Appeal in *Alhamrani v J P Morgan Trust Company (Jersey) Limited* [2007] JLR 527 at paragraph 39:-

“39 As a matter of law, therefore, the trustee is entitled to be reimbursed for the expenses and liabilities that he has reasonably incurred in connection with the trust. The concept of ‘reimbursement’ implies full repayment and the authorities in England have always made it clear that a trustee has the right to full reimbursement of his expenditure properly incurred on behalf of the trust.”

It was felt in that case that costs and expenses would only be disallowed on taxation if they were shown clearly to have been unreasonably incurred, which was a high hurdle, with the trustee having the benefit of any doubt.

- 45 The fees rendered in this matter have already been discharged in full. We do not know the extent to which they were reviewed by Geneva Trust Company, but as they have been discharged out of its own funds we presume that they would have been. The only issue drawn to our attention by Advocate James was that the time sheets of Ms Younger were in small part redacted. Advocate James expressed a concern that the unredacted time sheets could show the involvement of Mr Jonathan Crystal, English counsel for D's brother G, with whom he is in dispute. The Court asked for, and has now received, unredacted copies of those time sheets which do indicate some involvement of Mr Crystal, but we do not think the amounts involved are very material.
- 46 We also note that in the breakdown of the sums to be held by Collas Crill as set out in Advocate Swart's e-mail of 6th October 2019, £15,000 is included for the provision of evidence for and attendance at this hearing. It seems to us that we should make a summary assessment of the costs incurred up to the date of the settlement and that the costs incurred from that date, up to and including this hearing, should be costs of and incidental to the summons, which will be dealt with in the usual way once this judgment has been issued. Accordingly, we reduce the amount claimed from £195,565.30 to £180,565.30.
- 47 A summary assessment is bound, in our view, to lead to a reduction from what might be achieved through taxation on the trustee basis, because a detailed analysis has not been

undertaken, and the Court has to be confident in the amount it awards. Taking this into account together with the references to Crystal and the unascertained proportion of Temple Bright's extra fee of £5,000 for providing evidence for this hearing, we think that a further reduction of 10% is appropriate, and we therefore summarily assess the costs payable to Geneva Trust Company in defending the Stephenson Harwood claim at £162,508.77. We order Collas Crill to pay that sum to Dickinson Gleeson immediately upon this judgment being handed down and to hold the balance pending our decision on the costs of this summons.

Postscript

- 48 Following the issuing of this judgment in draft, the Court has received confirmation from the parties that the engagements between Geneva Trust Company and Stephenson Harwood were subject to English law and contained no contractual limitation equivalent to Article 32. Geneva Trust Company therefore did face personal liability in the sum of £3.6 million, save to the extent that it succeeded in its defences, including its argument that the English court in proceedings in England under contracts subject to English law should give effect to Jersey law in order to limit Geneva Trust Company's personal liability.
- 49 The Court has also received further submissions from Advocate James in relation to the involvement of Mr Crystal and the way reference to him in the time sheets of Ms Younger were in all but one case redacted, although at the time the Court made its decision it had unredacted copies. Ms Martin had sworn a 22nd affidavit in relation to this extending to 78 paragraphs excluding exhibits, from which it is clear that the respondents have grave concerns about Mr Crystal's involvement and the conduct of Geneva Trust Company in what Advocate James says can be seen to be part of a wider vendetta pursued by G, assisted it is said by Mr Crystal, against D.
- 50 Whilst Mr Swart, in response, gives no explanation for the redactions, he says that Mr Crystal has not charged for his time or rendered fees of his own, which seems correct, and was simply assisting Ms Younger with factual information around Stephenson Harewood's claim, which Geneva Trust Company did not have as it was Ms Martin who ran the relationship with Stephenson Harwood. He says there was nothing in the Stephenson Harewood claim that could have been of assistance to G.
- 51 We do not feel it is appropriate or proportionate for this Court to be drawn into these further issues, as it has been tasked with a discreet exercise agreed by the parties, namely to assess on a summary basis the extent to which Geneva Trust Company should have its costs of defending the Stephenson Harwood claim. The Court has already deducted the amount claimed by 10% to include what appears to be Ms Younger's limited time involvement with Mr Crystal, so whatever Ms Younger and Mr Crystal were discussing, Geneva Trust Company is not getting re-imbursement for her time in this respect. We therefore maintain our decision.

