S.G. Kleinwort Hambros Trust Company (C.I.) Ltd, Noctule Services Ltd, Pallas Holdings Ltd and MT Services Ltd v B and Eight Others

Jurisdiction:	Jersey
Judge:	Bailhache
Judgment Date:	03 April 2023
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Reported In:	2023 (1) JLR 167
Court:	Royal Court

Text

S.G. Kleinwort Hambros Trust Company (C.I.) Limited, Noctule Services Limited, Pallas Holdings Limited and MT Services Limited
and
B and Eight Others

In the Matter of the Bell, Eclipse, Helios, Jupiter, Mars, Moon, Neptune, Pallas, SPV Charitable and SPV (No. 2) Charitable Trusts

[2023]JRC054

(William Bailhache, Commr.):

ROYAL COURT

Trusts — powers and duties of trustees — application for directions — directions given in respect of proposed restructuring of trusts

Held, ruling as follows:

(1) The non-binding guidance hearing was adjourned to a date in June. This process was not a straightforward blessing application following a decision taken by trustees without judicial prompting, but a process firmly within the scope of art. 51 of the Trusts (Jersey) Law 1984 designed to assist the parties and the trustees in the administration of the SG Trusts and in their restructuring. The *In re S Settlement* test might well be applied at the final blessing application, subject to the right of any party to argue otherwise, but it had no bearing on the process to be adopted until that application was made because the restructuring was a judicially led initiative. At the hearing in June, the court would deal with the issues which arose on the available evidence and the skeleton arguments filed in accordance with the various directions given with this judgment. At the heart of the current difficulties was settling the right provision for G. The court did not anticipate that the result of the non-binding guidance in June would be a determination of G's entitlements under the trusts. The trustees' views would be formed having regard to the various views expressed by the beneficiaries and by the court (paras. 18–28).

(2) The court would not issue a letter of request to the Royal Court of Guernsey at this time. It was clear that the two processes would proceed to a final hearing. The trustees' proposal was a joint one and accordingly it would be the same proposal ultimately considered in each court. The Commissioner shared the view of the Bailiff of Guernsey that it was not necessary for a letter of request to be issued, certainly at this stage. The court did not consider that a letter of request was necessary in any event, even if there were to be full cooperation between the two courts. As to directions for pre-trial hearings, those could be made by having regard to what had been decided already in the other court, without that decision being in any sense binding. If the court had been minded to issue a letter of request now, it would have had to consider the jurisdiction to do so. The court left open whether art. 51 of the Trusts (Jersey) Law 1984 provided a sufficient jurisdiction. Sending a letter of request was a procedural matter. If it was desirable to do so to achieve justice, it should be possible to do so using the inherent jurisdiction. In respect of consultation between judges, the Commissioner could see no reason why such consultation should not take place if the judges thought it desirable. For the purposes of transparency, any such consultations which lead to the conclusion that there were particular questions which troubled the judge should, as a matter of good judicial practice, lead to those questions being ventilated in court so that the parties could address them. Here we had the unusual circumstance of essentially the same case—the blessing application in respect of a proposal produced by the trustees jointly—being advanced in two jurisdictions. It was likely that the same, or potentially very similar, test would be applied in each of the jurisdictions. Subject to the question of transparency, there was no reason not to have consultations, and every reason to do so. That did not mean that the courts would reach the same conclusions. Each court must reach its own conclusions. The court declined to issue a letter of request at this stage and did not contemplate that it would be necessary to do so in the future, although the court would certainly do so if the Bailiff of Guernsey considered that some detailed cooperation was necessary or appropriate and that it could not take place without a letter of request passing from one jurisdiction to another (paras. 43–50).

(3) The court issued directions (paras. 51–53).

Cases cited:

(1) *Angenent v. Pring*, 2005–06 GLR 1, referred to.

(2) *Finance & Economics Cttee.* v. Bastion Offshore Trust Co. Ltd., 1994 JLR 370, considered.

(3) *Mayo Assocs. S.A. v. Cantrade Private Bank Switzerland*, 1998 JLR 173, considered.

(4) *S Settlement, In re*, 2001 JLR N [37], referred to.

Trustees sought directions from the court.

J was a very wealthy man who died in 2019. The first and second respondents, B and C, were the children of J from his first marriage. The third respondent, G, was J's second wife, and the fourth and fifth respondents, H and K, were the children of J and G. At the time of J's death, he and G had been engaged in divorce proceedings. As a result of J's death, those proceedings came to an end and no financial provision consequent on divorce was made. G therefore had such rights as might be available to her under J's estate as his widow, together with any rights pursuant to a marriage contract and her rights as a beneficiary of various trusts. J's children had such rights as were available to them against his estate, if any, and such rights as they were able to assert as beneficiaries of the various trusts.

The representors ("the SG Trustees") were the trustees of a number of trusts ("the SG Trusts"). The SG Trustees had regarded J as the principal beneficiary of the trusts. J had also established a number of other trusts ("the Mirafield Trusts") of which Mirafield PTC Ltd. ("Mirafield"), a company incorporated in the Cayman Islands but administered in Guernsey, was the trustee.

B and C brought a representation seeking the dismissal of the eighth respondent as protector of the SG Trusts in respect of which he held that office. It was clear at that time that B and C might also have brought proceedings for the dismissal of the SG Trustees but they did not do so because the SG Trustees indicated their wish to retire as trustees subject to suitable alternative trustees being identified. In an interim judgment in April 2022, the court concluded that subjectively B and C were entitled to have no trust and confidence in the protector. The way forward was a possible restructuring of the trusts. The representation was stayed for three months. All parties were in favour of a restructuring of the trusts, although there were differences as to how that should be achieved.

The SG Trustees brought a representation seeking a number of procedural orders including directions as to the representation of the interests of any minor and unborn beneficiaries of the SG Trusts and representation of the charitable interest; confirmation of the suspension of the powers of the protector or enforcer; and directions as to the timetable for the provision of information and views by the beneficiaries, for the formulation of a plan of restructuring by the SG Trustees, for a further directions hearing following the provision of the SG Trustees'

outline proposals for restructuring, and fixing a date for a hearing at which the final restructuring proposals could be considered by the court.

In June 2022, a timetable was set (which had not been entirely met) which included an order that at the outline proposals hearing, to be fixed for a date after March 6th, 2023, the court would consider the outline proposals and the parties' views on them, with the court able to provide such non-binding observations and views as it saw fit, and give further directions in connection with a timetable for preparation of the trustees' final restructuring proposals.

At the hearing on March 23rd, 2023, the advocate for G, H and K was not ready to make submissions on the trustees' outline proposals. The directions proposed by the SG Trustees made no provision for any judicial observations on the outline proposals and the comments of the parties.

There were parallel proceedings in Guernsey. Proceedings brought by B and C seeking the removal of Mirafield had been adjourned. The outline proposals for the restructuring of the trusts concerned both the SG Trusts and the Mirafield Trusts. Although it would be desirable for one court to deal with the whole process, Mirafield and the SG Trustees were not willing to submit to the jurisdiction of the Jersey and Guernsey court respectively unless all of their beneficiaries consented, which agreement was not forthcoming. The parties accordingly proceeded on the basis that there would be separate blessing applications in the Royal Court of Guernsey and the Royal Court of Jersey, albeit the intention was that the blessing applications would be in respect of the same scheme, jointly developed by the trustees.

At a hearing in Guernsey in which directions were considered for the handling of the Mirafield application, which ran in parallel to the SG Trustees' representation in Jersey, the Bailiff was encouraged to consider the possibility of a letter of request to be sent from the Royal Court in Guernsey to the Royal Court in Jersey. The Bailiff concluded that it was not clear that he had jurisdiction to issue a letter of request under s.69 of the Trusts (Guernsey) Law 2007—that matter was left over—but while the issue of such letters was clearly possible using the inherent jurisdiction of the court, it was a jurisdiction which should only be called upon if it were necessary for the purposes of doing justice in the Royal Court. He considered it premature to determine at that stage of the proceedings how and if it would be appropriate to seek judicial cooperation with the Royal Court of Jersey. He added that if the Royal Court of Jersey were to issue a letter of request to the Royal Court of Guernsey, he considered the Guernsey court would react positively.

B and C applied for an abridgment of time for a draft summons seeking a letter of request to be sent to Guernsey. It was submitted that there was a real risk of different decisions being reached by the two courts.

Legislation construed:

Trusts (Jersey) Law 1984 (Official Consolidated Version, ch.13.875), art. 51: The relevant terms of this article are set out at para. 10.

A. Kistler for the representors;

N.M.C. Santos-Costa and S.J. Williams for the first and second respondents;

N.M. Sanders for the third, fourth and fifth respondents;

J.P. Speck for the eighth respondent;

The sixth and seventh respondents appeared in person;

The Attorney General did not appear.

1 Bailhache, **COMMISSIONER:**

History

This is a judgment given in respect of a directions hearing on March 23rd, at which a number of issues in relation to the representation of the representors ("the SG Trustees") were ventilated, judgment having been reserved.

2 The SG Trustees are between them trustees of a number of trusts (referred to collectively as "the SG Trusts") established on and after October 9th, 2007. The principal beneficiary of the SG Trusts was regarded by the SG Trustees as "J" who died in 2019, survived by his widow, the third respondent ("G"), his two children from an earlier marriage, the first and second respondents ("B" and "C" respectively), and the fourth and fifth respondents, his two children with G ("H" and "K"). In this judgment I shall be referring to those respondents by their Christian names (now anonymized to letters). This is not intended as any discourtesy to them, but it is a reminder to me and to all the parties that the case has both financial and emotional consequences for these family members. Indeed in parallel proceedings in Guernsey, to which I shall come in more detail later in this judgment, the learned Bailiff recently said this:

> "I want to emphasise that I have certainly not overlooked the fact that there are real people behind what is happening in this Court room over the last two days, and that it is important for everyone to have the best interests of the beneficiaries as a group in mind."

3 J established a number of other trusts ("the Mirafield Trusts") of which Mirafield PTC Ltd. ("Mirafield"), a company incorporated in the Cayman Islands but administered by Aquitaine Group Ltd. in Guernsey, was and remains the trustee. In this judgment, where there is reference to "the trustees," it is a reference to both the SG Trustees and Mirafield. The SG and Mirafield Trusts (together "the trusts") are in substantial measure subject to the proper law of either Jersey or Guernsey although there are exceptions. The eighth respondent is the protector of a number of the SG Trusts and has been closely associated with the Aquitaine Group Ltd., not only as a director but also as a beneficial shareholder in its parent

company. The relationship is more fully described in this court's judgment of April 7th, 2022 (“the April judgment”) (*In re B*, [2022]JRC086) in respect of the representation of B, C, and B's children.

4 At the time of his sudden and unexpected death, J and G were engaged in divorce proceedings. As a result of J's death, those came to an end, and no financial provision consequent on divorce was made. Accordingly, G has such rights as may be available to her under J's estate as widow, together with any rights pursuant to a marriage contract which I understand there was, although I have not seen it, and her rights as a beneficiary of the various trusts. Other than the reference to the marriage contract, J's children similarly have such rights as are available to them against his estate, if any, together with such rights as they are able to assert as beneficiaries of the different trusts, recognizing that, for example, C is not the beneficiary of one of the trusts for tax reasons.

5 The April judgment was given in respect of a representation seeking the dismissal of the eighth respondent, L, as protector of those SG Trusts in which he held that office. It was clear that at that time B and C might also have brought proceedings for the dismissal of the SG Trustees as well—they only did not do so because the SG Trustees had indicated their wish to retire as trustees subject to suitable alternative trustees being identified. Given that no application for the dismissal of the SG Trustees was then before the court, the April judgment deals only with the application to dismiss L. The judgment is an interim judgment. Its conclusion was that, subjectively, B and C were entitled to have no trust and confidence in L. The court went on to say this ([2022]JRC086, at para. 133):

> “The question is whether that is enough for the purposes of a decision that the First Respondent should be dismissed from office, particularly in circumstances where three of the adult beneficiaries consider that he has done nothing wrong and want him to stay, and where objectively there might be debate about the reasonableness of B's and C's particular complaints. We have a discretion to exercise as all the authorities make clear. This leads us to the discussion below as to the way forward.”

6 The way forward was a discussion about a possible restructuring of the trusts, a concept which by that stage all the adult beneficiaries had come round to accepting. The judgment concludes with an order for a stay for a three month period, with liberty to apply, and leave for the parties to file further evidence within twenty-eight days of the expiration of the stay if so advised for the purposes of updating the court on the progress of the restructuring discussions, with provisions for attendance on the Judicial Secretary to list a directions hearing should any party so require.

The process to date

7 In my judgment it is important to remember, in considering the right steps to take in the context of the present representation, why we are where we are. It was obvious to the court,

which sat for seven days during which both submissions and a good deal of evidence were made and given respectively that restructuring was in principle a good solution to the issues which beset this family, and that it was important to recognize that the lack of trust and confidence which B and C had in the SG Trustees and L (and although it was not part of the Jersey proceedings, it was quite obvious that lack of confidence extended to Mirafield), was a potential problem in a satisfactory restructuring, not least because the nature of the court's functions on a blessing application in relation to restructuring following the *In re S Settlement* line of authority (*In re S Settlement* (4)) was such as would arguably place them at a significant disadvantage in that process. Furthermore, the potential sword of Damocles hanging over any restructuring process, namely an application for the dismissal of the trustees, could also be an inhibiting factor in providing a timely solution.

8 This was recognized by L. As the April judgment records ([2022]JRC086, at para. 136):

> "On 11th February 2022, in an open letter to the other parties, Advocate Speck on behalf of the First Respondent put forward the proposal below on an open basis:
>
> > (i) The First Respondent should remain in office as protector, but with his powers 'frozen' pending the restructuring. He would not exercise any of these powers as protector without the prior agreement of the adult beneficiaries or an order of the Jersey Court.
> >
> > (ii) The Trustees should remain in office for the purposes of carrying out a restructuring of the SG Trusts, which it was thought Mr Needham had confirmed on behalf of the Trustees while giving evidence.
> >
> > (iii) The Court could give directions for the preparation of restructuring proposals by the Trustees and by whatever other indications it considered suitable as to the broad nature of these proposals.
> >
> > (iv) Suitable representation be appointed to represent minor and unborn interests in the restructuring.
> >
> > (v) The parties should agree on one court for the purposes of supervising the restructuring of both the SG and the Mirafield Trusts so that a holistic view could be taken of the assets in those trusts."

9 No doubt that letter was subsequently the subject of discussion between the parties.

10 We interpose here to say that the court's power to act as it did in the April judgment is entirely within the scope of art. 51 of the Trusts (Jersey) Law 1984 ("the Law"), which is worth setting out in its material parts at this stage:

> " **51. Applications to and certain powers of the court**
>
> (1) A trustee may apply to the court for direction concerning the manner in which

the trustee may or should act in connection with any matter concerning the trust and the court may make such order, if any, as it thinks fit.

(2) The court may, if it thinks fit—

(a) make an order concerning—

(i) the execution or the administration of any trust,

(ii) the trustee of any trust, including an order relating to the exercise of any power, discretion or duty of the trustee, the appointment or removal of a trustee, the remuneration of a trustee, the submission of accounts, the conduct of the trustee and payments, whether payments into court or otherwise,

(iii) a beneficiary or any person having a connection with the trust, or

(iv) the appointment or removal of an enforcer in relation to any non-charitable purposes of the trust;

(b) make a declaration as to the validity or the enforceability of a trust;

(c) rescind or vary any order or declaration made under this Law, or make any new or further order or declaration.

(3) An application to the court for an order or declaration under paragraph (2) may be made by the Attorney General or by the trustee, the enforcer or a beneficiary or, with leave of the court, by any other person.

…"

11 A body of case law has arisen in connection with applications by a trustee to the court seeking approval for its proposed course of conduct, frequently known as blessing applications. The approach which the court takes to such applications is well-established—it follows the *In re S Settlement* line of cases. Nothing in this judgment is intended to cast doubt upon that line of authority, which, like any line of authority, can be reconsidered from time to time should that be appropriate on the facts of the particular case. There is already, for example, a more nuanced approach in blessing applications where the nature of the decision under review concerns court proceedings where it might be thought that the court has a greater degree of experience than the trustee or indeed any other party.

12 The important consideration is that art. 51 confirms the court's very wide equitable powers of supervision in relation to the administration of trusts.

13 The representation of the SG Trustees sought a number of procedural orders. They included directions as to the representation of the interests of any minor and unborn beneficiaries of the SG Trusts, and the representation of the charitable interest. They also

included confirmation of the suspension of the powers of the protector or enforcer. Importantly, at para. 7 of the prayer, the representation seeks—

> "directions as to a timetable for the provision of information and views by the beneficiaries, for the formulation of a plan of restructuring by the Representors, for a further directions hearing following the provision of the Representors outline proposals for restructuring, and for the fixing of a date for a hearing at which the final restructuring proposals may be considered by the Court."

The directions sought then included directions as to whether the representors should surrender their discretions (in whole or in part) as trustees of the SG Trusts to the court in respect of the decision(s) to approve and implement a restructuring of the SG Trusts and, if so, to what extent and on what basis.

14 In this context, it is also appropriate to be reminded of the letter dated May 13th, 2022 from Advocate Kistler to all parties where at para. 9 he said this:

> "It has been proposed that a further directions hearing could take place after the formulation of outline proposals at which the Court can be apprised of them and the beneficiaries' views. The Court may be willing at that juncture to express nonbinding observations or views to assist the Trustees in their consideration and development of their final, fully worked proposals. We do not see such a directions hearing as amounting to an application for blessing of a momentous decision or a surrender of discretion in any form. Instead, the hearing will be in the nature of case management and the Trustees will be able to reflect on the Court's observations, make any adjustments to the proposals that they consider appropriate in light of them, and take any further tax or other advice as may be necessary. Alternatively, the Trustees may decide that the Court's observations do not cause them to revisit their proposals and they will explain why not when they seek approval of their final proposals."

15 These considerations were no doubt in the forefront of the parties' minds at the time of the hearing on June 21st, 2022 in relation to the SG Trustees' representation. On that date, a timetable was set, which has not been entirely met, but which included the order that at the outline proposals hearing, to be fixed for a date after March 6th, 2023, the court would consider the outline proposals and the view of the parties on the same, with the court able to provide such non-binding observations and views as it may see fit, and give further directions in connection with a timetable for preparation of the representors' final restructuring proposals.

The hearing on March 23rd

16 One might think that the position could not have been clearer. The parties were expected to address the court on the outline proposals at the directions hearing fixed, as it turned out, for March 23rd and 24th. Instead, the court found that the date had been fixed for me to sit

as a single judge without Jurats, which at some inconvenience to the court diary I was able to change and, more fundamentally, Advocate Sanders on behalf of G, H and K informed us that he was simply not ready to make submissions on the trustees' outline proposals. The directions proposed by Advocate Kistler on behalf of the SG Trustees, supported by Advocate Sanders and Advocate Gardner, made no provision for any judicial observations on the outline proposals and the comments of the parties, again, one might think, contrary to the existing act of court.

17 I recognize that B and C could legitimately be concerned at this *volte face*, not least because it was perfectly apparent that they had difficulty with at least some of the outline proposals of the trustees and it is clear that Advocate Sanders, whose clients also have some comments to make on those proposals, was anxiously pressing the view that this was not a matter for the court in any event, and that it was a matter for the trustees to come forward with a blessing application in due course. In the circumstances of the history and process described above the view that I have attributed to B and C would be perhaps unsurprising.

18 For this part of the argument on whether there would be argument on non-binding guidance, I sat with Jurats Christensen and Averty, who were the Jurats also sitting with me for the April judgment. The court was completely unpersuaded that anything had been put forward to suggest a change of direction from that which is reflected in the act of June 21st, 2022 and in the history of the proceedings to that date. We want to be quite clear with the parties that the process with which we are engaged here is not a straightforward blessing application which emerges as a result of a decision taken by the trustees without judicial prompting, but is a process firmly within the scope of art. 51 of the Law, designed to assist the parties and the trustees in the administration of the SG Trusts and in their restructuring. We wish to be quite clear about that in order that the parties do not waste time and expense in preparing for arguments which will fail. The *In re S Settlement* test may well be applied at the final blessing application—subject to the right of any party to argue otherwise—but that has no bearing at all on the process to be adopted until that application is made because, as we have said, this restructuring is a judicially led initiative. Insofar as Jersey is concerned, we therefore respectfully disagree with the comment made by the learned Bailiff of Guernsey in his decision in the Guernsey proceedings on March 8th that “Everyone should have the opportunity to make their comments but, ultimately, this is a Trustee determination and a Trustee process that will result in the Trustee coming to this Court with its final decision, which may be supported, it may be opposed,” because that does not reflect in this jurisdiction why we are where we are.

19 The court in Guernsey will of course follow its own approach: the nature of our respective jurisdictions is that we will follow our approach in Jersey and the court in Guernsey will follow its approach there. What I consider is particularly relevant in Jersey is the process which has been adopted to get us to where we are at the moment, within which is included the judgment of this court dated May 20th, 2022 (unpublished) in relation to a directions hearing at that time. There was then the possibility of a summons from B and C coming forward for consideration, but on the basis that the SG Trustees were then expected to

come forward with their own representation, which they did very shortly afterwards, then that would be the preferred mechanism for taking matters forward. I said this:

> "Secondly, it is obvious to me that if there is, as there appears to be, genuine agreement to pursue restructuring, the parties should agree that the Mirafield litigation in Guernsey should be adjourned sine die. It is a matter for the Guernsey Court of course, but to continue with it on the face of it seems to be a waste of money, a waste of emotional effort and a waste of goodwill …
>
> 4. The continuation of the Mirafield litigation in Guernsey, it seems to me, can only make things worse. Therefore, I would be encouraging all parties to seek an adjournment of that."

20 As I understand it, B and C have agreed to the adjournment of their action to have Mirafield removed in Guernsey, and they need leave of the Royal Court of Guernsey to bring those proceedings back. It would be seriously inhibiting of the restructuring process in both jurisdictions if such an application were brought back but that is merely another reason why the process leading up to the final blessing application is so important.

21 For these reasons, the non-binding guidance hearing will take place and has been adjourned to a date in June, fixed as below. Subject to unforeseen events, that hearing will take place with the same Jurats who have sat on the hearing leading to the April judgment; and they will also sit on the final blessing application for the purposes of consistency. As indicated previously, the Jurats will provide with me an experienced trust court.

Non-binding guidance in June

22 I now turn to the nature of the matters to be considered at the non-binding guidance hearing.

23 In the April 2022 judgment, the court said this ([2022]JRC086, at paras. 147–148):

> "147. We have reviewed the documentation and think it is right to draw out these principles, to which this Court would have regard if asked to approve a momentous decision by the Trustees by which the SG Trusts are restructured:
>
> (i) It is transparently clear that the overriding wish of J was to ensure that his four children be treated equally. It is not possible to make an assessment of every gift made during J's lifetime to bring that reality home. That is to focus on the past and not on the future, but whatever is done from now on should reflect that equality.
>
> (ii) It is clear that J's wish was to ensure that that G was properly provided for. That comes through loud and clear both from his lifetime and through his wishes expressed in the different trusts. We have no doubt that he

> would have wanted this to be achieved not only because it met his own sense of obligation but also because he would not want his children, H and K, thinking ill of him because of his treatment of their mother. Much has been made in the evidence we have read and heard of the need to 'maintain [G's] standard of living and lifestyle'. This is an area which clearly needs careful discussion and agreement. Had the divorce proceeded, it may be that G would not have had the use of the Monaco property, where she was no longer living at the time or indeed the other Trophy Assets. It appears to us that the lifestyle approach does not mean there can never be an alteration in her living accommodation, nor does it mean that the Trophy Assets must always be available to her. G's overall standard of living and lifestyle can be maintained without always providing the Trophy Assets to her, but there is no doubt that her lifestyle includes access to sumptuous housing arrangements. These considerations may form part of any discussions around the renewal or otherwise of the existing tenancy arrangements.
>
> (iii) The third important wish of J was that the trusts would provide not just for him and his wife and his children but at least his grandchildren and possibly a further generation as well. That is demonstrated, *inter alia*, by his wish that the trustees distribute relatively small amounts of the trust capital and, even then, not until beneficiaries had reached the age of 42.
>
> 148. There will be other principles, no doubt, but we consider these three to be at the heart of any restructuring arrangements …"

24 At the hearing in June, the court will deal with such issues which arise on the evidence which is available and the skeleton arguments which are filed in accordance with the various directions given with this judgment.

However, it seems to me that right at the heart of the current difficulties is settling the right provision for G. That is not just a question of quantum but is also a question of structure, albeit that the right structure may depend upon the quantum. It is uncomfortable for G to be in this position, but in my judgment there is no other way of approaching the issue because the first principle set out above at para. 147 of the April judgment, namely that of equality between the four children and their *souches* is otherwise relatively easy to achieve. I note in passing also that giving guidance in this respect is entirely consistent with art. 51(2)(a)(iii) of the Law.

25 In this context, different views have already been expressed. At the time of the non-binding guidance hearing, the court will no doubt wish to have regard to the extent to which the wishes of J should hold sway, bearing in mind that they are not always expressed consistently—for example, the letter of wishes dated May 3rd, 2018 addressed to Mirafield in relation to the Mirafield Trusts, as described at para. 53 of the April judgment, notes that after his death, G and his children will become primary beneficiaries. That suggests an equality between them, which may not be consistent with other statements of his which

suggest the concept that G should continue to enjoy the same lifestyle as previously.

26 I note that in November 2021, the SG Trustees provided to the beneficiaries and the protector a statement of principles to which they intended to have regard in any restructuring—these are set out at para. 20 of the representation, but in relation to G, the principles at para. 4 are not entirely consistent with the approach that her lifestyle prior to separation or indeed possibly prior to J's death should be replicated in any future arrangements.

27 In their outline proposals document, the trustees addressed the question of provision for G in various places but in particular at paras. 5.9.5–5.9.9, 7.9–7.12, 8.3, 9.1–9.4 and 12–14.

28 I should make it clear that I do not anticipate that the result of the non-binding guidance in June will be a determination of G's entitlements under the trusts. The view of the trustees will be formed having regard to the various views expressed by the beneficiaries and the views expressed by the court; and it is unlikely that the June hearing will be substantially concerned with the quantum of benefits directly, although inevitably some headline figures may receive attention. It is, for example, noted that the trustees have proposed the sale of the Monaco apartment at the appropriate time and an acquisition for G's occupation during her lifetime of a less valuable, but still expensive, Monaco apartment in lieu. The responses to the outline proposals reveal slightly different reactions to the trustees' suggestion. G's response suggests a less significant property of nonetheless suitable size and very high standing in Monaco. B and C's response merely recognizes it is not necessary for G to occupy as large and as valuable an apartment in Monaco as the present apartment, but the response is otherwise imprecise as to what kind of accommodation ought to be provided.

29 Clearly also in issue from the various responses to the outline proposals is the disposition or otherwise of the Los Angeles property, currently earmarked under the trustees' outline proposals for use by G during her lifetime as part of her lifestyle arrangements.

30 The structure which the trustees have put forward in the online proposals is broadly that there should be a lifetime trust for G, the reversion of which will be available for the second and third generations. If the overall figures work—by which I mean that the provision of such funds in the lifetime trust that will not adversely impact upon the other principles including proper provision for the children—this structure is entirely consistent with the court's interim views expressed under the heading “the way forward” in the April judgment. It is a structure which provides conveniently for G to be separately provided for but her benefits to be for her lifetime only and therefore available thereafter for subsequent generations. The question which will need to be considered by the trustees is whether, within such a structure, the overall figures work. For that reason, I anticipate that the figures which are contained in the outline proposals, and which have been the subject of comment in the responses, will receive the court's attention for our guidance in June. For my part, I can see that this can be the subject of further oral and written submissions and argument, but I do not see that there is likely to be the need for much further evidence. In particular, I

am currently far from convinced that the joint J and G spending prior to his death or prior to their separation bears any direct relationship to what is properly to be provided for G hereafter. I expect the court to receive argument both in principle and in detail as to such provision in order that we can, if we think fit and it is likely we will think fit, express our views upon it.

31 The annual maintenance support for G of course has an impact upon the amount of capital which must be provided for G's lifetime trust and in that context, unless there is general agreement, the anticipated return on capital will have to be the subject of expert evidence if the court is to express any guidance upon the structure as a whole. It is apparent that if the amount of capital is such that there is substantially less than is necessary to provide benefits to the children under the existing or future Blossom trusts, that would be a material factor in reviewing either the structure or the quantum of payments for G's maintenance. The nature of a holistic restructuring requires us to have regard to the whole. However, other than such expert evidence, it is not apparent to me at the moment that that evidence will be required in June. The existing material plus submissions ought to be enough. That is why there is limited provision in the directions for filing of further evidence other than expert evidence, but there is general liberty to apply. However, all the written evidence before the court at the hearing in February 2022 and adduced in all the Guernsey proceedings and here in the current proceedings should be before the court.

Jurisdiction

32 I now turn to the arrangements regarding the Guernsey proceedings.

33 The outline proposals for restructuring which have been circulated to the parties emanate from the trustees—both SG Trustees and Mirafield. Recognizing the desirability of a holistic approach, there have been many discussions between the trustees of the two structures which is absolutely to be desired. As has always been anticipated, any scheme for restructuring will be the subject of a blessing application to the court, which prompts the question as to which court would deal with any such application. As we said in the April judgment, and indeed as everyone appears to agree, it would be desirable that one court is seised with the whole process. It does not particularly matter which court that might be. However, both Mirafield and the SG Trustees are not willing to submit to the jurisdiction of Jersey and Guernsey respectively unless all the beneficiaries of their trusts agree and in that respect, no such agreement is forthcoming. All parties therefore now proceed on the basis that there will be separate blessing applications in the Royal Court of Guernsey and in the Royal Court of Jersey, albeit the intention is that the blessing application will be in respect of the same scheme, jointly developed by the trustees. Conscious of the difficulties which might result if the courts reach different conclusions, Messrs. Collas Crill on behalf of B and C wrote to me through the Bailiff's Judicial Secretary seeking my views as to whether I would be open to receiving an approach which would see the courts of Guernsey and Jersey sitting together to consider the blessing applications. The other parties responded to that letter in their different ways. On my instructions, the Judicial Secretary sent an email to

the lawyers concerned on February 27th, 2023 to give initial views—in the absence of any formal application—that while it might be possible for the two courts to sit together, the approach was a novel concept and raised a number of practical issues which would have to be addressed, not least as to the right to address the court, which laws would apply to which application, how the criminal law of perjury might apply and which court would have jurisdiction over it, and so on. It was suggested that an alternative approach would be discussion between the parties and with the court in Guernsey along the following lines:

(i) Blessing applications would be filed in each court in the usual way.

(ii) Dates for the hearing of directions in respect of such applications and for the applications themselves should be fixed so as to take place within a day or two of each other if possible in each home jurisdiction in the usual way.

(iii) Each directions and final hearing would take place in private save that the courts of the other jurisdiction and counsel in the other jurisdiction should be permitted to watch and listen in remotely to what was said to ensure that the court and the parties are completely aware of what has transpired in the other jurisdiction.

(iv) Affidavits and skeleton arguments in each jurisdiction should be available to the court and counsel in the other jurisdiction.

(v) At the end of each hearing the decisions would be reserved in order for there to be consultation between the judges following the hearings and in their respective jurisdictions. Indeed, it was suggested there might also be consultation between the judges prior to the hearings.

(vi) Any privacy rule would be lifted as between counsel for the parties and the two jurisdictions and the courts for the purposes of the restructuring exercise.

34 I agreed that that email could be shared with the Royal Court of Guernsey, and I understand that that took place at the hearing in Guernsey on March 7th and 8th, in which directions were considered for the handling of the Mirafield application which runs in parallel to the SG Trustees' representation in this court.

35 Following the receipt of various submissions, the Bailiff of Guernsey gave a number of directions:

(i) Various directions in relation to a disclosure hearing to take place on April 25th.

(ii) Directions in relation to the timetable for responses to the online proposals, the filing of the final restructuring proposal with evidence in support, directions for a pre-trial review in November 2023 and directions in relation to the final hearing to take place during a window between February 26th and March 22nd, 2024, with general liberty to apply.

36 It is clear from the hearing in Guernsey that the learned Bailiff was encouraged to give consideration to the possibility of a letter of request to be sent from the Royal Court in Guernsey to the Royal Court in Jersey. I am not sure if I have seen the letter of request in draft which was put before him, but I assume it is in similar terms to the draft letter of request to Guernsey which has been put before me. At all events, the learned Bailiff's conclusion was that it was not clear that under s.69 of the Trusts (Guernsey) Law 2007 he had jurisdiction to issue a letter of request—that matter was left over—but while the issue of such letters was clearly possible using the inherent jurisdiction of the court, it was a jurisdiction which should only be called upon if it were necessary for the purposes of doing justice in the Royal Court. He cited, I think with approval, comments of the Lieutenant Bailiff in *Angenent v. Pring* (1) which adopted the "necessity approach" in reliance upon the decision of the Court of Appeal in Jersey in *Mayo Assocs.* S.A. v. Cantrade Private Bank Switzerland (3) in which is to be found the relevant passage (1998 JLR at 188). The learned Bailiff concluded that even under the inherent jurisdiction there had to be an application for the court to determine, and the jurisdiction should not be exercised of the court's own motion. His view was that it was premature to determine at this stage of the proceedings how and if it would be appropriate to seek judicial cooperation with the Royal Court of Jersey. Accordingly, his view at the present time is that it would be better to address what level of judicial cooperation might be appropriate at a later stage. He therefore concluded:

> "In summary I am not rejecting outright the possibility of this Court acceding to any application to request aid and assistance from the Royal Court of Jersey, where that is something that goes beyond case management matters, of granting access to the proceedings, granting access to the materials, but extends to something tangible happening between the different judiciary, provided that somebody can explain that it will serve a real purpose. I can add that if the Royal Court of Jersey were to issue a suitably framed, in appropriate terms, letter of request to this Court, I can well imagine that this Court would react positively to that."

37 No doubt that judgment led to the filing on March 16th of an application by B and C for an abridgment of time for a draft summons seeking a letter of request to be sent to Guernsey. Given that all parties were present before me—in force—I resolved to take that summons despite the fact that the prescribed period of notice had not been given for it to be argued. Annexed to the summons was a draft letter of request referring to the Jersey and Guernsey proceedings including a proposed judicial cooperation protocol.

38 In advancing the application, Advocate Santos-Costa submitted that there was a real risk of different decisions being reached by the two courts and, as he described it, that would be a train wreck. If it happened, all the work done to date would be wasted. If it was likely that different legal tests would be applied on the blessing application—the *In re S Settlement* test or potentially a developed or enhanced *In re S Settlement* test, that also could lead to different results. He considered there would be an artificial race to get in first with the hearing and/or the judgment and throughout this B and C would have the feeling they might

have to apply to reinstate in Guernsey the dismissal proceedings. It became clear during his submissions that Advocate Santos-Costa did not really dissent from the view that there was no need for a letter of request but there was a need for judicial cooperation. He agreed that it was quite proper for me to speak directly to the Bailiff of Guernsey about the cases, with or without a letter of request, subject to the parties being informed as to what was being done. He considered that there was jurisdiction to make the letter of request either pursuant to art. 51 of the Law or in the exercise of the court's inherent jurisdiction.

39 Advocate Kistler was neutral about the possibility of a letter of request, and he also agreed that it would not be improper for the two judges to speak directly, as long as the parties were clear as to what was being said. There was a need for transparency so that the parties knew what they had to address.

40 By contrast, Advocate Sanders asserted that art. 51 was not wide enough to cover the making of a letter of request and that there was no inherent jurisdiction to be exercised at this stage because this was not an insolvency context and therefore the cases referred to by the learned Bailiff of Guernsey were not applicable; and it was not necessary to make any such request, which, if made at this stage, in his view, ran the risk of leading to judicial bad manners between the two jurisdictions, the learned Bailiff having made it clear in his judgment that he considered it premature to consider the sending of letters of request at this time. As to whether there could be direct discussions, he thought that if they concerned procedural or organizational issues, that might possibly be unobjectionable, but there should be no discussion of matters of substance. He noted that the protocol annexed to the summons issued by B and C had not been formally proposed and was inconsistent with the proposed letter of request inasmuch as it suggested joint sittings of the Royal Court of Guernsey with this court.

41 Advocate Speck, on behalf of L, noted that his client supported paras. 1–4 and 6 of the Judicial Secretary's email suggestions, but he had reservations about the possibility of consultation between the judges. Transparency was essential, and the process should retain its integrity. Advocate Le Maistre considered that it was essential to bring the whole process to a conclusion and cooperation between the courts was an important element of that. He considered the risk of different decisions was significant, and as no substantive points had been raised against the letter of request, it should be issued. As to consultation between the judges, he saw no reason why not, subject to transparency. Advocate Gardner said the real question was how any protocol would assist. The courts are free to apply their own test and he did not see how a letter of request would help a final decision in the case. He agreed that consultation between judges was perfectly possible, and it could take place, as long as the process was completely transparent.

42 In reply on this issue, Advocate Santos-Costa said that it was concerning that anyone would think it was inappropriate to consult with the other court.

43 What to make of it? It is clear that the two processes in the Royal Court of Guernsey and

the Royal Court of Jersey will proceed to a final hearing. The trustees' proposal is a joint one and accordingly it will be the same proposal ultimately considered in each court—if not, the whole exercise would be a waste of time and a very expensive one at that; worse still, litigation would continue for years.

44 I share the view of the Bailiff of Guernsey that it is not necessary for letters of request to be issued, certainly at this stage. I do not really consider that a letter of request is necessary in any event, even if there were to be full cooperation between the two courts. As to directions for pre-trial hearings, those can be made by having regard to what has been decided already in the other court, without that decision in any sense being binding. A good example of that lies in the SG Trustees' application for directions here, where the essential structure of the directions in Guernsey is replicated but the dates for some of the directions are varied. It is to be remembered that the SG Trustees were not party to the Guernsey proceedings and therefore had no direct input into them. I accept what is said in that respect, and therefore will be fixing different dates—and indeed the consequence of that may be an application for a variation of the existing Guernsey directions which the Royal Court of Guernsey will deal with on its merits, aware of, but not bound by, what is done in Jersey.

45 If I had been minded to issue a letter of request now, I would have had to consider the jurisdiction to do so. I leave open whether art. 51 provides a sufficient jurisdiction for that basis. I would however say that the *Mayo* case (3) is not the only case in Jersey where the inherent jurisdiction has been considered. Another such case, and indeed it was an earlier decision, was that of the Court of Appeal in *Finance & Economics Cttee.* v. Bastion Offshore Trust Co. Ltd. (2). That was a case in which Bastion had sought further and better particulars of the Committee's case on an administrative appeal. Objection was taken as to whether the court had jurisdiction to make such an order in the absence of any express provision in that part of the Royal Court Rules then in force dealing with administrative appeals. The Court of Appeal found against the Committee on that objection but it also found in favour of Bastion on the wider ground of its inherent jurisdiction. Neill, J.A., giving the judgment of the court, said this (1994 JLR at page 382, line 12 – page 383, line 28):

> "Practitioners in these courts and in the courts of Guernsey are familiar with the maxims ' *la cour est toute puissante*' and 'The court is master of its own procedure.' The better known a proposition is, the harder it is to find authority for it and so it turns out if one seeks judicial statements of these two maxims (though in Guernsey the Court of Appeal relied on the second maxim in *Cherub Invs.* Ltd. v. Channel Islands Aero Club (Guernsey) Ltd. [Guernsey C.A., January 13th 1982, unreported.]
>
> Both maxims are expressions of the inherent jurisdiction of the court. So far as English law is concerned, the inherent jurisdiction of the court has been said to be—
>
> > 'a virile and viable doctrine, and has been defined as being the resolve or fund of powers, a residual source of powers, which the

> court may draw upon as necessary whenever it is just or equitable to do so, in particular to ensure the observance of the due process of the law, to prevent improper vexation or oppression, to do justice between the parties and to secure a fair trial between them.' (37 *Halsbury's Laws of England*, 4th ed., para. 14, at 23).
>
> Reference is there made to a lecture on the topic, Jacob, *The Inherent Jurisdiction of the Court*, 23 *Current Legal Problems*, 23 (1970). The definition quoted above first appeared in that erudite and authoritative lecture and it has been approved judicially in Canada and New Zealand.
>
> One feature of the inherent jurisdiction is that it can exist alongside an identical or similar rule of court. The court does not lose its power because a rule is made (though there may be many cases where the court will have no need to look outside the text of the rule). Striking out pleadings is the classic example of overlap of powers. The fact that the Rules of the Supreme Court in England make express provision for striking out and dismissing an action or pleading has been held not to displace the court's inherent power to do so. As Sir Jack Jacobs said in his lecture (*loc.* cit. at 50): 'The inherent jurisdiction of the court is a most valuable adjunct to the powers conferred on the court by the rules.'
>
> …
>
> Rules of procedure have to be servants, not masters. Their function is to ensure that cases before the court are conducted in an orderly and expeditious manner and so that the attainment of a just result is furthered. One feature of just proceedings is that each side should know in advance the case it will have to meet at the trial. Another feature of justice is that the court itself is properly informed as to the real issues. Much time can be wasted if the real case only begins to emerge for the first time at the trial …"

46 The comment in *Halsbury* as to whether it is a jurisdiction which can be exercised only where it is necessary to do so needs in my judgment to be read alongside the comments of the Court of Appeal in *Finance & Economics Cttee.* v. Bastion (2). Sending a letter of request is a procedural matter. If it is desirable to do so to achieve justice, then it should be possible to do so using the inherent jurisdiction, regardless of any arguments which lead the protagonists to dance on the head of the pin of "necessary."

47 I also wish to add this in relation to consultation between the judges. For my part, I can see no reason why such consultation should not take place if the judges think it would be desirable to do so. I agree that for the purposes of transparency, any such consultations which lead to the conclusion that there are particular questions which trouble the judge should, as a matter of good judicial practice, lead to those questions being ventilated in the court so that the parties can address them. That should happen anyway, whether the judge thinks of the point himself or it has been suggested to him by something he had heard or read.

48 More generally, most judges do not do their work in isolation. They do discuss points of law with their colleagues and with others from time to time and it assists the delivery of justice if they do so. In the Court of Appeal, for example, as is obvious, judges will discuss with each other the particular case on which they are sitting. Indeed they do so notwithstanding that the outcome may be the delivery of three different judgments—or more sometimes in the case of the Privy Council or the Supreme Court or House of Lords. No one can sensibly argue that a judge is or should be somehow prevented from delivering his judgment because he hears another judge say something about the particular case. Judges understand that it is the nature of the job that it is their decision, whether or not others agree with it, which is reflected in their judgment.

49 Here we have the unusual circumstance of essentially the same case—the blessing application in respect of a proposal produced by the trustees jointly—being advanced in two jurisdictions. It is likely that the same, or potentially very similar, test will be applied in each of those jurisdictions. Subject to the question of transparency as aforesaid there is no reason in my judgment not to have such consultations both in advance and if necessary after the hearing, and every reason to do so. I anticipate that a copy of this judgment will be provided to the Bailiff of Guernsey. He may or may not agree with what I have said. That is his prerogative. If, however, he does agree with what I have said, he is perfectly able to pick up the telephone to me directly for such discussions as he feels would be helpful. Similarly, unless he tells me otherwise, I will feel the same about picking up the telephone to him. This does not necessarily mean that we will reach the same conclusions. Each court must reach its own conclusions and there is in any event a slight difference because I will be sitting with Jurats whereas, as I understand it, he will be sitting alone. It might be thought that that is all the more reason for such discussions to take place, because it would be relevant for me to draw to his attention any particular concerns that the Jurats might have bearing in mind that one, now retired, is an experienced trust practitioner and the other is an accountant, and that spread of professionalism and expertise may well add a dimension to consideration of the issues in Jersey which the Bailiff may, but not necessarily, find helpful in Guernsey.

50 For these reasons, I decline to issue any letter of request at this stage and indeed I do not contemplate that it will be necessary to do so in the future, although I would certainly do so if the Bailiff of Guernsey considers that some detailed cooperation is necessary or appropriate and that it cannot take place without a letter of request passing from one jurisdiction to another.

Directions

51 Having regard to the reasoning set out above, I now issue the following directions which, in respect of the final hearing, largely track, at least in part, the directions which have been issued in Guernsey.

52 The following directions are given:

(i) A hearing of up to three days' duration will take place before the Inferior Number on June 19th, 20th and 21st, 2023 (“the outline proposals hearing”) at which the representors' outline proposals, as amended (if applicable), and the views of the parties on the same will be considered with the court able to provide such non-binding observations and views as it may see fit. For the purposes of that hearing (and any other subsequent application in the current proceedings) all the documents put before the Royal Court at the hearing in February 2022 wherein the first and second respondents sought the dismissal of the eighth respondent as protector shall be uploaded to the Case Center (spelt that way only because that is the name of the system and not because it is correct, a comment which I reserve the right to include in all future judgments by way of minor rebellion against the growing and intrusive incursion of American English) and designated as the documents for the said hearing in February 2022. The documents uploaded to the Case Center for the hearing on March 23rd and 24th, 2023 shall remain on the Case Center for continuing use in the present proceedings. Any documents hereinafter uploaded to the Case Center shall be marked as so uploaded for the purposes of the hearing on June 19th–21st, 2023.

(ii) No further evidence shall be filed for the outline proposals hearing other than:

(a) Any further correspondence between the parties or between the trustees and the beneficiaries including specifically the responses directed to be provided under paras. 5 and 6 below

(b) Any further documents or other evidence filed in the Royal Court of Guernsey in the Mirafield proceedings and in the currently adjourned removal proceedings against L and Mirafield;

(c) Witness statements (as to fact but not as to argument) relevant to any discussions between the trustees and the beneficiaries or between the beneficiaries themselves. Such witness statements shall be filed no less than fourteen days prior to June 19th;

(d) Any expert evidence relevant to the outline proposals hearing involving the assets of the SG or Mirafield Trusts;

(e) Any expert calculations as to the capitalization required to meet the estimated costs of G lifetime trust. All such expert evidence shall be filed no less than fourteen days prior to the outline proposals hearing.

(iii) Skeleton arguments will be filed and exchanged seven days before the outline proposals hearing;

(iv) Unless otherwise ordered, oral evidence will not be permitted at the outline proposals hearing;

(v) By Wednesday, May 31st, 2023, the first to seventh respondents shall provide their finalized responses to the outline proposals of the trustees dated December 2nd, 2022. The representors shall circulate the further responses to all other parties on receipt;

(vi) By June 12th, 2023, the first to seventh respondents shall, if so advised, provide any responses to other respondents' responses pursuant to para. 5 above. The representors shall circulate the replies to all other parties on receipt;

(vii) A period of further consultation shall take place until July 31st, 2023, to include meetings (in person or online, as the representors may agree) between the representors and each respondent if each respondent so requests. Nothing in this direction prevents consultation between the representors and any respondent, either in person or online before such responses have been received;

(viii) By October 31st, 2023, the representors shall file and serve on the respondents their final restructuring proposal (“the restructuring proposal”) together with their evidence in support. That evidence will include details of responses, replies and any alternative proposals received, as well as the outcome of any consultations with the eighth respondent, S and N;

(ix) In the next 7 days following delivery of this judgment, the parties shall attend on the Bailiff's Judicial Secretary to fix a directions hearing to take place immediately before or after November 20th, 2023 with a time estimate of one day. All parties have liberty to file a skeleton argument for that hearing, served and updated to the Case Center by 4 p.m. on November 13th, 2023. No party may file any evidence for consideration at this hearing without first obtaining the permission of the court;

(x) By December 14th, 2023, each of the respondents shall file and serve on each of the other parties any evidence in response to the restructuring proposals and supporting evidence served by the representors under para. 8 above;

(xi) By February 2nd, 2024, the representors shall file and serve any evidence in reply to any evidence served under para. 10 above;

(xii) Subject to further order, a hearing shall be listed in the window between February 26th, 2024 and March 22nd, 2024 with a time estimate of ten days for the Royal Court's determination of the representors' application for approval of the restructuring proposal (“the final approval hearing”);

(xiii) For the purposes of the final approval hearing:

> (a) the representors shall file and serve on the respondents their written submissions for the final approval hearing by 4 p.m. on the date twenty-one days before the commencement of the final approval hearing;

(b) each respondent shall file and serve on each of the other parties their written submissions for the final approval hearing by 4 p.m. on the date fourteen days before the commencement of the final approval hearing; and

(c) the representors shall, if so advised, file and serve on the respondents their written submissions in reply by 4 p.m. on the date seven days before the commencement of the final approval hearing.

(xiv) There is liberty generally to apply.

53 These directions take into account the directions made by the Bailiff of Guernsey on March 8th, 2023. I have noted that the dates proposed by the SG Trustees differ from the Guernsey programme, the consequence of which, if Guernsey remains unchanged, would be that the final approval hearing takes place there before the hearing takes place in Jersey. By contrast, B and C have proposed a schedule of dates which would have the result that the hearing in Jersey takes place first. I have tried to avoid any commitment in that respect by adjusting other dates in order that the issue of which hearing takes place first can be resolved later. It is likely, if the Bailiff agrees, that there will be direct consultation between me and the Bailiff of Guernsey in that connection albeit it is far from clear to me whether it matters which hearing goes first because both courts have to be satisfied independently of the trustees' application. The parties are required to keep the entire window free and available pending the dates being fixed by the court.

Directions accordingly.