

# Richard Campbell v Robert Campbell

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|--------------------------|-----------------------|
| <b>Jurisdiction:</b>     | Jersey                |
| <b>Judge:</b>            | Matthew John Thompson |
| <b>Judgment Date:</b>    | 11 February 2016      |
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| <b>Court:</b>            | Royal Court           |
| <b>Date:</b>             | 11 February 2016      |

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## Text

[2016] JRC 41

ROYAL COURT

(Samedi)

Before:

**Advocate** Matthew John Thompson, **Master of the Royal Court**

Between  
Richard Campbell  
Plaintiff  
and  
Robert Campbell  
First Defendant  
Longton Holdings Limited  
Second Defendant  
Financial Consultants (Jersey) Limited  
First Party Cited

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FCM Limited  
Second Party Cited

**Advocate J. S. Dickinson for the Plaintiff.**

**Advocate M. T. Jowitt for the First Defendant.**

**Authorities**

*Campbell v Campbell* [2014] (2) JLR 465 .

*Campbell v Campbell* [\[2015\] JRC 249](#) .

Royal Court Rules 2004.

Business dispute — reasons in relation to application by the first defendant in respect of his application for a stay.

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**THE MASTER:**

**Introduction**

- 1 This judgment represents my detailed reasons in relation to an application by the first defendant who I will refer to as Robert in respect of his application for a stay of paragraphs 6 to 9 of an act of court dated 3<sup>rd</sup> December, 2015.

- 2 Paragraph 6 to 9 of the Act contained various directions given by me. For the purposes of judgment the material paragraphs are paragraphs 5 to 10 which provide as follows:-

*“5. the Plaintiff shall by no later than 5.00 p.m. on Thursday, 31st December, 2015 file and serve a Statement of Case that addresses the issues referred to in paragraph 101 of the judgment handed down on the date thereof;*

*6. the parties shall by no later than 5.00 p.m. on Friday, 22nd January, 2016 file and serve on every other party affidavits made by those witnesses of fact whose evidence it is intended to rely on at trial, such affidavits to stand as evidence in chief. In addition the First Defendant shall disclose any expert evidence he intends to rely on in relation to loans made by AGL to the First Defendant;*

*7. the Plaintiff shall by no later than 5.00 p.m. on Friday, 19th February, 2016 file and serve a Schedule of Loss identifying the losses claimed from the First Defendant. Permission is given to the Plaintiff for such Schedule of Loss to be accompanied by an expert report from one accountant;*

*8. the First Defendant shall by no later than 5.00 p.m. on Friday, 18 March, 2016, file and serve a Schedule of Loss in reply also with permission to support such Schedule of Loss with a report of one expert accountant;*

*9. if both parties retain expert accountants, such experts shall meet by 5.00 p.m. on Friday 15th April, 2016, without the parties, or without legal representation to identify areas of agreement and disagreement and within 7 days of said meeting shall produce a report of their conclusions;*

*10. the present trial dates are vacated and are re-fixed for Tuesday, 31st May, 2016 for 6 days.”*

## Background

- 3 The overall background to the present dispute is set out at paragraphs 4 to 17 of the judgment of Sir Michael Birt in the present matter reported at *Campbell v Campbell* [2014] JLR (2) 465 (the forum challenge) which I adopt for ease of reference.
- 4 In a subsequent judgment in this dispute, reported at *Campbell v Campbell* [2015] JRC 249 dealing with applications for further and better particulars and specific discovery brought by Richard at paragraph 3, I stated as follows:-

***“Since Sir Michael Birt’s judgment, part of the issues between Richard and Robert have been resolved, as Richard and Robert have agreed terms as to the ownership of shares in Longton.*** The terms of this agreement are recorded in a consent order approved by Sir Michael Birt and dated 22nd June, 2015. Pursuant to this consent order it was agreed that Richard was entitled to 50% beneficial ownership of Longton. On the pleadings, while Richard had

claimed a 50% interest, Robert had contended that he held 51% of Longton beneficially with Richard only holding 49%.”

- 5 I also set out the procedural history of the dispute subsequent to the forum challenge at paragraphs 5 to 12 as follows:-

***“5. The claims currently brought by Richard are recorded in a re-amended order of justice dated 11th November, 2014 .***

***6. Robert filed an answer on 3rd December, 2014 .***

***7. A reply was filed on 24th December, 2014 .***

***8. A request for further and better particulars comprising of 35 requests and running to 18 pages was filed on 10th February, 2015 .***

***9. Requests 1 to 16 of this request for further and better particulars however were not pursued because shortly after the request for further and better particulars Robert conceded in open correspondence, that Richard was entitled to a 50% share in Longton which was therefore owned by Richard and Robert beneficially in equal shares .***

***10. Answers to the remaining requests for further and better particulars were provided on 17th March, 2015, 1st April, 2015, and 6th May, 2015, prior to issue of Richard's summons on 26th August, 2015, together with a clarification statement dated 14th May, 2015 .***

***11. Subsequent to the issue of Richard's summons, further and better particulars dated 5th October, 2015, were provided as well as a schedule analysing the source of funds for loans made by Robert to Longton attached to a letter dated 26th October, 2015, from Robert's English Solicitors Wragge Lawrence Graham (“the October Schedule”).***

***12. As a result of the filing of further and better particulars on 5th October, 2015, and the provision of the October Schedule, Richard's application was narrowed to the following issues:-***

***(i) That Robert within 7 days should file and serve proper further and better particulars in response to requests 32, 34.2, 34.5, 34.6 and 34.7 of Richard's request dated 10th February, 2015;***

***(ii) An order was sought that the October Schedule should be provided by way of further and better particulars and/or verified by a statement of truth;***

***(iii) To the extent not already covered by request (i) Robert should provide further and better particulars of the “informal arrangement” referred to in the particulars produced on 5th October, 2015. Richard therefore sought***

further and better particulars of this informal arrangement by reference to paragraphs 34.5 to 34.7 of his request dated 10th February, 2015.”

- 6 It is also relevant to the issues raised by the present application to set out other paragraphs of my judgment. In relation to Richard's application for further and better particulars, my decision was recorded at paragraphs 31 to 33 of the judgment as follows:-

**“31. In relation to the request that Robert should provide the October Schedule by way of further and better particulars, the fundamental issue between Richard and Robert was where Robert obtained the funds he loaned to Longton and whether these came from their mother by way of a loan to Robert or a loan to Robert and Richard jointly, or whether the funds came from any legal entity forming part of the business including AGL. Ultimately, Richard is entitled to know what Robert's case is as to where the money came from and when the money was borrowed. Richard is also entitled to know when those monies were paid to Longton. That information is found at pages 12, 22 and 24 of the October Schedule. These pages are not just evidence but summarise Robert's present case in relation to where monies he borrowed came from and when these monies were advanced to Longton. Accordingly, I ordered Robert within 7 days to provide by way of further and better particulars of Robert's case, a schedule recording the payments set out at paragraphs 12, 22 and 24 of the October Schedule .**

**32. I refused the request for the remaining parts of the October Schedule to be provided by way of further and better particulars. This was because I accepted Advocate Jowitt's submission that the remainder of the October Schedule is evidence which it is appropriate for Robert to address in evidence advanced when witness statements are produced. It is a matter for Robert to what extent he explains the payments or whether they are explained by reference to evidence from the forensic accountant to whom Advocate Jowitt referred .**

**33. In respect of paragraph 1 of Richard's summons and the application seeking further and better particulars of the informal arrangement, I refused these requests. Robert has made it clear that there was no formal contract either agreed in writing or orally in respect of the loans from AGL and this was an informal arrangement. I also have recorded my understanding of the submissions made by Advocate Jowitt as to how the informal arrangement worked at paragraph 29 above. In my judgment at this stage of the action which started in early 2014, the most effective way to proceed is for Robert to provide his witness statement to explain how the informal arrangement worked in respect of each sum advanced by AGL to Robert. Robert through Advocate Jowitt is on notice that I expect Robert's witness statement to explain precisely how the arrangement worked in respect of each payment, including who authorised or was aware of each payment said to be from AGL, which account the monies advanced came from and how these were recorded in the books and records of AGL. His evidence should also address who else in AGL was**

***involved in the making of these loans. The essence of his case however that monies were advanced under an informal arrangement with no written documentation is clear.” (Emphasis Added)***

- 7 In particular I noted that the fundamental issue between Richard and Robert was where Robert obtained the funds he loaned to Longton, as I have noted in the first sentence of paragraph 31 set out above.
- 8 In relation to the application for specific discovery brought by Richard, I summarised the applications brought at paragraph 37. For the purposes of the present decision paragraph 37(ii) provided that Richard was seeking:-

***“(ii) Disclosure of all further relevant documents related to ownership of any entity forming part of the business or Longton including any Wills, tax advice or documents relating to the K Trust, or following on from various letters sent by Dickinson Gleeson (paragraph 2.1)”***

- 9 I recorded the submissions made on behalf of Richard by Advocate Staal at paragraph 55 as follows:-

***“The request for documentation in relation to the ownership arrangements of all companies forming part of the business and Longton was relevant because of Robert's alternative case at paragraph 45 of the answer that Richard's entitlement to any benefit of the Longton loan was only an entitlement to 49% not 50%. All of the material identified at paragraphs 2.1.1 to 2.1.4 of the summons would enable Richard to test the case advanced by Robert which Richard disputed.”***

- 10 Advocate Jowitt's submissions in response were set out at paragraphs 63 to 66:-

***“63. The issue of what will happen to any monies due to AGL is a matter to be determined in England. Subsequent to filing of the answer in the present proceedings, Richard filed particulars of claim in England, where Richard claimed a 50% shareholding/interest in the companies/legal entities described by Sir Michael Birt as the business in the forum judgment, including seeking an order for Robert to take such steps as may be necessary to procure that 50% of the legal ownership of these companies is vested in Richard. These proceedings do not concern Longton, which proceedings have been resolved. What Richard was really seeking by his specific discovery application was evidence for use in the English proceedings.***

***64. In the forum proceedings, Richard contended the issue of Longton was separate from the issue of any ownership interests in companies' part of the business and therefore could be heard in Jersey. He should not be permitted to depart from that approach .***



**65. The issue of ownership is not only being raised in England but is not raised on the pleadings in Jersey .**

**66. Richard's pleading does not set out the basis on which a constructive trust should arise. The proper course is for any monies found to be due to AGL to be returned to AGL and Robert had accepted this was the case in his answer."**

11 I also note that Advocate Staal submitted in reply at paragraphs 77(i) contended that:-

**"77. Advocate Staal in reply contended that:-**

**(i) The entitlement to interest arose by way of the constructive trust claim as pleaded at paragraph 50(b) of the re-amended order of justice."**

12 My decision in respect of the application for specific discovery as set out at paragraph 37(ii) of my earlier judgment was at paragraphs 80 to 84 and stated as follows:-

**"80. In respect of request 2.1 which relates to ownership, there is an issue of ownership of the Longton loan on the pleadings, by reference to paragraphs 8, 9 and 45 of the answer and paragraph 6 of the reply. Even if this is an alternative case advanced by Robert only, this is still an issue the jurats will have to rule upon.**

**81. There is also an issue in proceedings in England raised by Richard (foreshadowed in the forum challenge) about ownership of the companies forming the business. Richard in his affidavit has also produced evidence to show that further documents may exist which record Richard's entitlement to a 50% beneficial interest of the companies and the fact that he was a beneficiary of the K Trust .**

**82. The view I have reached is that I am not prepared to make a general order ordering discovery of all documentation going to ownership of all legal entities forming part of the business. This is because firstly, given what is at stake in respect of ownership of the capital of loans advanced for the reasons set out at paragraphs 43 to 50 above, the economic value of what is at stake is limited. In these circumstances in my judgment it would be oppressive to require Robert to look for documents relating to ownership arrangements to establish Richard's beneficial ownership of all the companies referred to on the basis this would assist Richard to attack Robert's case in respect of ownership of the loans made by Robert to Longton. There is no time limit on the materials sought so enquiries would therefore have to go back many years because the verbal arrangement was said to have taken place in early 1990's. What Richard is asking for is anything since that date which might contain something relevant to the point which the Royal Court is asked to determine. Such a task would be**

***time consuming and extremely expensive .***

***83. In addition, by reference to the matters Richard has already pleaded, he has material on ownership of the entities forming part of the business which could be put to Robert in cross-examination to challenge Robert's alternative case. I regard this material as sufficient to enable the jurors to reach a view on Robert's alternative answer. The discovery sought would only provide him with additional material .***

***84. Robert has also now conceded that Richard is entitled to beneficial ownership of 50% of Longton. Richard does not need therefore discovery to prove what has now been conceded. This concession means that Richard will be entitled to put to Robert why it is that the benefit of a liability of Longton if due to Robert and Richard jointly should not also be split equally just as Longton is owned equally."***

- 13 I also refer to the first sentence of paragraph 97 where, in ordering discovery of bank statements of AGL, I stated:-

***"These bank statements are relevant because it is in issue between Richard and Robert as to whether monies came from LC, AGL or another part of the business."***

- 14 This follows on from the observations in the first sentence at paragraph 31 of my earlier decision which I have already referred to above.

- 15 Finally, at paragraph 101 and in respect of the allegation of a constructive trust made by Richard I stated as follows:-

***"In my judgement there is a danger of an inconsistent approach between Richard in Jersey where he claims an entitlement to monies advanced either by AGL or other businesses directly and the English proceedings.***

The basis upon which a constructive trust claim arises is also not clear to me as it ***is not pleaded***. I consider that I possess a power either under Rule 6/15(1) or Rule 6/26(8) of the Royal Court Rules 2004, as amended, to require Richard to explain the basis of his constructive trust claim and to set out a summary of his case as to why a constructive trust arises both in respect of his claim to 50% of the capital of sums loaned by Robert to Longton and in respect of his claim to interest. I require Richard to provide such a summary and to set out any materials facts relied upon to be provided within 21 days of this judgment from being formally handed down."

- 16 Richard was therefore ordered to provide a statement of case that addressed the issues referred in paragraph 101 of my previous judgment as set out in paragraph 5 of the act of court of 3<sup>rd</sup> December, 2015.



- 17 I address the significance of the extracts I have referred to from my previous decision, later in this judgment.

### **Events subsequent to the act of court of 3rd December, 2015**

- 18 Subsequent to the act of court of 3<sup>rd</sup> December, 2015, Advocate Emma Jordan a partner in the firm of Taylor Wessing who represents Robert in England sent a letter dated 22<sup>nd</sup> December, 2015, to Advocate Dickinson as follows:-

*“We are, as ever, concerned to ensure that this case is conducted proportionately. With this in mind, we have obtained our client's instructions to discontinue his alternative defence in relation to the interest payments and loan capital. We attach a copy of our amendments to the Answer accordingly. You will note that this requires a deletion of paragraph 45 and part of paragraph 47. We agree that the usual rule as to costs should apply to these amendments.*

*Please confirm your agreement to these amendments to the Answer. To the extent you do not agree, we will apply for the leave of the Court to amend.*

*Given that we have withdrawn the alternative case, we will not (for the avoidance of doubt) be dealing with the issue of the oral agreement made between our clients as to the respective ownership in the business in the Second Affidavit of Robert Campbell due on 22 January.*

*This, like our client's compromise on the case as to the ownership of Longton, is purely a commercial compromise – the negligible 1% value of the alternative case renders the cost of litigating it disproportionate. Our client makes no admissions whatsoever as to the ownership of the entities being on a 50/50 basis, he maintains his positive case in the English proceedings that the agreement between our clients was for 49/51% ownership in his favour.*

*We also trust this will cut down the time needed for trial and assist the Court.*

*Please provide your confirmation within 7 days of this letter.”*

- 19 By this letter Robert withdrew paragraphs 45 and the second sentence of paragraph 47 of Robert's answer. The withdrawn paragraphs were as follows:-

*“45. Without prejudice to paragraph 45 above if, which is denied, the Plaintiff proves that he had any interest in any of the monies loaned and/or otherwise advanced to Longton Holdings Ltd by the First Defendant, and any interest in the interest payments made by Longton Holdings to the First Defendant on such sums, then the extent of any such interest as the Plaintiff may prove falls to be assessed by reference to the terms of the verbal agreement.*

*47. .... If, which is denied, the Plaintiff has any interest in any of the capital loaned to Longton Holdings Ltd or the interest paid by Longton Holdings Ltd on those sums in which the Plaintiff is interested, then that interest falls to be determined by reference to the terms of the verbal agreement....."*

- 20 Paragraph 45 of Robert's answer had been expressly referred to in my earlier decision at paragraph 80. I had also stated at paragraph 41 of my earlier judgment "in the alternative if Richard proves any entitlement to monies loaned to Longton by Robert and/or any interest payments made by Longton to Robert, then Robert contends that he is entitled to 51% of such capital and interest and Richard 49%, Richard's case by contrast is that he is entitled to a 50% share not 49%." The effect of the withdrawal by Robert at paragraph 45 and the second sentence paragraph 47 of his answer is that Robert is no longer advancing his alternative case, that he is entitled to 51% of the capital and interest in the Longton loan, if Richard proves an entitlement to such money. I comment further on the effect of this withdrawal later in this judgment.
- 21 However, as Advocate Jowitt confirmed orally at the hearing that his client was withdrawing paragraph 45 and the second sentence of paragraph 47, by reference to the powers vested in me by Rule 6/26 (8) of the Royal Court Rules 2004, as amended, I ordered that these paragraphs be struck out. I however left over the question of what other orders might follow including whether any other paragraphs of the answer might have to be struck out as a result of this withdrawal as well as what costs consequences followed, having noted the offer of Robert to pay Richard's standards costs. I did not consider it necessary for an application to be made at this stage to amend an answer when it was clear that certain parts of Robert's answer were being withdrawn.
- 22 On 31<sup>st</sup> December, 2015, Richard filed a statement of case as directed by paragraph 5 of the act of court of 3<sup>rd</sup> December, 2015. For the purposes of the present judgment, the material paragraphs are paragraphs 9, 9.1, 9.1.1 and 17.2 which provide as follows:-

*"9. In the further alternative, and for the avoidance of doubt, Richard maintains as against Robert paragraph 54. j. of the RAOJ (but without prejudice to the totality of that paragraph) that:*

*9.1. Robert has been or will be enriched, including without limitation in circumstances where Robert's primary case were to succeed and Robert were to make no repayment to AGL, to the extent of: -*

*9.1.1 50% of any and all repayments of (a) the capital and interest due pursuant to and connected with the Longton Loan and (b) the capital due pursuant to the Further Advances, such enrichment being at Richard's expense by virtue of those repayments being made in respect of advances to Longton in the shape of Richard's own monies, Richard's share of monies transferred out of the Jewellery Business, and sums loaned to Richard and Robert by LC on a joint basis."*

*“17.2 That Richard is entitled to a 50% interest or share in the monies referred to in paragraphs 15.2, 15.3, 15.5 and 16 as a consequence of his 50% interest in the Jewellery Business and/or his equal interest in the South London Property business.” (Emphasis added).*

- 23 The statement of case led to Robert issuing an application for a stay of the proceedings in Jersey on the basis of a change in circumstances justifying an argument on the grounds of forum *non conveniens* in favour of England. The letter from Jowitt Legal Services dated 19<sup>th</sup> January, 2016, stated as follows:-

*“Please find enclosed a summons dated 19th January 2016 which has this morning been filed with the Bailiff seeking a stay of the above proceedings on the basis of a change in circumstances justifying an argument for forum non conveniens. A supporting affidavit will be filed and served later today and I will deliver a copy to you. A date fix for the stay hearing will take place next Tuesday, 26th January, at 10.30am.*

*In accordance with your order dated 15 December 2015, the Plaintiff's statement of case was filed on 31 December 2015 (the “**Statement of Case**”). This document clarified for the first time the basis upon which the Plaintiff put his case on constructive and resulting trusts. As you will see from the content of the affidavit filed in support of the summons, what is pleaded within the Statement of Case substantially alters the Plaintiff's case. In particular, the Plaintiff now relies on the purported equal ownership of the family business to justify his claim to a constructive or resulting trust entitling him to the capital of the loan made by the First Defendant to Longton Holdings Limited and to interest paid and owing to the First Defendant by Longton Holdings Limited on that loan. Ownership of the family business, however, is an issue which the Plaintiff is already litigating before the English Court in proceedings which he brought against the First Defendant eight months ago. It is also inconsistent with the position submitted on the pleadings by the Plaintiff at a forum hearing before the Royal Court in November 2014.*

*Further to your order dated 24th November 2015, the parties are due to file at Court and exchange affidavits this Friday 22nd January 2016.*

*The issue of the ownership of the family business is a matter that the English Court is already seized of. Directions for a trial of that issue have been set in the High Court in England, and the trial is fixed for 31st October 2016. Prior to the Statement of Case, this issue was not part of the Jersey proceedings and as such was being dealt with in England. It now appears for the first time that this issue would have to be determined by the Jersey Court, since it has now become a central plank in the Plaintiff's case for a constructive or resulting trust.*

*Given the circumstances, the current affidavit of the First Defendant which has been drafted for filing and service on 22nd January 2016, in accordance with your order dated 15th December 2015, does not deal with this issue. To do so in*

the Jersey proceedings would essentially give the Plaintiff advanced notice of an issue currently being dealt with in the English proceedings where witness statements are due on 15th April 2016.

*Accordingly, given the substantial nature of the relief sought, we would suggest it is not proportionate to file and exchange affidavits at this point. We would respectfully ask that the filing and exchange of such affidavits is stayed pending the decision of the Royal Court in relation to the First Defendant's summons."*

- 24 Dickinson Gleeson replied on 20<sup>th</sup> January, 2016, complaining about Robert withdrawing his case on the 22<sup>nd</sup> December, 2015, and also stating that the ownership issue was a live issue in the Jersey proceedings.
- 25 I responded to both letters by a letter dated 21<sup>st</sup> January, 2016, which it is appropriate to set out in full:-

*"I write further to Advocate Jowitt's letter dated 19 January 2016 and Advocate Dickinson's reply dated 20th January, 2016.*

*I firstly refer to the fact that Advocate Jowitt's letter advances a justification for a stay the basis of the statement of case filed by Richard on 31st December 2015. However, it is clear from Advocate Jordan's letter dated 22nd December 2015 that Robert had already decided by 22nd December 2015 not to file any evidence in Jersey dealing with the issue of an oral agreement as to the respective ownership of Robert and Richard in partnership assets. This was not explained in Advocate Jowitt's letter of 19 January 2016 and should have been. I therefore require an explanation from both Advocates Jowitt and Jordan as to why the contents of Advocate's Jordan's letter of 22nd December 2015 were not drawn to my attention as part of the application for a stay.*

*Secondly, I note that no application to amend all or any part of Robert's answer has in fact been made. The pleadings at present remain unamended. It is therefore a matter for each party as to what evidence they choose to file in respect of the current pleaded case and if they choose not to do so what consequences might follow absent any order varying the present timetable or pleadings.*

*Thirdly, evidence about the oral agreement is relevant whether the issue is ultimately determined in Jersey or England, which is a matter for the application to stay the Jersey proceedings. I do not at present therefore see why an exchange of evidence on issues currently in dispute before the Jersey Court will be affected by any order the Royal Court might make.*

*Most of the issues currently brought before the Jersey Court are only being argued in Jersey and therefore it should assist for evidence relevant to those issues to be produced as I have previously directed. If some part of the evidence*

turns out *not to be relevant to Jersey but is relevant to English proceedings, at present as long as simultaneous exchange occurs I do not see what prejudice is sought by either party to see the evidence of the other.* I remind all counsel of my previous observations about taking a proportionate approach. Exchanging evidence should help both parties identify the extent of the issues between them and to explore whether a settlement can be reached or what alternative issues a trial court has to determine. A stay has the opposite effect

*I am not therefore prepared to grant the stay requested by Advocate Jowitt on the papers.* If a stay is wanted then an application will have to be made in the usual way before me. If it assists the parties I can deal with an urgent application to extend time next Thursday.

*Finally I have no issue with extending the time for the filing of evidence by a week."*

26 Following this letter, an application for an oral hearing before me was issued by Advocate Jowitt on behalf of Robert, which I heard as a matter of urgency.

27 I also received Advocate Jowitt's letter dated 22<sup>nd</sup> January, 2016, which states as follows:-

*"I write in response to your letter to counsel of 21st January 2016 in which you sought an explanation on certain matters.*

*It appears that unfortunately there has been some misunderstanding following Advocate Staal's email, suggesting that our decision to withdraw our alternative case and the application to stay the Jersey proceedings were connected. Both Advocate Jordan and I wish to stress that we are acutely aware of our duties to the Court and neither of us would mislead by either commission or omission and have not done so on this occasion.*

*I should make clear what plainly was not sufficiently clear from my last letter.* The decision to make a renewed application to stay the Jersey proceedings had nothing at all to do, and was not in any way connected, with the decision taken before Christmas to seek to withdraw Robert Campbell's alternative, 49%-51% defence. The decision to seek to withdraw the alternative defence was taken before we had received the Plaintiff's further Statement of Case on 31st December and, consequently, before we saw for the first time in this litigation precisely how the Plaintiff in fact puts his case on the constructive and resulting trust, unjust enrichment *points*. The two aspects could not therefore have been related at all, and were not. The decision to seek to withdraw the alternative defence was taken purely on commercial grounds and with a keen eye to proportionality. The alternative defence would have required substantial and expensive litigation over 1% of the sums in issue – an amount of not much more than £10,000.

*We were also acutely aware that matters have moved on in England since our*



*Answer was pleaded and the trial of the issue of ownership of the business is currently set down in the English High Court and evidence is due on that issue in April in England. Whilst of course it is open to Robert to fight this issue in two jurisdictions, it makes little commercial sense to do so.*

*That commercial pragmatic decision was communicated to the Plaintiff before he served his further statement of case on 31st December. The Plaintiff was asked to agree to the withdrawal of that alternative defence in the interests of saving costs and narrowing the issues between the parties at trial in Jersey. The Plaintiff's lawyers refused to consent to this withdrawal. Notwithstanding this failure to consent, we would have continued to take steps to withdraw the claim. At no point would this have affected the Affidavit because we took the view in drafting the witness statement that we were withdrawing this alternative claim. At no point would this decision have prompted us to seek a stay from you for the service of this Affidavit. That commercial pragmatic decision was communicated to the Plaintiff before he served his further statement of case on 31st December. The Plaintiff was asked to agree to the withdrawal of that alternative defence in the interests of saving costs and narrowing the issues between the parties at trial in Jersey. The Plaintiff's lawyers refused to consent to this withdrawal. Notwithstanding this failure to consent, we would have continued to take steps to withdraw the claim. At no point would this have affected the Affidavit because we took the view in drafting the witness statement that we were withdrawing this alternative claim. At no point would this decision have prompted us to seek a stay from you for the service of this Affidavit.*

*That matter was then overtaken by events, because on 31st December the Plaintiff, at your direction, served his further Statement of Case. This document runs to 20 pages and is in content not only densely packed and prolix but, and for the very first time, sets out the Plaintiff's case on why he is entitled to 50% of the Longton loan capital and interest payments. Due to the deadline for witness statements of the 22nd January the First Defendant had no more than 15 working days to digest the Statement of Case, take advice on its content, and respond to it in a witness statement. Given the length and detail of the further Statement of Case this was hardly sufficient time, and it is perhaps not surprising in the circumstances that an application for leave to withdraw the alternative defence was not pursued, not least because our focus necessarily changed.*

*The representatives for Robert have taken significant time, including with their Leading Counsel to consider that Statement of Case in light of the English proceedings. Unfortunately, it appears that we have arrived at a position where the Plaintiff has created parallel proceedings in Jersey and England, in which the self-same issue, (ownership of the wider family business), now falls to be determined by two different courts in two different trial separated by a space of a mere four months.*

*In these circumstances, all the lawyers felt that we had no option but to seek a stay of proceedings in Jersey, however unfortunate that is. The request to you to*



stay your directions accordingly arose from a desire not to waste further legal costs in Jersey in preparing and serving Affidavits when in fact the entirety of the proceedings would be stayed. The reason for requesting you to consider this on the papers was merely as a result of the timing, which could not be helped given the shortness of time that we had to consider the Statement of Case before the Affidavits were due to be served.

*This, I hope, explains the decision making process which we have been engaged in on Robert Campbell's behalf. Throughout we have been concerned about proportionality; our desire is not to incur further costs in Jersey at this stage until that stay application is determined.*

*I trust this explains more fully our position and why we have reached it."*

### **The English proceedings**

- 28 The English proceedings were commenced by Richard against Robert in 2015. The particulars of claim were filed by Richard on 26<sup>th</sup> May, 2015, and seek a declaration that the business as described at paragraph 6 of Sir Michael Birt's judgment is owned in equal shares between Robert and Richard.
- 29 This claim is disputed by Robert who contends that the interests of Richard and Robert are 49%-51%. He also seeks orders that the businesses be wound up.
- 30 Directions were given by Master Marsh on 12<sup>th</sup> November, 2015.
- 31 I was informed that witness statements relating to the issues in dispute in England are to be exchanged in April 2016 with trial commencing on 31<sup>st</sup> October, 2016.

### **The parties' contentions**

- 32 Advocate Jowitt contended that what led to the present application was a brand new alternative case set out for the first time in the statement of case that Richard had been required to provide by 31<sup>st</sup> December, 2015.
- 33 This alternative case was different from Richard's primary case set out at paragraph 22 of the re-amended order of justice, namely that there was a verbal agreement between Richard and Robert, separate from the business. He particularly emphasised paragraph 22(a)(v) which provides as follows:-

*"22. In subsequent telephone discussions that took place at the material time between*

*Robert, Richard and LC (with Robert and LC in France and Richard in London), the following oral agreements were reached: -*

*a. Robert and Richard agreed that:-*

*v. In order to assist with the funding of the purchase of the London Property and Longton Robert and Richard would each invest some of their own money and money could be taken out of the Business and money taken out of the Business would not have to be repaid to it. Any money taken out of the Business could be used to pay and/or repay the capital and interest due in respect of the aforesaid loans and to meet any other costs and expenses in connection with the London Property and/or Longton which were not funded by the payment of rent received for the occupation of the London Property (as to which see sub paragraph 22. e. below)."*

- 34 In the primary case therefore according to Richard money was not to be repaid to the business, and the borrowing from their mother was on a 50–50 basis, (paragraph 22(d) (i)). A re-balancing exercise would take place if one of them transferred more money in than the other (paragraph 22(f)). There was therefore no assertion that monies had come from the other businesses which were owned equally to support Richard's claim to 50% of the Longton loan.
- 35 The statement of case was also inconsistent with the statements made to Sir Michael Birt in his judgment in the present dispute at sub-paragraphs 50(viii) and (ix) and Sir Michael Birt's own reasoning at sub-paragraphs 51 (v), (vi) and (vii) on page 485 of the reported judgment. These extracts are set out below.
- 36 The new alternative case raised by Richard in his statement of case was found at paragraph 9.1.1 as set out at paragraph 22 above. I was also referred to part C of the statement of case which described Robert and Richard being equal owners of the jewellery business as relevant background, at paragraph 10 and a reference to a South London property business at paragraph 12. This ultimately led to the claim at paragraph 17.2 where Richard claimed a 50% interest "as a consequence of his 50% interest in the jewellery business and of his equal interest in the South London property business".
- 37 By this statement of case, Advocate Jowitt argued that Richard had therefore brought into the Jersey proceedings an issue which he previously said was irrelevant and which issue was being litigated in England. The current issue in Jersey was simply limited to where funds came from and whether they were Robert's own funds advanced to Longton or whether they funds as being borrowed from Lucy Campbell or the business. This issue did not require ownership of the business in England to be determined.
- 38 Advocate Jowitt did not resist the suggestion that evidence could be filed in respect of the issues in dispute in Jersey other than in respect of ownership of the business. He also fairly accepted that the consequences of the stay he was seeking would be the setting aside of

the trial dates.

- 39 Advocate Dickinson firstly contended that, as Robert appeared to be withdrawing his case that the benefit of the Longton loan and interest was held on a 51–49% basis contained at paragraph 45 of his answer, the position in Jersey was now simpler and the Royal Court could now just focus on where the money came from.
- 40 Secondly he argued that ownership of the business had always a central part of the primary case, as well as it being an issue that the Longton loan was funded in part by money from the business. This followed from paragraphs 34, 42(a), 42(b), 43(b)(ii), 43(b)(vii), 45, 46(a), 50, 54(b)(i) and 54(j)(i) of the re-amended order of justice.
- 41 Thirdly in relation to his submissions on the forum challenge, it was always Richard's case that the jewellery business and Longton were separate. It was therefore Robert, in filing his answer after the forum challenge had been determined, who had pleaded his alternative case that any entitlement of Richard to the benefit of the Longton loan interest was only 49% which he had now abandoned.
- 42 Fourthly the statement of case simply provided an articulation of Richard's case. Advocate Dickinson therefore emphasised that paragraph 9 reflected paragraph 54(j) (i) of the re-amended order of justice.
- 43 He expressed concern about the prejudice his client would suffer if the trial dates were vacated. His client did not want to delay matters and indeed was willing to explore settlement. His client was therefore concerned this was an attempt to delay the trial.
- 44 In reply Advocate Jowitt:-
- (i) Accepted that paragraph 54(j) (i) of the order of justice may have referred to the ownership issue but contended it was not easy to follow and that it was also inconsistent with Richard's primary case, namely there is no obligation to repay funds to the business.
  - (ii) Argued that the other paragraphs of the re-amended order of justice referred to by Advocate Dickinson were only relevant to the issue of where funds came from not ownership of the other businesses.
  - (iii) Contended that the fact that Robert had withdrawn his alternative defence did not mean that Robert was not entitled to put Richard to proof on all aspects of the case he was now advancing.
  - (iv) Maintained that the present submissions of Advocate Dickinson were inconsistent with what had been submitted to Sir Michael Birt.

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## Decision

45 In reaching my decision as to whether or not to grant a stay, I started by considering to what extent Richard has already raised the issue of ownership of the business other than Longton in the re-amended order of justice.

46 Firstly, I reviewed the judgment of Sir Michael Birt in this matter. At the time of his decision, what was before him was an amended order of justice. However there are no material differences between the re-amended order of justice and the amended order of justice that are relevant to this decision and all the paragraphs of the re-amended order of justice cited to me were also all before Sir Michael Birt. At paragraph 49(vii) in summarising the arguments of Advocate Jowitt, Sir Michael Birt stated:-

***“I would summarise the arguments of Advocate Jowitt on behalf of Robert as follows:-***

***(vii) The strongest reason for considering England to be the appropriate forum, submitted Advocate Jowitt, was the fact that proceedings would be taken there in any event and it was necessary to avoid the risk of conflicting decisions.***

This was because Robert had given notice of dissolution of Lucie Campbell LP and there was a dispute as to the parties' shares in the partnership and what assets were constituted in the partnership . ***Thus ownership of RCJL, Milling Lock, Azure Gold and LCC would fall to be considered in any such English proceedings.*** Whilst it was accepted by Robert that it had always been intended that ownership of Longton (and therefore the London Property) was to be outside Lucie Campbell LP and the assets in dispute (i.e. the shares in Longton and the Longton loan) were therefore undoubtedly not part of that partnership, nevertheless the overall relationship between Robert and Richard would fall to be considered in dissolution proceeding in England and it would be far more effective and economical for the dispute in relation to Longton and the Longton loan to be considered as part of those proceedings, so as to avoid duplication of costs and the ***risk of inconsistent decisions.*** In essence, Robert and Richard were in dispute over almost everything and one court should hear that dispute and resolve ownership of all the assets in which they had interests. This would avoid having more sets of lawyers than was necessary. At present Robert was having to instruct lawyers in both England and Jersey.”

47 He then went on to summarise Advocate Dickinson's contentions at paragraph 50. The relevant parts are sub-paragraphs (viii) and (ix) on page 483 as follows:-

***“(viii) Conversely, there were not many links with England.*** No proceedings had in fact been issued in England by Robert despite the fact that Robert was seeking to persuade the Court that England was the jurisdiction to resolve all matters in dispute between them. Robert had resolutely refused or failed to state exactly what his case

was in relation to the assets but had merely contented himself with denying Richard's claim. In the circumstances he could not properly say that he was raising issues which would need to be resolved in England. Lucie Campbell LP produced regular accounts showing the assets of that partnership and that Richard and Robert were equal partners. The one thing which was agreed by both parties was that the ownership of Longton (and therefore ultimately the London Property) was to be outside Lucie Campbell LP. On Richard's case it was also outside the business. It was hard to see therefore why the two matters needed to be tried together. In any event, given that a number of the companies referred to earlier were situated outside England in Thailand, BVI or the US, it was hard to see why England was the appropriate forum. For example, the evidence before the Court suggested that an English judgment would not be enforceable in Thailand in relation to ownership of the two companies incorporated in Thailand.

***(ix) Given the separation of ownership of Longton and the Longton loan from Lucie Campbell LP and, on Richard's case, the business, there was no risk of inconsistent judgments and the issues could and should be tried separately."***

- 48 Therefore it appears to me that Sir Michael Birt recorded that Richard's case was that ownership of Longton and the Longton loan was outside the Lucie Campbell limited partnership (Robert agreeing with this part) and also that ownership of Longton was separate from the business. This led Sir Michael Birt to conclude that there was no risk of inconsistent judgments and the issues in Jersey could and should be tried separately.
- 49 Ultimately, Sir Michael Birt accepted Advocate Dickinson's submissions at paragraph 51 of his judgment at page 485. The first part of sub-paragraph (v) provides as follows:-

***"It seems to me that Advocate Jowitt's strongest point was the suggestion that Richard and Robert will be litigating about everything and that it would be best for there to be one compendium piece of litigation which would resolve everything and which would be in England because of the dissolution of Lucie Campbell LP in that jurisdiction.*** However I do not consider on analysis that that point has the force with which Advocate Jowitt sought to imbue it. One of the few matters which seems to be agreed between Richard and Robert is that ownership of Longton was to be quite separate from Lucie Campbell LP. The resolution of any dispute over the dissolution of that partnership and which assets are comprised in it will therefore not assist in the resolution of the present dispute."

- 50 In sub-paragraphs (vi) and (vii) Sir Michael Birt stated:-

***"(vi) Nor do I see a risk of inconsistent decisions.*** If the Longton dispute is resolved here, it will not be litigated anywhere else. Whilst it may in theory be possible for, say, Richard to be believed in relation to the Longton dispute and disbelieved in relation to ownership of other assets such as the Thai companies, that

would not be an inconsistent decision. The same could occur if all matters were litigated in one jurisdiction .

***(vii) On the case as pleaded at present, ownership of Longton and the Longton loan would appear to be a self-contained dispute and will turn simply on what was or was not agreed between Robert and Richard in relation to Longton and the Longton loan.*** Longton is clearly one of the most valuable assets and I think it is desirable that the dispute over who is beneficially entitled to it be resolved as simply and as quickly as possible. That is unlikely to be the case if it gets wrapped up in a dispute about worldwide assets which may or may not have formed part of the business. In these circumstances, Advocate Jowitt's argument does not lead me to conclude that these proceedings should be stayed in favour of English proceedings which are yet to be brought and the exact scope and nature of which cannot yet be ascertained."

51 Sir Michael Birt clearly accepted Advocate Dickinson's submissions that ownership of Longton and the Longton loan would appear to be a self-contained dispute which turned simply on what was or was not agreed between Robert and Richard in relation to Longton and the Longton loan. I therefore consider that Advocate Dickinson did not argue before Sir Michael Birt that the issue between Richard and Robert as to ownership of the business was part of his client's case and also had to be resolved in Jersey.

52 I secondly considered the re-amended order of justice to see whether it raises the issue of ownership and whether that part of the pleading had been before Sir Michael Birt. In my view the issue is raised by paragraph 54(j)(i) of the re-amended order of justice. This paragraph reads as follows:-

*"54. In the premises it is averred that Richard has suffered detriment and/or loss and it is further averred that: —*

*j. Further or alternatively, in the event that the Court determines that Richard is not entitled to a 50% interest in Longton (and the London Property) or the Longton Loan and/or any subsequent loan and/or any loan(s) entered into between Robert and Longton and/or any interest paid by Longton to Robert: -*

*i. Robert and Richard are respectively entitled to interests in Longton and/or its shares and/or its assets (and the London Property) and the Longton Loan and/or any subsequent loan and/or any loan(s) entered into between Robert and Longton and any interest payable pursuant thereto, taking account of their respective shares in the Business and the monies transferred from the Business and the amounts transferred from their own funds to Robert and/or Longton for use in connection with the Longton and/or the London Property, the extent of which is liable to be determined by the Court and Richard seeks orders providing for the transfer to Richard (or his nominees) of such shares and/or interest in Longton, such proportions of the Longton loan and/or any subsequent loan and/or any loan(s) entered into between Robert and Longton and interest due in connection therewith as the Court may determine that Richard is*



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*entitled to..”*

- 53 Richard's claim at paragraph 54(j)(i) does therefore seek an entitlement to the Longton loan and any interest payable “taking account of their respective shares in the business”. However, this reference is somewhat elliptical and not easy to identify in a lengthy pleading. I do not consider the ownership issue was raised by the other parts of the re-amended order of justice to which Advocate Dickinson referred me. These paragraphs go to the issue of where money came from and whether or not it came from Robert, borrowings from Lucie Campbell or from the business.
- 54 The ownership issue at paragraph 54(j)(i) was not however raised before Sir Michael Birt in the earlier forum challenge on the basis of what is said in his judgment. It was also not raised in the judgment I gave on 3<sup>rd</sup> December, 2015. At paragraph 80 I saw the ownership issue as only being raised by Robert's alternative case at paragraph 45 of the answer (now withdrawn) which answer post-dated the hearing before Sir Michael Birt. As far as I can recall the argument was not to put me that Richard had raised the ownership case in his re-amended order of justice.
- 55 I accept that paragraph 50 of the re-amended order of justice pleaded a constructive trust which had also been pleaded before Sir Michael Birt. However, it was because I did not understand the basis upon which a constructive trust was pleaded where there were no particulars set out and because I was concerned that such a claim might overlap the English proceedings that I ordered Richard to state his case (see paragraph 101). It is only this order that has led to it becoming clear that Richard was seeking an adjudication of his ownership interests in the business in the proceedings before the Jersey court.
- 56 I also should address the argument that because Robert has now withdrawn his alternative defence means that the issue in Jersey is now simpler and only relates to where funds came from. The issue where funds came from is relevant to Robert's defence where he contends that he loaned funds to Longton solely. However, Robert is also entitled to put Richard to proof in terms of any case he advances, whether in relation to his primary case that a verbal agreement was reached between them to share the Longton loan equally or the alternative case refer to at paragraph 54(j)(i) and now referred to at paragraphs 9.1.1 and 17.2 of the statement of case. The fact that Robert has not advanced a positive case of his own as to how the Longton loan should be divided up if funds are found not to have come from him solely does not mean that he is not entitled to Richard to proof on the cases Richard advances.
- 57 The effect of the statement of case in relation to the renewed forum challenge brought by Richard is of course a matter for Sir Michael Birt to decide. However, in deciding whether or not to grant the stay, I concluded I was entitled to take into account what had been raised on the pleading in the re-amended order of justice and how Richard was now putting his case in this statement of case. In my view it was only on the filing of the statement of case did Richard's position become clear. Up to this point both the court by reference to the two

judgments to which I have referred and Robert was proceeding on the assumption that issues concerning ownership of the businesses apart from the Longton loan were to be resolved in England. The only qualification to this arose from paragraph 45 of Robert's Answer, but I have decided at paragraph 82 of my previous decision that it was oppressive to require Robert to look for documents relating to ownership arrangements to establish beneficial ownership of all the companies to assist Richard to attack Robert's case. The issue of ownership of the companies was therefore at best tangential to the issue at the heart of the Jersey proceedings as I understood them when reaching my earlier decision.

- 58 In deciding whether or not to grant a stay, I also took into account the fact that if I granted the stay, as requested by Advocate Jowitt, the trial dates presently fixed would be set aside because there would be insufficient time to provide witness statements and to allow experts to conclude their analyses of schedules of loss advanced by Robert and Richard. On the other hand if I refused a stay then parties might be incurring costs in respect of an issue that Sir Michael Birt might decide should be determined in England.
- 59 I also reminded myself that the issue of ownership of the Longton loan and interest payable on that loan is only being adjudicated upon in Jersey. While it may be, depending on the outcome of the application before Sir Michael Birt, that the parties (and the English Court) agree that the Longton loan issue could be resolved in England, if that occurred, any evidence filed in Jersey could still be used in the English proceedings. This could mean that the costs of producing such evidence would not be wasted.
- 60 I therefore reached the view that I was prepared to stay the obligation to file any evidence in respect of paragraph 54(j)(i) of the re-amended order of justice and paragraph 9.1.1 and 17.2 of the statement of case pending the renewed forum challenge. It was only on the filing of the statement of case that it became clear that ownership of the business was a central part of Richard's claim and the issue is also being determined in England. While there was a forum challenge pending, I did not consider it appropriate to require evidence to be filed on an issue where Richard's case had only become clear on 31<sup>st</sup> December, 2015, and where the same issue was in dispute in England. However I required the parties to file their evidence in respect of all other issues i.e. the issue of ownership of the Longton loan and accrued interest. The filing of such evidence will be of benefit to both parties in that they will have the factual evidence that the other party intends to advance at trial and both parties will then be in a position to evaluate the strength of that evidence. That issue at present is not before any other court.
- 61 As Advocate Jowitt indicated again that the case in Jersey was uneconomic because of what his client regarded as being at stake and Advocate Dickinson indicated a continued willingness to explore settlement, which offer he said had previously made on an open basis, by filing evidence as I have ordered, each party has the factual evidence in terms of their claims to the Longton loan to see whether they are able to resolve their differences on this part of their dispute. My order also enables the trial dates to be preserved if Robert's forum challenge fails. This is because there is still sufficient time between the hearing of the

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forum challenge and the trial dates fixed for expert evidence to be completed.

- 62 With this possibility in mind, I also varied the timetable for expert evidence to take effect after the forum challenge had been determined but subject to any other orders that Sir Michael Birt may make either at the forum challenge hearing or when he gives his decision. In making these orders I accept there is only a short interval between the hearing fixed before Sir Michael Birt and the obligation on Richard to file his expert evidence. Richard has however made it clear that he wants to progress with this action in Jersey. I therefore concluded it was not unfair to require Richard now to prepare his expert evidence on the losses he claims and the reasons why for use in Jersey. Even if it turns out that such expert evidence cannot be used in Jersey, I did not consider that significant costs would be wasted because at that stage it would be likely that such expert evidence would be filed in England in any event.
- 63 Finally, I should deal with the fact that when Advocate Jowitt first asked for a stay I was not informed of the decision his client had already taken in respect of paragraph 45 and the second sentence of paragraph 47 of his answer. I now accept that technically this was not relevant because Robert was always entitled to put Richard to proof as to his case on ownership in Jersey, even if Robert was not advancing a positive case himself. However this reasoning should have been explained so that I could understand why Robert, correctly as I have found, had concluded that his decision to withdraw parts of his answer was not relevant to the forum challenge he was making.

## Conclusion

- 64 For reasons set out in this judgment I therefore refused the stay as requested by Advocate Jowitt on behalf of Robert. However, I granted a stay so that the parties did not have to file evidence in respect of ownership issues that might be in dispute in England. I also varied the timetable for filing of expert evidence to take effect, depending on the outcome of the renewed forum challenge brought by Robert to be determined by Sir Michael Birt. As both parties had been partially successful in their arguments I also ordered costs in the cause.