Trilogy Management Ltd v YT Charitable Foundation (International) Ltd

Jurisdiction:	Jersey
Judge:	M. J. Herbert
Judgment Date:	12 August 2015
Neutral Citation:	[2015] JRC 166
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Court:	Royal Court
Date:	12 August 2015

Text

[2015] JRC 166

ROYAL COURT

(Samedi)

Before:

M. J. Herbert, **Q.C., Commissioner, sitting alone**.

Between
Trilogy Management Limited
Representor
and
(1) YT Charitable Foundation (International) Limited
(2) HM Attorney General
(3) OM-LC ^{2} Charitable Foundation International
(4) The Empowerment Charitable Trust

(5) The Saving Grace Charitable Trust
(6) OM-VC5 Charitable Foundation
(7) The well Foundation
(8) Mrs C
Respondents

Advocate S. M. Baker **for the Representor**.

Advocate F. B. Robertson **and Advocate** J. M. Dann **for the First Respondent**.

Advocate P. G. Nicholls **for RBC Trustees (CI) Limited as trustee of the Third to Seventh Respondents**.

Advocate N. F. Journeaux **for the Eighth Respondent**.

Authorities

Trilogy Management -v- YT and Others [2014] JRC 214.

In re Londonderry's Settlement [1977] Ch 918.

Lewin on Trusts 19th edition.

Re Rabaiotti's Settlements [2000] JLR 173.

Trusts (Jersey) Law 1984.

Schreuder v Murray (No 2) [2009] WASCA 145.

Schmidt v Rosewood Trust Limited [2003] 2 AC 709.

Breakspear v Ackland [2009] Ch 32.

Trust — disclosure of documents by trustees.

THE COMMISSIONER:

1 This judgment relates to the disclosure of documents by trustees. On 13 and 14 May, 2015, I heard an application by the Representor Trilogy Management Limited ('Trilogy') to require the First Respondent YT Charitable Foundation (International) Limited ('YT') to file a further affidavit exhibiting certain categories of documents over and above those exhibited to an earlier affidavit of 27 March. The application had been made by summons dated 28 April, 2015, later amended on 11 May, 2015. At the end of the hearing I gave permission for YT to serve and file further affidavit evidence, without making an order to that effect, but I did make an order for YT to disclose certain documents by 4pm on Friday 15 May, and this judgment provides my reasons for that decision. I shall begin by explaining the context,

which is a little complex.

Context

2 Trilogy's summons forms part of a long history of disputes between the parties relating to a charitable trust (which I shall call 'the Foundation'). The original representation was dated 3 November, 2010. On 10 May, 2012, certain preliminary issues were determined by the then Bailiff sitting with jurats, and on 22 August, 2012, the Court of Appeal allowed an appeal against part of the Court's order on the preliminary issues. The balance of the representation culminated in a trial before this Court, on which judgment and an Act of Court were given on 10 November, 2014 (*Trilogy Management -v- YT and Others* [2014] JRC 214). Subject to certain provisions for directions, paragraph 1 of that Act ordered that YT shall be removed and replaced as trustee of the Foundation. The directions were for YT to undertake a procedure to identify a replacement trustee to be appointed in due course by the Court. As appeared in paragraph 150 of the judgment:–

> ***"It would not be right for this process to be left under the control of Trilogy, which has already expressed its opposition to the mere replacement of YT, nor would it be right to direct RBC to manage the process.*** There is no real alternative but to direct YT to manage the process of finding its own successor, within a given period, and to return to this Court at the end of that period for an order for the appointment of that successor and the giving of appropriate directions. YT has taken no active position in the trial, but it has been directed to give the Court such assistance as it requires, and it is this assistance which the Court will now require…."

To explain some of the references in that passage:–YT is today still the trustee of the Foundation; Trilogy is the trustee of three of the eight charitable sub-trusts with interests in the Foundation; RBC is trustee of the other five such sub-trusts.

3 The directions provided for YT to identify three trust companies as candidates for appointment, to allow each of them to conduct a process of due diligence and, if and to the extent that more than one of the three should consent to accept the trusteeship, YT was directed to select one of them by 27 January, 2015. This latter date was subsequently amended to 20 February, 2015. Paragraph 2g of the Act then provided for the other parties to the action to serve and file any objections to the appointment of the proposed successor by 27 February, 2015.

4 In addition to the matter of appointing a replacement trustee, the Act also required YT to procure certain amendments to the articles of association of an investment company known as JY controlled by YT.

5 In the period before and after Christmas YT identified three candidates for possible appointment. Then, by a letter of 20 February, 2015, Advocate Dann of Appleby notified the

parties and the Court that YT had selected one of those candidates (which I shall anonymise as 'X Co') pursuant to paragraph 2e of the Act of Court. In point of detail, the proposal was not to appoint X Co itself, but to appoint a private trustee company, to be formed for the purpose as a subsidiary of X Co.

6 Walkers (for RBC) and Baker & Partners (for Trilogy), who between them act for all eight of the charitable sub-trusts interested in the Foundation, immediately requested more information from YT about the process of selection. At a hearing on 6 March, 2015, this Court gave directions for YT to serve and file written evidence relating to:–

(i) YT's reasons for choosing X Co as the provider of a trustee in favour of any other candidate;

(ii) YT's reasons for choosing a private trustee company;

(iii) The provision of an indemnity for YT itself, if entitled;

(iv) The proposed remuneration of the new trustee, to include any evidence of remuneration requested by the other candidates, if known; and

(v) The insurance aspects in respect of the private trustee company.

7 This led to an affidavit from Advocate Alan Binnington, one of the directors of YT, dated 27 March, 2015. An exhibit to that affidavit ran to 371 pages.

8 Trilogy, acting through Baker & Partners, remained dissatisfied and continued in correspondence to request further details and documents. The requested further documents had already been set out in a letter of 16 March. But YT declined these requests. Trilogy took the view that it was unable to make a formal decision whether or not to oppose the appointment of X Co until the further documents had been disclosed, and on 10 April Trilogy applied for an extension of time in which to serve and file its evidence in answer to YT's evidence. I allowed that extension to 7 days after receipt of the documents identified in the letter of 16 March. However, I later acknowledged that this last direction suffered from at least one weakness, namely that it included no direction at all for Trilogy to give evidence if YT were to provide none of the requested documents. On 28 April Trilogy issued its summons applying for an order requiring YT to serve and file further written evidence exhibiting the documents requested in the letter of 16 March.

9 On 30 April I convened a directions hearing by telephone conference call. I declined to give an order pursuant to Trilogy's summons, but I did express myself strongly critical about what I saw as several shortcomings of Advocate Binnington's affidavit of 27 March. I gave YT permission to serve and file further evidence by noon on 11 May and for Trilogy to file evidence in answer by 14 May. Trilogy took the opportunity of amending its summons on 11 May, taking its cue from some of the critical remarks which I had made during the directions hearing about the existing evidence. There was no objection to this amendment.

10 In this amended form the summons asks for a further affidavit exhibiting information particularised in ten paragraphs numbered 3 to 12. Paragraphs 3 to 10 specify correspondence, file notes, records of meetings and telephone conversations between YT and its directors and advocates (on the one hand) and X Co and the other potential replacement trustees (on the other). YT has not maintained an objection to those paragraphs, and Advocate Robertson (for YT) told the court that copies would be provided. YT does, however, object to paragraphs 11 and 12, which are in these terms:–

> *"11. All records of deliberations by the board of the First Respondent in relation to the selection of its replacement as trustee of the Foundation, its nomination of [X Co] as replacement trustee and its consideration of the other replacement trustees as Trustee of the Foundation.*
>
> *12. Any advice received by the First Respondent or prepared for it in relation to its selection of its replacement as Trustee of the Foundation and its nomination of [X Co] as replacement trustee and its consideration of the other replacement trustees as Trustee of the Foundation."*

The parties' positions

11 Trilogy puts its demand for these documents on three grounds:–

It may be hard to distinguish between points (1) and (3).

> (i) That the disclosure of these documents is necessary pursuant to the Act of Court of 6 March;
>
> (ii) That the documents are trust documents to which Trilogy is entitled in any event, by virtue of the Trilogy sub-trusts being absolutely entitled to future distributions of income from the Foundation;
>
> (iii) That the documents are necessary in order to enable the Court to decide whether it is proper to appoint X Co on the terms proposed.

12 Trilogy also points to the way in which YT was appointed to make its selection, and submits that the Court should look closely at how it and its advocates have dealt with those issues, in relation both to X Co and to the other competitor trustees. Advocate Baker, for Trilogy, pointed to earlier problems which he said that Trilogy had experienced with YT throughout the last 10 years, and that this included YT failing to comply with certain court orders, for example its failure to amend the articles of association of JY (this requirement being mentioned at paragraph 4 above) until contempt proceedings had been issued. In short, Trilogy acknowledges that the court selected YT to conduct the selection process but submits that the Court should look sceptically at the information which YT has provided.

13 Trilogy points to three issues in particular, all of which I had myself identified during the telephone directions hearing of 30 April (having already been specified in the directions of 6 March). The first is the level of professional fees which X Co has proposed. The second issue is the provision of security for YT itself. The third issue is the level of indemnity insurance for X Co and its proposed subsidiary as trustee.

14 The documents already disclosed included transcripts of three telephone conference calls between directors of YT and each of the three candidate trustee companies. Advocate Baker drew attention to two features of these conference calls. First, he suggested that MC, one of the eight daughters of the settlor OM (as he has been called throughout these proceedings) had appeared to resuscitate issues which had been determined by the judgment in the main action, such as whether the new trustee would have any duty to consider the actions of the sub-trusts. Second, he pointed out that Advocate Binnington had not participated in the call involving X Co. He submitted that the court would need to consider how the board of YT considered these issues.

15 Turning to Trilogy's right as a beneficiary to call for documents in YT's possession as trustee, Advocate Baker submitted that YT were wrong to claim entitlement to withhold disclosure of these documents on the strength of the exceptions enunciated in *In re Londonderry's Settlement* [1977] Ch 918. That is a well-known English case in which the Court of Appeal had supported the propositions that, although trustees should normally be prepared to disclose trust documents to their beneficiaries, they were not obliged to inform beneficiaries of the trustees' reasons for their particular exercise of a discretionary disposition (that being common ground in the appeal (see page 924E-F of the report), and that for that reason they were not obliged to provide beneficiaries with copies of documents recording or explaining those reasons. Advocate Baker submitted that YT's decision in the present case to select a replacement trustee was not the same sort of discretion as was relevant in the *Londonderry* case.

16 Apart from *Londonderry*, Advocate Baker referred me to two other decisions and two passages from Lewin on Trusts (19th edition). First, he took me to *Re Rabaiotti's Settlements* [2000] JLR 173, which he said justified a presumption in favour of disclosure, with a discretion to withhold documents in the interests of the beneficiaries as a whole. He cited the following passage:–

> ***"In our judgment, the court does have a discretion to refuse to order disclosure of trust documents that a beneficiary is normally entitled to see.*** Clearly, the general principle is that a beneficiary is entitled to see trust documents which show the financial position of the trust, what assets are in the trust, how the trustee has dealt with those assets etc. This is an essential part of the mechanism whereby the trustee can be held accountable for his trusteeship to a beneficiary .
>
> ***But the need for an individual beneficiary to obtain trust documents has to be weighed against the interests of the beneficiaries as a whole.*** The

> trustee has a duty to the beneficiaries as a class. If, as in some of the cases referred to above, the trustee forms the view in good faith that disclosure of documents to which a beneficiary would normally be entitled, would be prejudicial to the interests of the beneficiaries as a whole, it may refuse to make that disclosure and seek the directions of the court. Should the trustee fail to seek the directions of the court, it is open to any beneficiary to bring the matter before the court for resolution."

I pause there to comment that this passage seems to relate to a different type of discretion from the one being exercised by YT in the present case. On the other hand it operates as a useful reminder that a trustee is in principle accountable to its beneficiaries in regard to its administration of the trust, and that its duties include consideration of the interests of the beneficiaries as a whole.

17 *Lewin on Trusts* includes a four-page section headed ***Categories of documents within the Londonderry exception***. At paragraph 23–041 it states:–

> ***"The documents which are excepted from disclosure under*** *Re Londonderry's Settlement* ***are minutes of meetings of trustees and other documents, or parts of documents, disclosing:–***
>
> > ***(1) the deliberations of the trustees as to the manner in which they should exercise the relevant powers or discretions;***
> >
> > ***(2) the reasons for any particular exercise of such powers or discretions; and***
> >
> > ***(3) the material upon which such reasons were or might have been based."***

These reflect the terms of the order given in the *Londonderry* case, recorded at pages 939–940 of the report. In the passage from *Lewin on Trusts* which follows, the documents are described as falling within categories (1), (2) and (3) in accordance with that classification.

18 Then, with that classification in mind, in paragraph 23–044 the learned editors refer to article 29 of the 2014 revised edition of the Trusts (Jersey) Law 1984 and add the following analysis:–

> ***"In the Channel Islands, where the relevant legislation is closely modelled on the order made in the*** *Londonderry* ***case, both as a matter of general principle, and by reason of the fact that the statutory exception from disclosure of documents within categories (1) to (3) takes effect subject to an order of the court, the exception is of a prima facie nature only.*** And so in appropriate circumstances, the court may exercise its discretion to order disclosure of documents within those categories, though there is a strong presumption against disclosure."

Footnotes refer at this point to *Re Rabaiotti's Settlements* [2000] JLR 173 (above).

19 The passage from paragraph 23–044 of *Lewin on Trusts* (above) continues:–

> ***"An example of a case where disclosure may be ordered of documents within categories (1) or (2) is where trustees volunteer their reasons for a particular exercise of a power or discretion but then refuse to disclose the documents containing their reasons — in such a case, depending upon the circumstances, and in the absence of an explanation why the documents should be withheld if the reasons have been given, the court may think fit to exercise discretion in favour of disclosure.*** In our view, the case for exercise of judicial discretion in favour of disclosure is at its highest, and the presumption against disclosure at its weakest, is in relation to category (3) documents, since such documents neither contain the reasons nor the deliberations of the trustees and are at most documents from which reasons might be inferred or deduced, and even then may be documents containing material upon which the relevant decision might have been, but was not in fact, based. Although the order made in the *Londonderry* ***case is of great importance, it should not be approached as though it were a statute."***

Again the *Rabaiotti* case is cited as authority for that passage.

20 Advocate Baker relied on these texts to support his submission that the court should exercise its discretion in favour of disclosure in the present case, on the footing that YT had given reasons for the decision which it had made, and that this put the case in that category where the presumption against disclosure is at its weakest.

21 Advocate Baker also addressed the question whether a claim for legal professional privilege may be made in respect of certain documents containing or referring to legal advice. He referred to paragraph 23–048 in *Lewin on Trusts*:–

> ***"Normally disclosure will be ordered of cases submitted to, and opinions of, counsel taken by the trustees, and other instructions to and legal advice obtained from the trustees' lawyers, for the guidance of the trustees in the discharge of their functions as trustees, and paid for from the trust fund."***

A footnote at this point cited a number of cases, including *Schreuder v Murray (No 2)* [2009] WASCA 145, from which Advocate Baker referred me to paragraph 10 of the judgment. The passage in *Lewin on Trusts* continued:–

> ***"Even though such advice is privileged, the privilege is held for the benefit of the beneficiaries, not for the personal benefit of the trustees, and so privilege is no answer to the beneficiary's demand for disclosure."***

22 In answer to a question from the bench, namely whether Trilogy was positively challenging

the choice of X Co as replacement trustee, Advocate Baker submitted that the issues covered by the order dated 6 March, 2015, went further than the mere selection of X Co. He acknowledged that, during previous directions hearings conducted by telephone, I had expressed a strong indication that the court would be unwilling to re-run the selection process carried out by YT. But Advocate Baker submitted that I should not have limited the enquiry in that way.

23 For YT Advocate Robertson began by stating that the parties already had more than enough documents before the court, and that Trilogy had misunderstood the purpose of the exercise. He said that the court should not attempt to step into the shoes of YT to second-guess its decision. The order of 10 November, 2014, had required YT to undertake the selection process, and it had done so. Trilogy was deliberately not charged with the selection, and it should not be a question of deciding between X Co and Trilogy's preference. Advocate Robertson also pointed out, correctly, that it was only in the order of 6 March, 2015, that YT had been required to put in evidence in relation to the selection.

24 Advocate Robertson took me to paragraph 23–040 of *Lewin on Trusts*:–

> ***"Trustees exercising a power or discretion are not in general obliged to disclose their reasons for taking a particular decision, whether or not disclosure of their reasons is sought by a beneficiary.*** In consequence the general rule was established in *In re Londonderry's Settlement* [1965] Ch 918, ***and the decision in that case followed or approved in later cases before*** *Schmidt v Rosewood Trust Limited* [2003] 2 AC 709, ***that trustees are not bound to disclose or allow inspection of documents disclosing the reasons for exercising a power or discretion in a particular way."***

The passage continues to the effect that the *Schmidt* case reinforces the decision in the *Londonderry* case. It concludes:–

> ***"Accordingly, prima facie the court should exercise its discretion so as to withhold disclosure of documents within this category if the trustees do not wish to disclose their reasons to a beneficiary demanding disclosure."***

25 I may say that the words **"prima facie"** in that passage are marked by a footnote referring to paragraph 23–043. This latter paragraph explains that the trustees do not have an absolute right to withhold disclosure of documents relating to their reasons for a decision, and that it is a matter of the court's discretion whether to override the trustee's confidentiality. A case in which confidentiality was overridden was *Breakspear v Ackland* [2009] Ch 32.

26 Advocate Robertson concluded this part of his submissions by emphasising that there was a strong presumption against the court ordering the disclosure of trustees' reasons, and by the same token, allowing disclosure of documents disclosing their deliberations, and that such disclosure in the present case was neither necessary, proportionate, nor essential.

27 In regard to legal professional privilege Advocate Robertson took me to a different passage in *Lewin on Trusts* at paragraphs 23–049 to 23–051.

28 Advocate Nicholls for RBC assisted me with brief submissions to the effect that the court has a discretion to order disclosure, and that it should do so. He commented that YT's resistance to the requests of Trilogy and RBC to disclose these documents was delaying the appointment of a new trustee, and therefore prejudicing the administration of the Foundation.

Analysis

29 There was no fundamental disagreement between the parties about the passages in *Lewin on Trusts* to which I was referred. For my part I too accept those passages as an accurate summary of the law in this area. The passages about disclosure show that a trustee is ordinarily entitled to withhold the reasons for his or her decision, but that the court has a discretion in certain circumstances, and in respect of certain categories of documents, to order disclosure.

30 In my view the discretion is more likely to be exercised in favour of disclosure where the trustee's reasons have already been disclosed. The documents requested in paragraphs 11 and 12 of Trilogy's summons seem to fall mainly within categories (1) and (3) of the categories described as falling within the *Londonderry* exception. The Court has already ordered YT to disclose its reasons and to give written evidence of its deliberations. YT has done so, though the other parties claim that the disclosure has been selective. In essence Trilogy's summons seeks full disclosure of documents relating to YT's deliberations falling within category (1) plus other documents falling within category (3).

31 At the root of the differences between the parties is a contrast between their professed understanding of YT's function and status in regard to the selection of the successor trustee. YT has emphasised its status as current trustee of the Foundation and that it was involved in exercising a discretion conferred upon it as trustee. This was said to justify its reliance on judicial statements in the *Londonderry* case and elsewhere restricting beneficiaries' rights to know the reasons for its decisions and to see documents revealing its deliberations. Trilogy by contrast emphasises the order of 6 March, 2015, in which YT was required to serve and file affidavit evidence disclosing reasons, and submits that this justifies the court in exercising its own discretion in favour of the disclosure of relevant documents.

32 I have two main comments about YT's position. First, YT has in fact given its reasons for making its decision, at least in part, and to my mind this entitles, and perhaps even obliges, the court to consider whether those reasons justify the decision. The question for the court will remain the same, namely whether the decision which YT has made is one which a

reasonable trustee could make. But now that the reasons for the decision have been disclosed, the analysis of that question becomes easier for the court to perform. And if the court is entitled to judge the soundness of the trustee's reasons in that way that process will be impeded unless there is disclosure of documents recording and explaining the trustee's deliberations and other documents on which its decision may have been made.

33 To my mind this also justifies Trilogy and RBC in asking for this disclosure. The directions given in November 2014 entrusted the process of choice to YT, but it also gave the other parties the opportunity to object. The directions did not specify the type of grounds on which such an objection might be made, but in my judgment Trilogy and RBC were entitled to make the requests formulated in Baker & Partners' letter of 16 March and now contained in the amended summons. They are entitled to challenge YT's decision, and they have been told the reasons for that decision. I would draw the conclusion that they are, in those circumstances, entitled to challenge the soundness of YT's reasons and deliberations.

34 Even if this were purely a question of YT exercising a discretion conferred upon it as trustee, therefore, I would have been inclined to exercise the Court's discretion in favour of disclosing documents in the two relevant paragraphs of the amended summons. I recognize that, at least where reasons have not been disclosed, there is a *prima facie* presumption against disclosure. But the presumption is by no means absolute. In the present case I would regard such disclosure as necessary and proportionate in order to enable Trilogy and RBC properly to formulate any objection they may have to the appointment of X Co's subsidiary company, and in order for the Court to reach an informed conclusion on the propriety of that appointment. The fact is that on 6 March, 2015, this court ordered YT to disclose the reasons for its decision in the form of written evidence, and YT has now done that, after a good deal of prompting from me, in the form of three affidavits from Advocate Binnington.

35 I therefore accept Advocate Baker's submission that I should exercise the Court's discretion in favour of disclosure in respect of documents falling within all three of the categories comprising the *Londonderry* exception. So far as categories (1) and (2) are concerned the Court has already ordered that disclosure in principle, and an order requiring that disclosure to be complete is necessary and proportionate. Documents in category (3) are those where the case for the exercise of judicial discretion in favour of disclosure is at its highest, and the presumption against disclosure at its weakest. In this case too, an order is in my judgment necessary and proportionate.

36 My second comment on Advocate Robertson's submissions is that the decision process undertaken by YT was not, or at least was not purely, the exercise of a discretion of the kind mentioned in the authorities and text-book passages to which I have been referred. It was certainly not a discretion conferred on it by the trust instrument. Instead YT was acting essentially as the delegate or agent of the Court itself. YT was not chosen to perform this function specifically because it was a trustee. In fact nearly all the parties to this litigation are trustees. On the contrary the reason was that the other main parties were inappropriate to perform the task. YT had earlier applied to the Royal Court for directions in regard to its

approach to the main action, and it had been ordered to take a neutral position subject to assisting the court in ways that might be required. The directions given in the Act of November 2014 was made was a direction for YT to assist the court in just that way. Paragraph 150 of the Court's judgment of 10 November, 2014, made its motive clear.

37 It should be remembered that the Court has already decided in principle, after a long trial, to remove YT from the trusteeship for abundant reasons connected with its administration of the Foundation. Advocate Robertson (whose firm did not act for YT during that trial) submitted to me that Trilogy had misunderstood the nature of the decision which YT was now making, but in my judgment the reverse is the case. And I agree with Advocate Nicholls that YT's resistance to the sub-trusts' requests has unnecessarily delayed the appointment of a replacement trustee, to the probable detriment of the Foundation's administration, not to mention the added costs of the litigation. It is true that in other circumstances such resistance might have been justified by an appeal to the interests of the beneficiaries as a whole, but in the present context the interests of the eight sub-trusts are identical and their challenge to YT is unanimous.

38 I repeat the circumstance that the order of 6 March, 2015, required YT to give reasons for its selection. YT did not object to that order or choose to appeal it. I have pointed out that this gave Trilogy and RBC the opportunity to challenge those reasons, and to call for documents as they did in the letter of 16 March. In addition I remind the parties that the Court still has a function to perform, namely to appoint the successor trustee, and in doing so the Court needs to be satisfied that it is making a proper choice. I remain reluctant to re-open the selection process in the sense of having other candidates re-considered in place of X Co. But ultimately Trilogy is entitled to remind me and the other parties that if the terms of X Co's appointment are not terms which the Court can properly accept it might indeed come to a question of re-opening the selection process. I do not say that that is the inevitable consequence. But if the Court were unpersuaded of the merits of X Co's appointment, or of the propriety of the terms which are proposed for its appointment, then the Court would have to consider alternative courses, however reluctantly. I take the opportunity now of expressing the hope that the terms ultimately proposed will be terms that the Court can properly accept.

39 I find therefore that the entitlement of Trilogy and RBC to request documents coincides, at least to a substantial degree, with the interest of the Court itself to satisfy itself as to the propriety of the appointment being proposed, and that this includes an interest in understanding, assessing and ultimately judging the reasons for the selection. In my judgment the disclosure is necessary and proportionate:–the word essential seems to me to add nothing to the word necessary.

40 These are the reasons why, immediately after the hearing on 13 and 14 May, I made the order for disclosure of documents specified in paragraphs 11 and 12 of Trilogy's amended summons.