Caroline Garnham v PC; AC; MC; LC; Alan Binnington; Mrs C; BNP Paribas Jersey Trust Corporation Ltd

Jurisdiction:	Jersey
Judge:	Bailiff
Judgment Date:	13 May 2013
Neutral Citation:	[2013] JRC 88
Reported In:	[2013] JRC 88
Court:	Royal Court
Date:	13 May 2013

Text

[2013] JRC 88

ROYAL COURT

(Samedi)

Before:

Sir Michael Birt, Kt., Bailiff, **and** Jurats Tibbo **and** Crill.

Between
Caroline Garnham
Representor
and
PC
First Respondent
AC
Second Respondent

MC
Third Respondent
LC
Fourth Respondent
Alan Binnington
Fifth Respondent
Mrs C
Sixth Respondent
BNP Paribas Jersey Trust Corporation Limited
Seventh Respondent

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

Advocate A. D. Robinson **for the First and Second Respondents**.

Advocate J. S. Dickinson **for the Third and Sixth Respondents**.

Advocate N. M. Sanders **for the Seventh Respondent**.

The Fourth and Fifth Respondents did not appear and were not represented.

Authorities

In re C [2012] (1) JLR 204.

Lewin on Trusts (18th edition).

Re Marshall [1914] 1 Ch 192.

Re Sandeman [1937] 1 All ER 368.

Re Weiner [1956] 1 WLR 579.

Re Scott [1915] 1 Ch 592.

Re Fitzpatrick [1952] Ch 86.

Re Clough-Taylor [2003] WTLR 15.

Re Pearce [1909] 1 Ch 819.

Re Rooke [1933] Ch 970.

Perry -v- Meadowcroft (1841) 4 Beav 197.

Re Hewett [1920] 90 LJ Ch 126.

Estate — application regarding continuing differences between the executors in connection

with the administration of the estate.

Bailiff

THE

1 This application requires the Court to resolve continuing differences between the executors in connection with the administration of the estate. The background is fully described in the judgment of the Court dated 13th March (*In re C* [2012] (1) JLR 204) ("the 2012 judgment") and we do not propose to repeat it. The reader is referred to that judgment, which should be regarded as being incorporated in this judgment.

2 In bare outline, the testator died on 10th December, 2001, domiciled in Hong Kong. He left eight children and a widow (Mrs C). The children who are party to these proceedings are PC, the third child and eldest son, AC, the fourth child and other son, LC the eldest daughter and MC, the seventh child. Those four children were named as his executors together with not more than two of the partners of Simmons and Simmons. By his Will, the testator left his residuary estate as to 99% to the seventh respondent ("BNP") as trustee of an *inter vivos* settlement known as the General Distribution Settlement ("GDS") and as to 1% to Mrs C.

3 Probate of the Will in Jersey was granted on 17th October, 2002, to the Representor (CG), PC, AC, LC and MC. CG was a partner in Simmons and Simmons at the time but subsequently she moved to the firm of Lawrence Graham where she remained at the date of the hearing which gave rise to the 2012 judgment. However, she has since left and ceased to practice as an English solicitor.

The 2012 judgment

4 An issue arose as to how the executors should deal with a claim against a company known as SDL (which is owned by PC and AC) in relation to an alleged loan by the testator to SDL of approximately Singapore $21.5 million. As on so many issues, the executors were divided as to how to proceed. BNP, as 99% residuary beneficiary, wanted the claim to be assigned to it for it to investigate and if appropriate collect as it saw fit. It was willing to account within the estate to Mrs C for 1% of the face value of the claim. BNP was supported by PC and AC with CG and LC remaining neutral. MC and Mrs C opposed the assignment and considered that the executors should investigate the validity of the claim and collect it if appropriate.

5 The Court first considered at paragraphs 62 - 89 of the 2012 judgment what its correct role was. It held that, as there was deadlock between the executors, the Court had to reach its own decision in the best interests of the residuary beneficiaries and direct the executors

accordingly.

6 Having reviewed the matter in detail, the Court directed that the SDL claim should be assigned to BNP for BNP to take such steps as it thought fit to investigate and if appropriate collect the debt, with Mrs C being compensated by payment from the estate of 1% of the face value of the claim.

7 As one of the reasons leading to that decision, the Court referred to the deep level of distrust and disagreement which existed between the executors. It summarised the position as follows at paragraph 93(v) of the 2012 judgment:–

> ***"(v) It is quite clear that there is considerable distrust and division amongst the executors and that they are incapable of acting effectively and efficiently as a body.*** The administration of this estate has taken far too long and cost far too much. Although the amounts involved were large, it was not a particularly complex estate. In saying this, we are not to be taken as attributing blame as between the various executors. In particular, we are not to be taken as associating ourselves with the criticism of CG and her firm by BNP and by PC / AC. We are not in a position to make any finding on the fault for the level of fees or the time that matters have taken. But the fact is that, because of the divisions, progress on any aspect of the estate is painfully slow and, as a result, expensive. We have no doubt that the testator would be dismayed by what has occurred.
>
> ***(vi) The interests of all the beneficiaries of the estate would, in our judgment, be best served by bringing the administration of the estate to a close as soon as possible.*** There is no reason why this should not be done very promptly if the SDL claim is assigned. The other outstanding matters have been described to us and there is nothing of note. Conversely, if the SDL claim is not assigned, the executors will have to continue in post for some time with continuing scope for division and argument. …"

This application

8 Regrettably, the Court's hope that there was nothing of note in relation to the outstanding matters appears not to have been fulfilled. Although a number of matters have been agreed, there is continuing disagreement as to what should be done in relation to certain issues. The main division lies between PC/AC on the one hand and MC on the other. LC is neutral about all the issues and has made no submissions to us. CG expressed some views in a position paper of 3rd April 2012 and, following a request from the Court, she has now also made written submissions. The residuary beneficiaries are also split with BNP and Mrs C taking differing views on most of the issues.

9 All the parties have agreed that we should decide these issues by giving directions to the

executors following consideration of the written submissions which have been made to us. They have also agreed that an oral hearing is not necessary unless the Court wishes for this to occur. The parties have further agreed that the Court's role is as it held in the 2012 judgment; in other words, given that there is deadlock between the executors, the Court should reach its own decision as to the best course of action in the interests of the residuary beneficiaries as a whole and give directions accordingly.

10 With that introduction, we turn to consider each of the outstanding matters in turn.

(i) Mirador Investments Limited ("Mirador").

11 Although its existence as an asset of the estate was not disclosed to the executors until 2005, there is no dispute that Mirador, a company incorporated in the BVI, was wholly owned by the testator and is therefore a wholly owned asset of the estate.

12 It is said on behalf of MC/Mrs C that there is persuasive evidence that Mirador was indebted to the testator in the sum of S$180,000 (Singapore dollars) and has the following assets:–

(i) "The Victory Towers loan" — a loan of S$960,000 (approximately US$750,000) which Mirador made to a Malaysian company called Victory Towers (M) Sdn Bhd ("Victory Towers").

(ii) "The Quality Prospects loan" — a loan of S$2,418,000 (approximately US$1,886,000) which was made by SDL (on behalf of Mirador and of which Mirador is understood to have the benefit) to a Malaysian company called Quality Prospects (M) Sdn Bhd ("Quality Prospects").

(iii) "The Southern Blossom loan" — a loan of S$2,700,000 (approximately US$2,106,000) which was made by SDL (on behalf of Mirador and of which Mirador is understood to have the benefit) to a Malaysian company called Southern Blossom (M) Sdn Bhd ("Southern Blossom").

(iv) "The Puan Saleha loan" — a further loan by SDL (on behalf of Mirador and of which Mirador has the benefit) of MYR71,000 (approximately US$22,000) to Ms Puan Saleha in order to allow her and another to purchase 71% of the shares in Quality Prospects, the benefit of which shareholding is said to have been transferred to SDL in 1997 and which SDL has acknowledged it holds on behalf of Mirador.

(v) "The Quality Prospects shareholding" — as to this it would seem not to be disputed that Mirador owns 14.5% of the shares in Quality Prospects but there is uncertainty as to whether it owns the further 71% which are or were registered in the name of Dr Aziz and Puan Saleha and are referred to at (d) above. The balance of 14.5% appears to be owned by SDL.

(vi) “The Humana Singapore shareholding” — Mirador owns 68.7% of the shares in Humana Health Care (Natural) Centre (Pte) Ltd (“Humana Singapore”), a Singapore company which ran the Singapore based health clinic in which the testator was heavily involved in the run up to his death.

13 As to the value of these various assets, it is said that the Victory Towers loan was used by Victory Towers to purchase real property, that the property was subsequently sold and that the proceeds were paid away by Victory Towers for other purposes with the exception of the sum of approximately US$31,866, which is apparently now held by Stanley Chang and Partners (“Chang”), a Malaysian law firm which assisted with the testator's Malaysian business. MC/Mrs C suggest that further enquiries should be made as to the monies held by Chang, whether monies are also held by another firm known as Messrs Mah Weng Kwai (as per the schedule attached to the executors' report of June 2011), what happened to the proceeds of sale to the extent that they are not retained and whether Victory Towers has any other resources to pay the outstanding debt to Mirador. They contend that only once these enquiries have been made will it be clear whether the Victory Towers loan is recoverable or should be written off.

14 As to the Quality Prospects loan and the Quality Prospects shareholding, it is understood that Quality Prospects has sold the properties which it purchased with the benefit of the Quality Prospects loan, that certain monies were paid elsewhere, but that a balance of approximately US$325,661 is held in Chang's client account. It is not known what other assets Quality Prospects may have that could be used to repay the loan from Mirador.

15 As regards the Southern Blossom loan, Southern Blossom is understood to have purchased eight condominiums with the benefit of the loan. Apparently four of them have been sold and it is thought that some of the sale proceeds (in the sum of US$384,769) are held by Messrs KY Foo and Co, solicitors. The directors and shareholders of Southern Blossom are apparently Dr Aziz and Puan Saleha, as they also are of Victory Towers. It is further said that Southern Blossom has retained ownership of the remaining four condominiums but these have not been rented out since 2007 and may be deteriorating. It is said on behalf of MC/Mrs C that enquiries ought to be made as to the recoverability of these funds and whether the remaining four units could be sold with a view to the remainder of the loan from Mirador being discharged.

16 As regards the Humana Singapore shareholding, it appears that that company's accounts suggest that it has assets but that they may be exceeded by its liabilities. If so, the shareholding will be worth nothing, but Mirador, as one of the creditors, may be entitled to a pro-rata payment from these assets. On the figures currently available, it is suggested by MC/Mrs C that this would amount to US$37,205.

17 Mrs C/MC contend that the executors should carry out further enquiries in order to clarify the uncertainties referred to above and establish whether Mirador can recover or realise the various assets referred to.

18 BNP, as 99% residuary beneficiary, wishes to receive its shareholding (and presumably the proportion of the loan from the testator to Mirador) in kind. In much the same way as in the case of the SDL loan, it does not wish to see a divided body of executors, which is incapable of working effectively together, continuing to incur expenditure on investigations where BNP would in effect be paying 99% of the costs of so doing. It wishes to receive its shareholding in Mirador and be left to realise such value in Mirador as it can achieve.

19 Additionally, it argues that it is entitled to call for distribution *in specie*. We were referred to Lewin on Trusts (18th edition) chapter 24 at paragraph 24–03 and 24–05 as follows:–

> ***"24–03 The foregoing assumes that the beneficiary is solely entitled.*** We now turn to beneficiaries who are absolutely entitled, not to the whole of the trust property, but to an undivided share of it. The position then may be summarised as follows. Such a beneficiary is entitled (subject to the trustees' lien for their expenses) to an aliquot share of each and every asset of the trust fund which presents no difficulty so far as division is concerned, and (subject to the exercise of any available power of appropriation) can call for an immediate distribution of that portion accordingly. This applies to such items as cash, money at the bank and other unsecured loans, stock exchange securities and the like. However, as regards land in all cases, and shares in a private company in very special circumstances, the situation is not so simple and even a person who becomes entitled to an absolute vested interest in possession in an undivided share may have to wait until all the shares have ***similarly vested or the underlying assets have to be sold for some reason other than the mere purpose of making a division.*** …"

20 That passage cites as authority the cases of *Re Marshall* [1914] 1 Ch 192, *Re Sandeman* [1937] 1 All ER 368 and *Re Weiner* [1956] 1 WLR 579, to which we were referred by Advocate Sanders on behalf of BNP.

21 PC and AC support BNP's position.

22 In her position paper of 3rd April, 2012, CG was of the view that Mirador should be assigned to BNP for BNP to investigate and realise its assets in such manner as was in the best interests of the beneficiaries of the GDS, with a further provision that, to the extent that BNP realised any monetary value, it should account to Mrs C for her 1% interest. However, following a request for further submissions from CG by the Court and now that she has seen the submissions of Mrs C, CG is of the opinion that the executors should carry out further enquiries so as to establish the position as to Mirador's assets and whether they are capable of recovery. She says that she would be willing to undertake these enquiries on behalf of the executors if so instructed by the Court.

23 In her submissions, Mrs C has made it clear that she does not agree to BNP taking over

responsibility for investigating and collecting Mirador's assets because, for the reasons which she put forward in relation to the SDL loan and which were summarised at paragraph 92 in the 2012 judgment, she does not have confidence in BNP's ability or desire to collect Mirador's assets, particularly if this involves any argument with or adverse action against PC/AC. She further points out that BNP appears to have done little in relation to investigating and enforcing the SDL loan since it was assigned to BNP following the 2012 judgment. MC shares the view of Mrs C.

Decision

24 One starts from the position that the asset of the estate is the shareholding in Mirador together with any loan account owed by that company to the estate. The assets of Mirador itself do not form part of the estate. It is the duty of the directors of Mirador to ascertain its assets and realise them if possible; it is not the duty of the executors to undertake this task themselves although, in their capacity as shareholders, it may well be their duty to ensure that the directors fulfil their duties to the company. In this case the directors of Mirador are four of the executors but that does not alter the fact that responsibility for the assets of Mirador rests in the first place with its directors, not the executors.

25 In our judgment, the position in relation to Mirador is not dissimilar to that concerning the SDL loan. The administration of this estate (in the sense of gathering in the assets, paying the creditors and any taxes and settling any pecuniary legacies) is complete. The time is therefore right for distribution of the residuary estate. One of the assets of that estate is the shareholding in Mirador. BNP is the entity entitled (as trustee of GDS) to 99% of the residue and it wishes to receive the shareholding in Mirador in kind. It does not wish the executors, who are divided and incapable of working effectively together, to continue to incur time and expense in investigating the underlying assets of Mirador. It wishes to appoint its own two corporate directors together with Advocate Binnington as directors of Mirador and trust those directors to exercise their fiduciary duties so as to ascertain and, if appropriate, realise the assets of the company.

26 In our judgment, whilst we do not accept that there is a right to demand distribution *in specie* because executors do not hold assets in an estate on bare trust for the residuary legatees, where the 99% residuary legatee of an estate calls for distribution of an asset *in specie* when the administration of the estate (in the sense described at para 25) is complete, there needs to be some good reason for denying that request and insisting that the executors retain it. Is there such good reason in this case?

27 We do not think so. Mrs C asserts that she has no confidence that BNP will carry out its fiduciary duties under the GDS and actively realise the value of Mirador. As we found in the 2012 judgment at paragraph 93(iv), we see no reason to doubt that BNP will carry out its fiduciary duties under the GDS. It has asserted that it will do so and we do not consider that anything produced to us throws any doubt on that assertion. In particular, we think it is too early for her to assert that BNP is not taking proper steps in relation to the SDL loan.

Secondly, BNP is aware of the fact that Mrs C and MC are amongst the beneficiaries of the GDS and they clearly have strong views as to the need to investigate and, if appropriate, collect the Mirador assets. We think it highly unlikely that, with that knowledge, BNP will not ensure that the directors of Mirador act properly and in good faith. Were it to do otherwise it would clearly be opening itself up to a claim by one or more of the beneficiaries of the GDS.

28 We are conscious of the fact that, whereas in relation to the SDL loan after the refined proposal referred to at paragraph 50 of the 2012 judgment, BNP had the sole economic interest in the loan, BNP only has a 99% interest in the Mirador shareholding and Mrs C has the remaining 1% interest. However, we do not think that this alters the position. Mrs C is entitled to 1% of the shares in Mirador and 1% of any loan account to Mirador. The value of those shares will depend upon the actions taken by the directors of Mirador to realise its assets. She would prefer the executors to remain as directors of Mirador in order to carry out the enquiries, whereas BNP would prefer to exercise its power as majority shareholder to put in directors of its choice. We see no objection to this course of action and Mrs C will receive that which she is entitled to, namely 1% of the shares in Mirador and 1% of the loan to Mirador. In reaching that conclusion, we have not ignored what the Bailiff said at paragraph 17 of his judgment of 13 April, 2012, relating to the costs of the proceedings giving rise to the 2012 judgment. The Bailiff indicated that he could understand the argument that, as long as she was going to receive 1% of any amount recovered in respect of the SDL loan, Mrs C would prefer to place recovery of the loan in the hands of the executors (in whom she said she had confidence) rather than the hands of BNP (in whom she said she did not). However, that was said in the context of whether that was an unreasonable stance. We have to decide in this case a very different question, namely what is the best way of proceeding.

29 If Mrs C would prefer for there to be a 100% distribution of Mirador to BNP against an undertaking on the part of BNP to account to her for 1% of any value recovered in Mirador, that is a matter for her and BNP to agree. So far as the Court is concerned, we direct that the executors distribute the shares in Mirador and any loan account as to 99% to BNP and 1% to Mrs C.

(ii) Green Projects and 618

30 The matters we now turn to consider under (ii) — (iv) are in a different category from Mirador. There is no doubt that Mirador is an asset of the estate; the issue there is simply whether the executors should retain it, so that further investigations may be carried out as to its assets, or whether the shares should be passed across to the residuary beneficiaries for them to appoint directors who will be charged to ascertain the position. Conversely, there is considerable doubt as to whether the assets falling within (ii) — (iv) that we are about to discuss are assets of the estate at all; and the issue is the extent to which further investigation should be carried out to try and establish the position, having regard to the state of the evidence and the perceived value of any such assets.

31 We should add that many of the difficulties are the result of the manner in which the testator conducted his affairs. It is clear that he held his varied business interests via numerous companies and made frequent use of nominees. It appears that he did not insist on the issue of written declarations of trust. During his life, this was no doubt not a problem as he was clearly a much respected individual whose wishes would be acted upon by all those around him. However, following his death, this method of operation has meant that it has not been easy to establish the true position.

32 We turn first to consider the position in relation to Green Projects Donations Limited ("Green Projects") and 618 Nominees Limited ("618"). The current position is set out in the June 2011 executors' report as expanded upon in the submissions of MC/Mrs C and would appear to be as follows.

33 Green Projects is a BVI company. According to the executors' report, the registered share-holders are Rocky Shek ("RS") and Sandra Leung ("SL"). RS is the sole director. SL has stated that she viewed this as a company which was owned by the testator as he made all the decisions and funded the company. She has also said that, under the instructions of the testator, she sold her shares to RS, although it is not clear whether that was a reference to the 50% which RS now holds or whether she is saying that she has sold the remaining 50% to RS so he now has the entire shareholding. She has however said that she understands that RS was holding the shares in Green Projects as nominee for the testator. Furthermore, there is a fax from RS dated 5th June, 2001, which sets out an agenda for a proposed meeting for 11th–13th June, 2001, with the testator. One of the matters to be discussed is headed " *Re: Personal investments in Singapore and Malaysia to be reviewed*", and that section includes an item " *Green Project Donations Limited and Malaysian Investments"*. This would tend to suggest that RS was indeed holding the shares in Green Projects as nominee for the testator.

34 MC/Mrs C also refer to a fax dated 28th May, 2001, from RS to the testator and others in which, under the heading ' *JC's related investments in Singapore and Malaysia'*, there is reference to Green Projects. This would suggest that Green Projects was beneficially owned by the testator.

35 As to the assets of Green Projects, it would seem to hold 14.5% of the shares in Natural Components (M) (Sdn Bhd) ("Natural Components"), a Malaysian company established to operate a health clinic in that country. It is also said that SL, who has a 14.5% shareholding in Natural Components, holds those shares on trust for Green Projects as her shareholding was funded by the testator or companies on his behalf. Thus it is said that in total Green Projects owns 29% of Natural Components. However, the Court has been provided with no information as to the value of Natural Components. It is also said Green Projects advanced a loan of US$116,584 to Puan Saleha in order that she and Dr Aziz could acquire their shares in Natural Components.

36 The only other asset of Green Projects to which we have been referred is its 100%

shareholding in 618 Nominees Limited ("618"), a Hong Kong company. According to SL, 618 was a nominee company used for the testator's interests. The only specific matter drawn to our attention in relation to 618 is that it held shares in Humana Hong Kong, apparently on behalf of Green Projects. However, it would seem that Humana Hong Kong has been wound up with the result that 618 no longer has any assets that we are aware of. It would therefore seem to be of no value.

37 According to the June 2011 executors' report, RS has been approached about Green Projects and 618 but has refused to provide any information on the basis that the executors are allegedly conducting a *"fishing expedition"* and that no assets are held by him for the estate. However, it is pointed out by MC/Mrs C that this leaves unanswered the question as to how Green Projects was able to advance funds to other persons and companies involved with the testator's healthcare ventures if it had not itself been funded by the testator. It is said that it is reasonable to infer that RS, an accountant used by the testator, did not himself fund the substantial investments which Green Projects made in Natural Components or the investment that 618 made in Humana Hong Kong. It is said that it seems probable that Green Projects (and its subsidiary 618) either belongs to or is indebted to the estate. However, there is insufficient information at present to be able to determine the position.

38 MC/Mrs C contend that further enquiries should be made. A further approach should be made to RS to establish the position. In particular he should be asked as to how Green Projects and 618 were funded. If, as may be the case, each of Green Projects and 618 was funded by loans from the testator, then the issue will be whether Green Projects and 618 have the ability to make repayment of these loans. Furthermore, it is said that PC and AC had a greater involvement with the testator's affairs than any of their siblings and accordingly they should either provide all documentation and information they have in their possession, custody or power in relation to Green Projects and 618 or, to the extent that it is their position that they have no such documentation or information, they should provide confirmation to that effect.

39 In its original submissions, BNP opposed the spending of any further money on this topic. It did not consider that there was any evidence of value to be gained nor did it think were any further enquiries likely to produce anything. In this stance, it was supported by PC/AC. However, having seen CG's submissions, to which we shall refer in a moment, BNP now rests on the wisdom of the Court, although making certain observations about the identity of who should carry out any further enquiries should the Court order that there be such enquiries.

40 CG provided a helpful submission. Firstly, as to the existence of evidence suggesting that Green Projects was owned by the testator, she referred to a document which had been exhibited at tab 41 of the submissions of MC/Mrs C, which is described as a fax from RS to Lui Lee and Leong dated 21st June, 2001. Mrs Boo of that firm was the testator's Singapore lawyer. The document consists of two pages and is clearly a draft of a form of authority to be signed by the directors of various companies listed in the document. The text of the

authority is to the effect that the testator is fully authorised to instruct Lui Lee and Leong in all matters on behalf of each of the named companies. Included in the list of named companies was Green Projects. One page of the exhibit appears to be an early draft which was submitted to the testator for his approval and the other page appears to be the draft as approved by the testator. However, it is not clear whether the drafts were ever executed. Be that as it may, as CG submits, it is supportive evidence to the effect that Green Projects was indeed a company which belonged ultimately to the testator. As the document was sent by fax from RS's office, it seems probable that RS was fully aware of the position.

41 CG also points to an e-mail dated 16th March, 2009, from PC in which he states that Green Projects was a nominee company ultimately beneficially owned by the testator.

42 CG accepts that there is a lack of current financial information as to Green Projects and 618 which makes it all the more difficult to know whether it is worthwhile carrying our further enquiries. Nevertheless, on balance, she considers that further enquiries should be carried out and these could be done without great cost. She suggests the following steps:–

(i) Enquires of the successor firm to Lui Lee and Leong (Legiste Law Corporation) as to whether the draft documents contained at tab 41 were ever executed and sent.

(ii) Further enquiries of SL to clarify how and in what manner she disposed of her shares in Green Projects. CG points out that reference to her having “sold” her shares is somewhat inconsistent with her having held them as nominee for the testator.

(iii) Further enquiries of RS along the lines suggested by MC/Mrs C (see para 38 above) after the results of the initial enquiries with the lawyers and SL are known so that, if more information has come to light, a more targeted approach may be made to RS.

Decision

43 In our judgment, there is a fair degree of circumstantial evidence that Green Projects was beneficially owned by the testator. If it was certain that the company had some value, there would be no doubt that further investigations should be made. The difficulty is that, at present, there is little evidence as to value. Even if monies were provided by the testator (so that there is a debt between Green Projects and the estate), such an asset would only be worthwhile to the extent that there was value in Green Projects so that it could repay the debt. As to that, the only asset that we have been made aware of is the shareholding in Natural Components but we have no indication of the value of that company. There is no evidence that the shares in 618 are worth anything (on the basis that 618 held shares in Humana Hong Kong which has been wound up) and the only other asset of Green Projects is the alleged loan to Puan Saleha.

44 It is a finely balanced decision. Nevertheless, given the circumstantial evidence to which

we have referred, we think that some further enquiries should be made. In particular we note that SL is apparently a person who was intimately involved in the implementation of the testator's philanthropic aims in Singapore in the areas of complementary and alternative medicine and she appears to be well disposed towards the family. Further enquires of her may well clarify the position and produce more information than the bare details which appear to be available at present. In essence, we think that the enquiries which should be carried out are those suggested by CG and summarised at paragraph 42 above, together with enquiries as to the financial position of Natural Components. But we also conclude that PC and AC must each provide an affidavit or affirmation giving all the information of which they are aware which relates to the ownership and affairs of Green Projects and 618 (including any information as to the value of Natural Components) and which exhibits any documents relating thereto which are in their possession or which they are able to obtain. Our reasons for making this additional order against PC and AC is as follows:–

(i) It seems from the e-mail referred to at paragraph 41 above that PC is in possession of sufficient information that he was able to make the assertion as to ownership contained in that e-mail.

(ii) It would seem that PC/AC were more involved in the business affairs of the testator during his life than the other family executors and therefore, if any of the executors are in a position to help, it is they.

(iii) As executors, they are in a fiduciary position. They have a legal duty to do their very best for the estate and to disclose all information and documents in their possession or which they can obtain in order to assist the administration of the estate. That duty overrides any personal interest of their own. In the circumstances of this particular estate, we think it perfectly reasonable that they should be ordered to give full details of everything they know about the matters still in dispute so as to assist the administration of the estate. It is not clear to us that they have in this respect devoted the energy that the estate is entitled to expect of them as executors. To take one example, it seems clear that RS was a valued adviser of the testator. It would on the face of it be surprising if he were to reject completely perfectly reasonable requests for information about the affairs of the testator from his two sons whom the testator had nominated as two of his executors.

45 As to the question of who should carry out the further investigations, we shall refer to that topic once we have given our decision on the other outstanding matters.

(iii) Greenware Technology

46 Greenware Technology Pte Limited (“Greenware Technology”) is a company incorporated in Singapore of which PC and AC are the shareholders. It apparently has a 15.65% shareholding in Humana Singapore. PC has stated that the testator provided S$495,000 (US$391,738) by way of gift to PC and AC towards the share capital of Greenware Technology and that the testator had no further involvement in the company. The directors

of Greenware Technology (namely PC, AC and another) have been asked to provide evidence to substantiate that this was a gift rather than a loan but there has apparently been no response to this request.

47 MC/Mrs C submit that this is not satisfactory. PC and AC are executors and owe a duty to the estate. They should be required to respond to this request.

48 BNP, supported by PC/AC, submits that there is no evidence to suggest that this was a loan and accordingly there is nothing further that can be done. It does not wish further expenditure to be incurred in pursuing the matter.

49 CG considers that, there is no documentary evidence that this was a loan rather than a gift, and given the comparatively small value, there are no further investigations which could be reasonably carried out.

50 In our judgment, for the reasons set out earlier, PC and AC must respond to the enquiry. They have a fiduciary duty towards the estate and it is not sufficient simply to fail to respond. We direct that they each file an affidavit/affirmation giving full details of the position and the grounds upon which they assert that the sum of S$495,000 was a gift by the testator. If there are any documents which are in existence or which they can obtain which are relevant to this transaction, they must be produced. If there are no documents, this must be stated specifically. Once the executors are in receipt of these affidavits/affirmations, they can consider whether the matter has been taken as far as it can be or whether there is evidence that the sum was in fact a loan rather than a gift.

(iv) Community Service Projects

51 Community Service Projects Pte Limited (“Community Service Projects”) is a company incorporated in Singapore. Its shares are owned equally by PC and AC. The background to the company has been described by Phillip Leung (“PL”) in an affirmation dated 12th June, 2012. PL is the husband of MC and was a director of Community Service Projects from 1st December, 2000, until 16th December, 2005. He says that Community Service Projects was used in connection with the healthcare and clinic activities supported by the testator. There is no dispute that, when he was appointed as a director, the shares in the company were owned as to 100,001 by Florence Kwong (“FK”) and 1 by Dorothy Tan (“DT”). FK played a significant role in the various healthcare projects supported by the testator in Singapore. DT is said by PL to have looked after the books of the clinic in Singapore on Saturdays.

52 In his affirmation, PL offers the view that FK and DT were nominees for the testator. It was the testator who had asked PL if he would like to be a director, as a result of which he was appointed. So far as he was concerned Community Service Projects was part of a series of companies which the testator set up in relation to his wish to provide alternative healthcare

in Singapore and Malaysia. FK always consulted the testator and took his instructions in relation to a whole variety of issues and decisions that needed to be made. It was clear that the testator was in reality the decision maker in relation to companies such as Humana Singapore and Community Service Projects. He would approve of all matters such as contracts, budgets, policy etc.

53 According to MC/Mrs C and CG, that opinion of PL is supported by certain additional documents:–

In summary, it is said therefore that there is considerable evidence that Community Service Projects was a company beneficially owned by the testator and that FK and DT were holding their shares as his nominees.

(i) the fax of 21st June, 2001, from RS to Lui Lee and Leong (referred to at para 40 above) included Community Service Projects in the list of companies for which the testator would be able to give instructions;

(ii) an e-mail of 6th November, 2011, from SL refers to Community Service Projects (as well as Mirador and others) as being a nominee company of the testator;

(iii) SL makes a similar reference in her e-mail of 30th November, 2008, to Denise Turley of Mourants.

54 According to the company records of Community Service Projects, FK and DT transferred their shares to PC and AC (in equal shares) and this transfer was approved by the board of directors by written resolution dated 22nd May, 2001. The directors of the company at that time were FK, AC, PC, PL and Mrs Boo, the testator's lawyer in Singapore. However, in his affirmation, PL alleges it was in fact not until July 2002 that AC approached him in Australia (where PL lived) and asked him to sign various documents. This he did at the Sydney branch of United Overseas Bank, a Singapore bank. According to PL, he signed three documents in July 2002 as follows:–

(i) The resolution of the directors approving the transfer of the shares from FK and DT to PC and AC with such resolution being dated 22nd May, 2001, i.e. over a year previously.

(ii) A written resolution of the directors dated 15th May, 2001, noting the resignation of DT as a director and the appointment of PC, Mrs Boo, PL himself and AC as directors of the company with effect from 15th May, 2001.

(iii) A written resolution of the directors dated 15th June, 2001, noting the resignation of Mrs Boo as a director and the appointment of Rocky Shek as a director in her place, in each case with effect from 15th June, 2001.

55 According to PL, all of these documents were backdated by over a year. The significance

of this is that the testator died on 10th December, 2001. It follows therefore that, according to the affirmation of PL — and assuming for these purposes that the shares were held beneficially for the testator — the shares in the company should have been shown as an asset of the estate, whereas they were in fact shown as assets of PC and AC from a date before the testator's death, and accordingly were not assets of the estate.

56 As to the value of Community Service Projects, the only information before the Court consists of the audited accounts for the year ended 30th June, 2005. These show bank deposits of S$2,168,659 but this is counter-balanced by “other payables” in the sum of S$2,133,081 and “amount owing to a director” of S$75,844 leading to an overall deficit in the balance sheet. The notes to the accounts do not assist in identifying the significance or nature of “other payables”.

57 Mrs C/MC consider that, in the light of this evidence, further enquiries need to be made in order to establish whether in truth Community Service Projects is an asset of the estate because the shares were held by FK and DT as nominees for the testator and the transfer out of their names took place after the death of the testator. They also consider that enquiries should be made as to the nature of “other payables” and therefore whether there is in fact value in the company.

58 In her submission, CG agrees that there is *prima facie* evidence that the shares in Community Service Projects were held by FK and DT as nominees for the testator.

59 As to whether the transfers of the shares were backdated, she refers to the matters mentioned in paragraphs 40 and 42 above. Community Service Projects was included amongst the companies where it was proposed in the fax dated 21st June, 2001, from RS that the testator should be authorised to sign for them. If the forms of authority were in fact signed and if the letter as executed by Community Service Projects was signed by DT as a director, this would be strong corroborative evidence in support of PL's evidence that the share transfer resolution and the director's appointment/removal resolutions were backdated because, on 15th May, 2001, (according to the resolution exhibited to PL's affirmation) DT ceased to be a director of the company. She would therefore have no standing to sign a letter as director of Community Services Projects on or after 21st June, 2001, (being the date on which the draft authority was faxed by RS). She points out therefore that enquiries should be made of Legiste Law Corporation (as successor to the firm of Lui Lee and Leong) to see whether the draft documents referred to at paragraph 40 were ever executed.

60 PC/AC submit simply that Community Service Projects is not an asset of the estate and this is consistent with an e-mail which PC sent on 16th March, 2009, to Advocate Binnington and others stating that Community Services Projects was a company which had never been owned by the testator. However, they have not responded specifically to the allegations made by PL.

61 BNP rests on the wisdom of the Court in relation to whether there should be any further investigation of this matter but points out that the audited accounts as at 2005 show that the liabilities of the company exceed its assets and that there is accordingly no apparent value in the company, even if it was an asset of the testator. It is concerned therefore at the expenditure of the funds to investigate ownership of a company which seems to be of no value.

Decision

62 We acknowledge the concern over whether investigation of the position in relation to Community Service Projects is worthwhile because of the apparent balance sheet insolvency of the company. However, the accounts are very vague as to the identity and nature of the liabilities and we have seen no accounts more recent than June 2005. Furthermore, this is a case where PC and AC are clearly in a position easily to offer assistance because they are the current owners of the company. As executors they owe a fiduciary duty to the estate and that takes precedence in legal terms over their own interests. It does not seem to us to be an unduly onerous task to require them to explain the current financial position of the company in more detail and to answer the allegations made in the affirmation of PL.

63 Accordingly we direct that the following enquiries by carried out:–

(i) PC and AC must file an affidavit/affirmation giving full details of the financial position of Community Service Projects from June 2000 to date including full details of the nature of the liabilities as well as the assets of the company and respond in full to the allegations in the affirmation of PL concerning the beneficial ownership of the company prior to the testator's death and the transfer of the shares from FK and DT to PC and AC.

(ii) Enquiries should be made of Legiste Law Corporation to see whether the draft documents contained at tab 41 (and referred to at paras 40 and 42 of this judgment) were ever executed and sent.

(iii) Enquiries should be made of FK and DT as to whether they owned their shares beneficially or as nominees for the testator and also whether they can assist as to the date when they transferred the shares to PC and AC.

64 On receipt of this further information, the executors can decide whether the matter should be pursued further or whether the state of the evidence and/or the established value of the company renders this inappropriate.

(v) Clause 3(A) documents

65 Under clause 3(A) of his Will, the testator made the following gift to the family executors (i.e. PC, AC, LC and MC):–

> *"3. Gift of personal chattels*
>
> *I GIVE free of duty:*
>
> *All my letters and documents of whatever nature other than those in such residence as I may be occupying at my death to my said sons and daughters"*

There is no dispute that the sons and daughters referred to are the four family executors.

66 The matter appears first to have been raised at a meeting of the four family executors in Singapore in September 2002 when Mr Ralph Taylor of Simmons and Simmons (CG's then law firm) advised that it was a gift to the four named family executors and, in practice, they would together have to decide to what documents it related. He went on to suggest that, whilst the original documents could be retained in custody in one particular jurisdiction as agreed by the four, each named executor would have the right to see and, if necessary, make copies of any of the documents in question. He went on to say, very sensibly, that this was a matter which should primarily be dealt with among the four named family members and that further advice should only be sought from Simmons and Simmons if there was any insoluble dispute.

67 MC raised the matter again through her then lawyers Allen and Overy by an e-mail dated 8th November, 2005, in the context of a suggestion that a suitable independent law firm could be chosen to review all papers and documents. However, the matter does not appear to have been pursued at that stage.

68 In June 2011 MC asked for the clause 3(A) documents to be gathered in from various of the testator's advisors. After some discussion, it was suggested that MC should write to Advocate Binnington (the administrator of the estate appointed by the executors), indicating the documents that she wanted to see and he would then supply draft letters for approval by the executors. MC duly did this on 17th August, 2011, and Advocate Binnington subsequently provided draft letters upon which MC commented by narrowing slightly the documents required. However, they have never been sent because PC and AC have not approved them. Accordingly the matter rests there.

69 MC (supported by Mrs C) seeks a direction that the executors should take reasonable steps to gather in the documents which are the subject of the clause 3(A) legacy ("the documents"). This is opposed by PC and AC (supported by BNP as 99% residuary legatee) who believe that the executors should simply assent the documents to the four family executors leaving them then to gather in the documents to the extent they think fit.

70 PC/AC contend that, if anything other than normal or routine steps are required to collect and deliver an asset which is the subject of a specific legacy to the specific legatees, the

executors ought to assent it, thereby transferring title in the asset to the specific legatees. It is then for the legatees to take such steps as they think fit to collect the asset. In support of this contention Advocate Robinson has referred the Court to a number of cases including *Re Scott* [1915] 1 Ch 592, *Re Fitzpatrick* [1952] Ch 86, *Re Clough-Taylor* [2003] WTLR 15, *Re Pearce* [1909] 1 Ch 819 and *Re Rooke* [1933] Ch 970. They submit that is the course which should be followed here.

71 MC, as one of the specific legatees, relies on much the same cases but contends that they lead to the conclusion that the executors should take the steps which she is requesting in order to gather in the documents.

Discussion

72 We have not been referred to any relevant Jersey authority and accordingly counsel have referred us to English cases.

73 The question of who should bear the costs of getting in items which are the subject of specific legacies appears to have been the subject of conflicting authority under English law over the years. In *Perry -v- Meadowcroft* (1841) 4 Beav 197 the executors had incurred expenses in getting in some costs due to the testator and which had been specifically bequeathed by him. The question arose as to whether these expenses should be borne by the general estate or by the specific legatee out of his legacy. Lord Langdale MR held in favour of the specific legatee and said as follows:–

> ***"I consider it part of the duty of executors to get in all the testator's estate whether specifically bequeathed or otherwise; and I know of no instance in which the expenses have not been paid out of the general estate, as part of the expenses of the administration."***

74 That decision was followed in *Re Hewett* [1920] 90 LJ Ch 126 where it was held that the cost of packing chattels which were the subject of a specific legacy and conveying them to England from abroad and distributing them among the legatees was payable out of the general estate. However, it is right to say that the judge was not referred to the case of *Re Scott* [1915] 1 Ch 592 to which we shall refer in a moment.

75 In *Re Pearce* [1909] 1 Ch 819 the testator bequeathed to his wife all his furniture and effects, horses, carriages, motor cars, yacht and jewellery and he disposed of his residuary estate to his wife for life and thereafter to Trinity College, Cambridge. After the death of the testator, the executors incurred considerable expense in retaining a large staff of servants in one of the testator's houses in order to maintain and keep in good order the furniture and effects and to look after the horses and carriages, and in paying the wages and expenses of the captain of the yacht and in repairs to the yacht. It was held that the specific legatee (i.e. the wife) should be charged with the costs of the upkeep care and preservation of the

specific legacy from the time of the testator's death until the executor assented the assets to her. The judge pointed out that as a specific legatee is entitled to the profits accrued due from the time of the testator's death until assent, it was only right and fair that the specific legatee should be charged with the costs of the upkeep and preservation of the specific legacy from the time of death until the executors' assent. However, as Advocate Dickinson pointed out in his submission, the facts of *Re Pearce* were somewhat different from the situation we have here, in that there was no doubt in that case as to what assets were actually comprised within the specific legacy, nor was there any difficulty in assembling those assets ready to make them available to the specific legatee at the appropriate time. We agree that the case is not on all fours with the situation which we have to consider. *Re Rooke* [1930] Ch 970 followed *re Pearce* but again that was a case where there was no question of ascertaining or gathering in the item which was the subject of a specific legacy; it was merely a question of who was responsible for the upkeep and preservation of the specific legacy until assent.

76 In *Re Scott* the testator had left valuable tapestries in his house in Paris which were bequeathed specifically to a legatee, but which under French law were subject to a mutation duty payable by the legatee, with a penalty if they were not so paid by a certain date. The case was argued both on the terms of the Will (which gave the legacy *"free of legacy duty"*, held to mean only English duty and not French) and on the basis that it was the executors' duty to deliver the asset to the legatee in England, which they could only do by paying the French duty. It was only the second argument which is relevant for the present purposes. In this respect Lord Cozens-Hardy MR said this at 606:–

> ***"It is said that it is the duty of an executor, where there is a specific bequest of property which is in a foreign country, to go to that foreign country and to procure the specific article, to pay what is necessary in order to get it, and to bring it back to this country.*** Each one of us has asked, I think, for a statement by any text-writer to support that proposition. I can find none, and it is conceded there is none. Is there anything in principle which can justify it? I think not, for many reasons, but the one that strikes me most is this. When there is a specific legacy the first duty of the executor is to consider whether he assents to it or not. If he assents to it the property passes out of him and is in the specific legatee, and from that moment the executor cannot possibly interfere with the possession of the chattels, cannot claim them from anybody else, and the legatee who has the legal title is the person to recover them, and do what is necessary. … Under those circumstances, there being no authority to support the proposition, I am clearly of opinion that we ought not to hold that it was the duty of the executors towards this present appellant to go to Paris to pay this mutation duty in order to get possession of the property and deliver it to the legatee."

77 Phillimore LJ used slightly more qualified language. At 610 he said this:–

> ***"The argument on behalf of Lady Sackville is that this being a specific legacy the duty of the executors is to deliver the subject of the legacy to***

> ***the legatee, and that any expenses which they may incur in order to do that are charges and expenses incurred by them in their capacity as executors and therefore payable out of the general estate.*** Stated in that general way I think the contention on the part of the specific legatee is correct … I have been thinking over the matter and I should be sorry if anything were said here which would make an executor surchargeable who in an ordinary case went to the expense of packing up a picture or some valuable chattel and sent it to the home of the legatee in some other part of England or even some near part of the Continent. One knows that in practice executors are always expected to do this sort of thing, and a legatee who may be left a picture or some token does not expect to have to bear the cost of packing and sending it. In that sort of way it may be very well held that the testator intends, when he gives a bequest of this kind, that it should reach the hands of the specific legatee, if it is only a reasonable matter of packing and transfer, without expense; but beyond that I decline to go. I know of no authority that the executors are bound to bring a chattel to the testator's domicil, or to bring it from foreign parts in order to deliver it to the legatee. If the argument is worth anything it would involve this, that whenever chattels specifically bequeathed are locally situated in some foreign country, and there is a duty of any sort payable on these chattels by reason of the death of the testator, it falls to the executors to redeem these chattels, to ransom them as it were, from the foreign country and bring them away and deliver them safely to the legatee. By this time of day if there were any such duty upon executors there would have been authority for it, and I decline to hold that there is any such duty."

78 *Re Scott* was followed in *Re Fitzpatrick* [1952] Ch 86. In that case the testatrix, who was domiciled in England, resided for several years before her death in Monaco and bequeathed chattels in Monaco to a specific legatee. The executor incurred costs in arranging for the chattels to be shipped back to the specific legatee in England and the question arose as to whether these were payable out of the general estate or by the specific legatee. The judge held that he was bound by *Re Scott* to hold that it was not the duty of the executors to obtain the chattels from Monaco and bring them back to England. All they needed to do was to assent, which they had to be taken to have done. They having assented, the specific legatee was responsible for getting the chattels.

79 The final, and in some ways the most helpful authority is *Re Clough-Taylor* [2003] WTLR 15. In that case the testatrix left a particular chattel by a specific legacy in her Will. The chattel was removed from the testatrix's house after her death by a person who alleged that the testatrix had given it to him during her lifetime and who subsequently sold it to a third party. The specific legatee contended that the executor was under a duty to get in the chattel as part of the estate and should therefore enter into litigation to recover it from the third party. The residuary legatees argued that the executor should assent in favour of the specific legatee in relation to the chattel and assign any cause of action to her.

80 Lloyd J reviewed the cases to which we have already referred. In relation to *Re Scott* he

said this at 17:–

> ***"The case [Scott] was argued … on the basis that it was the executors' duty to deliver the asset to the legatee in England, which they could only do by paying the French duty.*** The Court of Appeal rejected that proposition, and said that the first duty of the executor in relation to a specific legacy is to decide whether or not he assents to it. If he does, then it is for the legatee to do what he wishes or needs to do; See Lord Cozens-Hardy MR at 606–7 and Phillimore LJ at 609–610. The latter says that executors would not be chargeable (that is to say by the residuary legatees) for having gone to the expense of packing up a picture or some valuable chattel and sent it to the legatee in England, but that they are under no duty to bring a chattel to the testator's domicile or to bring it from foreign parts to deliver it to the legatee. Of course, there the concern was not about packing costs (though they might have been substantial) but about the French duty, but the clear implication from the judgment is that, while no-one would or could object to executors bearing moderate and reasonable expenses of packing and transport in relation to a specific legacy, it is not their duty to incur anything out of the ordinary, and expense of that sort must be borne by the specific legatee." (emphasis added)

81 The judge went on to hold that, given that the chattel was not required for payment of debts or expenses or for any other purpose of administration, the executor ought to assent the chattel to the legatee and leave the legatee to institute any litigation. It was no part of the executor's duty to take anything other than normal or routine steps to collect the asset and see that it was delivered to the legatee; and clearly the instigation of litigation to recover the chattel was not regarded by the judge as a normal or routine step. He went on to say however that he did not suggest that it had not been a proper course for the executor to investigate the position as regards the chattel but, having got to the present position, he thought it right that the executor should draw a line and not take further steps other than to assent and, if called for, execute an assignment of the cause of action to the legatee.

82 We would draw the following principles from the above cases. An executor is under a duty to gather in the assets of the estate so as to pay the liabilities of the estate and any taxes payable by the estate. Where an asset is the subject of a specific legacy which is not required to pay the debts of the estate, it is perfectly proper for an executor to incur moderate and reasonable expenses in relation to gaining possession of that asset and delivering it to the specific legatee, but he appears — although the position is not entirely clear — to be under no duty to do so. What he should not do is incur out of the ordinary expenses and charge this to the residuary estate; such expenses should be borne by the specific legatee and the executor should in those circumstances assent the item and leave the specific legatee to take such action as he or she may think fit.

83 This seems to leave the question of whether to incur moderate and reasonable expenses in relation to a specific legacy to the discretion of the executor. It seems to us that there is much to be said for making the position clearer and more uniform by saying that an

executor is under a duty to incur moderate and reasonable expenses in connection with gathering in and delivering a specific legacy and, if it were necessary, we would hold that Jersey law is to that effect. However, it is not necessary to decide that issue for present purposes and we are content to proceed on the basis that an executor has a discretion as to whether to incur moderate and reasonable expense in gathering in and delivering a specific legacy.

84 As already stated, in this case the executors are dead-locked and accordingly it is for this Court to exercise the discretion we have referred to on behalf of the executors.

85 CG submits that the whole issue of the clause 3(A) legacy should be left over for the time being until the results of the further investigations on the other matters are dealt with, at which time it would become clearer whether there was any purpose in pursuing the legacy. We do not think that that would be the right course. The administration of this estate has already continued for far too long and it needs to be brought to an end. We think that we should either direct an assent (as submitted by PC/AC) or we should direct that certain further enquiries be carried out now (as contended by MC).

86 PC/AC submit that identifying and collecting the documents will be a substantial exercise, fraught with difficulty and likely to be conducted in a hostile and interrogative environment. There are likely to be issues as to whether particular documents belonged to the testator or to companies which he beneficially owned. In this connection we accept that clause 3(A) only applies to documents held beneficially for the testator himself. Such an exercise, they submit, would not be routine or moderate and reasonable.

87 We do not accept that argument at this stage. The fact is that the executors have taken no steps whatsoever to ascertain and gather in the documents. Advocate Binnington has drafted a letter of instruction to various third parties seeking the documents but that has never been sent. We do not think it satisfactory that the executors have done absolutely nothing to fulfil the legacy described in clause 3(A). In *Re Clough-Taylor*, Lloyd J approved of the fact that the executors had investigated the position regarding the chattel. In our judgment, the executors should similarly in this case have taken moderate and reasonable steps to ascertain the existence and location of the documents so as to be able to give effect to clause 3(A) of the Will.

88 We see no reason why Advocate Binnington should not, on behalf of the executors, now send the draft letters to those who are thought to possess any documents falling within the legacy and seeking their delivery. This is a very substantial estate and in the overall context of the estate, we consider that the modest costs of writing these letters and of subsequently collating and gathering in any documents is a moderate and reasonable expense. Accordingly we direct that Advocate Binnington act accordingly and the costs of so doing should be borne out of the residuary estate.

89 We emphasise that we are going no further at this stage. If it becomes necessary to consider more complex or expensive steps to gather in the documents, this may cross the line referred to by Lloyd J and we might at that stage agree that the right course is for the executors to assent, leaving the specific legatees to collect in the documents. However, we accept that, given the apparently irreconcilable differences between the four specific legatees and the need, presumably, for all of them to agree to any action necessary to gather in the documents, the likelihood of clause 3(A) being fulfilled, if that course of action were followed, is minimal. That is another reason for concluding that it is reasonable at this stage for the executors to take the above action to identify and gather in the documents.

90 We should add that we agree with the advice proffered by Simmons and Simmons in 2002 referred to at paragraph 66 above, namely that the documents, once identified and collected, should be held by the executors in one location with copies being made available to any of the legatees upon request.

Who should carry out the investigations?

91 We have directed that certain further investigations should be carried out. The question then arises as to who should do this? We are in no doubt that the executors as a body are incapable of doing so because of the deep divisions and distrust which exist between them. The carrying out of the investigations will inevitably require a measure of discretion or judgment as to the extent of such investigations and how they are put into effect. We have no doubt that the executors will be unable to agree the moment any exercise of discretion or judgment is called for in relation to the carrying out of the investigations. It follows that someone must conduct the investigations on the executors' behalf.

92 MC/Mrs C submit that the further investigations should be undertaken by CG, MC and LC, failing which by CG alone. They point out that PC/AC have a conflict of interest in relation to many of the matters which are to be further investigated. They believe there is no valid reason for MC and LC not to participate in these investigations and point out that this would reflect the testator's wishes. If that is not thought to be acceptable, they have confidence in CG to carry out the investigations alone.

93 BNP objects strongly to CG being in charge of the investigations. It asserts (as was the case in the hearing leading to the 2012 judgment) that it has no confidence in CG for the reasons described in that judgment. It says that the relationship has deteriorated further since then and it also points out that she is no longer a practising solicitor and has left Lawrence Graham. It reminds the Court of the finding at para 93(vii) of the 2012 judgment. BNP submits that, if any further investigations are to be carried out, they should be done by Advocate Binnington who retains the confidence of all parties.

94 PC/AC support the stance of BNP and the Court notes from the 2012 judgment that they have expressed a lack of confidence in CG. It is clear from the submissions in this case that

the relationship between CG on the one hand and PC/AC on the other has deteriorated further since then.

95 In response to BNP's suggestion, Mrs C, whilst recording her understanding that Advocate Binnington is held in high regard in professional circles in Jersey and more widely, has pointed out that he sits on a number of boards with PC and AC and may not therefore be well placed to ask the kind of challenging questions that will be needed in the context of the further investigations and also points out that he does not fall within the class of persons that the testator identified in his Will to undertake the duties of executor of his estate. For these reasons she does not consider that Advocate Binnington should be appointed to undertake the further investigations.

Decision

96 We have already explained why the Court cannot satisfactorily direct the executors as a body to carry out the further investigations.

97 For the reasons set out at paragraph 87(vi) of the 2012 judgment, the Court has jurisdiction to direct that certain matters be dealt with by some of the executors. We are further satisfied that, in exercise of the Court's supervisory power and where there is deadlock, the Court has power to direct that some other person be appointed to carry out actions on behalf of the executors as a body.

98 Having decided that the executors as a body cannot carry out the investigations, it seems to us that the Court could pursue any one of the following courses:–

(i) remove the executors because of their inability to act and appoint new executors in their place;

(ii) direct that the investigations be carried out by LC, MC and CG or by CG alone;

(iii) direct that Advocate Binnington be appointed to carry out the investigations; or

(iv) direct that someone completely new and independent be appointed to carry out the investigations.

99 As to the first alternative, we do not think that this is necessary. Although the executors as a body have shown themselves to be incapable of completing the administration because of their differences, the fact is that the administration of this estate is nearly complete. Once the further investigations have been carried out, it should be possible to move fairly quickly to winding up the estate. We do not think it would be desirable to incur the expense and delay of removing the executors and appointing new ones in their place unless this were unavoidable. Furthermore, no-one is contending for this step at present.

100 For much the same reasons, we do not consider that the fourth course would be desirable unless there were no alternative. All those involved in the administration of the estate have accumulated an enormous body of knowledge over the years. If someone new were to be appointed to carry out the investigations on behalf of the executors, there would be a very steep learning curve. This would take time and would therefore be expensive. If satisfied that there were no alternative, we could be persuaded to follow this course but, for the reasons set out hereafter, we do not think that position has been reached.

101 As to the second alternative, we do not think it would be appropriate to appoint CG to carry out the investigations. The position is not identical to the circumstances surrounding the SDL claim which was the subject of the 2012 judgment in that there, BNP had the sole economic interest whereas in the present case, it has only a 99% interest with Mrs C having the remaining 1% interest. Nevertheless, the views of a 99% residuary beneficiary must carry weight as the estate is ultimately being administered for the benefit of the residuary beneficiaries. At paragraph 93(vii) of the 2012 judgment, the Court said this in relation to the suggestion that CG should have responsibility for the SDL claim:–

> ***"In our judgment, it would be quite wrong for CG (or CG, MC and LC) to have responsibility for deciding on what investigations and actions should be taken in relation to the SDL claim in circumstances when BNP, as the sole entity with any economic interest in the claim, was not content for them to do so but would be bearing the cost of such investigations and actions.*** It is clear from the history of this matter, as recited earlier, and also from the tone of the submissions made by counsel, that the relationship between CG and BNP has broken down to a considerable extent. Thus, if there is no assignment, CG, as the professional executor, will have the major responsibility for conducting the investigations and possible litigation, all at BNP's expense in circumstances where there is already dispute between BNP and CG as to the level of expense incurred in relation to the estate. We emphasise that we are not suggesting that CG's fees have been excessive. We are not in a position to decide this. But it is clear that BNP feels that they are. To require a residuary beneficiary with the sole economic interest in the estate to fund continued investigation by the executors in circumstances where the beneficiary wishes to assume control of the investigations and does not have confidence in the executors concerned seems to us a highly unsatisfactory outcome and cannot be considered to be in the best interests of the residuary beneficiary."

102 As mentioned already, the relationship between BNP and CG appears to have deteriorated even further since then and, in the circumstances, we think it would be a recipe for disagreement and possible further litigation to appoint CG to carry out the investigations. We also note the high level of distrust between PC/AC and CG. If it would not be satisfactory for CG to carry out the further investigations alone, we do not believe that it would be appropriate to order that CG, MC and LC jointly carry out the investigations, as similar problems would arise.

103 That leaves the appointment of Advocate Binnington. He was appointed as administrator of the estate of behalf of the executors in June 2006. He has since so acted but has needed to have the authority of all the executors in order to progress matters. It would appear that he broadly retains the confidence of all parties, although Mrs C has expressed reservations about his ability to ask hard questions of PC/AC because he sits on various boards with them. But he also sits on those boards with MC, who has frequently taken an opposing view to PC/AC. Advocate Binnington is an officer of the Court and is resident in Jersey. He is therefore amenable to the jurisdiction of this Court. He is an experienced lawyer. We find that he is the best person to carry out the investigations which the Court has directed on behalf of the executors. We therefore direct that he be appointed on behalf of the executors to carry out these investigations. In so doing, he is authorised to exercise his own judgment and discretion as to the exact nature and extent of the enquiries. He does not have to revert to the executors for directions. He should carry out such investigations as he thinks fit and reasonable to comply with the Court's directions and he should then prepare a report to the executors containing the results of his investigations and any recommendations as to the way forward or whether matters have been taken as far as they can. If the executors can agree on matters following receipt of that report, so much the better. If they cannot, the matter will have to be referred back to this Court for what will hopefully be a final decision. The report is to be provided to all the executors even though PC/AC may have a conflict of interest in relation to some of the issues. What steps, if any, should be taken thereafter to address any conflict of interest will be a matter for consideration at that time.

Remaining issues

104 The Court has been asked to rule on three further matters where MC appears to be in a minority. She has concluded that it would be inappropriate for her simply to agree that these matters should be discontinued by consent and she instead wishes to have the protection of an order of the Court that no further action need be taken in respect of them, if indeed that is what the Court considers is the appropriate way to proceed.

(i) Jan Yee Australia Pty Limited (“JYA”) and Yee Tak Charitable Foundation (Australia) Limited (“YTA”)

105 The information before the Court on this matter is to be found in the November 2011 executors' report (“the Report”) and in MC's first and third affirmations.

106 In brief summary, it came to light during a search on the testator in 2005 by the Australian tax advisers who were preparing the submission to the Australian tax office for the estate that there existed in Australia two companies connected with the testator, namely YTA and JYA. It was ascertained that the testator held the one share in JYA at the date of his death on 10th December, 2001, but that this had been subject to a declaration of trust dated 30th August, 1989, in favour of YTA. It was noted that the share certificate in respect of the share in JYA was issued to the testator on 15th June, 1990. It appeared that the testator had also completed an undated share transfer form in respect of the one share whereby he

transferred the share to YTA. A meeting of the board of directors of YTA was held on 15th March, 2002, which recorded that that company wished a Mr Mar Fan to be nominated to hold the share in JYA in place of the testator and required Mr Mar Fan to execute a declaration of trust in favour of YTA together with a blank share transfer form. Mr Mar Fan executed these documents on the same day and a board meeting of JYA was also held that day approving the transfer. It appears that the testator was a director of both companies until his death together with various other individuals and that AC had been an alternate director of YTA. After the death of the testator PC and AC were appointed as directors of JYA but AC resigned as an alternate director of YTA.

107 In December 2005 a request was made for accounts of JYA for the two years prior to the testator's death in order that the executors could be satisfied that no monies were due to the estate. AC wrote to Advocate Binnington in February 2007 suggesting that a letter be addressed to the company requesting such information. Unfortunately this does not appear to have happened and Advocate Binnington subsequently discovered, from an internet search, that JYA and YTA had been placed in voluntary liquidation on 16th August, 2007, and that a liquidator in Sydney had been appointed.

108 At a subsequent meeting held in Singapore, AC and PC assured the other executors that the estate had no financial interest in the Australian structure. Following discussion, they produced to the meeting copies of the accounts of JYA and YTA audited by KPMG Australia, which did not show any residual interest by the testator in the companies. It was noted that the auditors had certified that, in auditing the accounts, they had had regard to compliance with Australian charities legislation, the structure being exclusively charitable. Advocate Binnington and CG also reviewed the YTA trust deed which confirmed that the trust was entirely charitable and could not be amended to benefit non-charitable purposes or individuals. In the light of this, all the executors except MC concluded that the matter should be regarded as closed.

109 MC has expressed a number of concerns about the way in which this matter has been handled by PC/AC. She points out that no voluntary disclosure of the existence of the structure was made by them despite the fact that, following the death of the testator, they were both directors of JYA. When the matter was identified by the Australian tax advisers, accounts were not promptly disclosed, nor was any intimation given by PC or AC that the companies were going to be placed in liquidation. She also understood that a request had been lodged with the Australian tax commissioner that permission be given to destroy all the documents of the companies immediately, although these would normally be kept for five years following a liquidation. She does not know whether this request was granted. In the light of these matters she has residual concerns that the full picture has not been given. She is supported in this by Mrs C.

110 BNP, as 99% residuary beneficiary, takes the view that it is clear that the structure was exclusively charitable and the companies were in any event placed in liquidation five years ago. It considers that no good reason has been identified as to why further time and expense should be incurred on investigating this issue.

111 As to the executors, as already stated, with the exception of MC they agreed some time ago that the matter should be regarded as closed. In particular, CG, as the professional executor and as an executor who has supported MC on many matters, has expressed the view that there is no real evidence to suggest that the assets form part of the estate and the matter should now be brought to an end.

112 We can understand MC's concerns as to the manner in which this matter emerged. One might have expected PC/AC, given that they were directors of JYA following the testator's death, to have been more forthcoming about the existence of the structure, its charitable nature and the fact that it was to be placed in liquidation. However, the issue for us is whether there are any reasonable grounds for believing that there exists an asset of the estate either in the form of a shareholding in the structure or a loan to it.

113 We have no hesitation in concluding that, on the basis of the information produced to us, there are no reasonable grounds for incurring further expenditure at the expense of the residuary beneficiaries. We summarise our reasons as follows:–

(i) The Report shows that, albeit somewhat belatedly, accounts of JYA and YTA were produced to the executors. Those accounts were audited by KPMG Australia from which comfort can be drawn. The auditors apparently certified that the structure was exclusively charitable and that, in auditing the accounts, they had regard to compliance with Australian charities legalisation/regulation. No one has suggested that the accounts showed any form of a loan due by JYA or YTA to the testator and therefore to his estate.

(ii) It is not only the auditors who have certified that the structure was exclusively charitable. Advocate Binnington and CG, as lawyers, have reviewed the YTA trust deed and have confirmed that the trust was entirely charitable and could not be amended to benefit non-charitable purposes or individuals.

(iii) The structure was in any event liquidated some five years ago.

(iv) MC's concerns as to the manner in which the existence of the structure was disclosed cannot outweigh the concrete evidence before the executors as to the charitable nature of the structure and the fact that the estate had no interest therein.

114 We therefore direct that the executors need take no further action in relation to this matter.

(ii) JCL Loan

115 The information in relation to this matter is set out in some detail in the Report at pages 21–25. MC has also commented helpfully at paragraphs 29–31 of her third affirmation. We

can therefore summarise the position comparably briefly.

116 In November 2005, shortly before the submission to the Australian tax office on behalf of the estate was due to be made, MC's legal adviser suggested that it was common knowledge in the family that a sum of money had been lent by the testator some years ago to EL, the husband of JCL, the third youngest daughter of the testator. The relevance of this presumably was that JCL and her husband reside in Australia and a loan would therefore have been an Australian situated asset.

117 Accordingly CG, on behalf of the executors, emailed JCL asking for confirmation as to whether the loan was made, its amount and details of repayment. JCL responded on 5th December, 2005, confirming that the sum of A$1m was lent by the testator to a company owned by her and EL in 1995 and recorded as a loan to the company. She stated that, following the flooding of the company's factory during a hail storm, the testator had told her husband that he did not want to know anything further about the business, telling him to wind up the business and saying *"what's lost is lost"*. She stated that in September 2001, the testator had told her that the amount had long been written off. In terms of documentation, she believed that there was an application letter from her husband, a list of terms and conditions specified by the testator as to what her husband could do and what he agreed not to do, and a loan document for the company's records. Her husband had seen these documents but they believed that all these papers were kept by the testator. In the light of this, she did not believe there was any outstanding issue to concern the executors.

118 EL subsequently confirmed the account given by JCL and that the loan to the company had been written off by the testator prior to his death. He suggested that if the loan still existed, the testator would have retained the full set of documents.

119 It was thought at one stage that these documents might be found in a locked cabinet in the family office which, for various reasons, was not opened until February 2008; but when it was opened, no documentation relating to the loan was found. On enquiry thereafter by Advocate Binnington as to whether JCL or EL might have further documentation in their possession which would support the waiver of the loan, JCL responded on 7th November, 2008, stating there was nothing further she could add.

120 Advocate Binnington, on behalf of the executors, subsequently took advice from Messrs Allens Arthur Robinson seeking advice under Australian law in relation to the alleged loan. The advice received was that, in the absence of any evidence to contradict the statements of JCL and EL, the executor should conclude that the loan was made to a company of which JCL was a director, rather than to JCL personally. As to whether the debt had been released, the advice was that, given the context in which the alleged statement by the testator had been made, a court would more likely infer that the testator intended to release the company from its legal obligation to repay the loan rather than that he was just making a statement as to the commercial likelihood of it being recovered. The firm advised that, if the executors decided to undertake further investigations, they would first need to identify the

company to which the loan was made, whether it had been de-registered and whether it had any assets. Even if the borrowing entity did have assets, the firm advised there would still be significant uncertainty as to whether the loan would be recoverable and in those circumstances the executors could reasonably decide either to make further enquiries into the factual background or not to pursue the loan on the basis that the cost of litigation, combined with the uncertainty as to whether such litigation would be successful, outweighed the potential benefit in recovering the loan.

121 Further enquiries established that there were two companies which might be the company in question. The first was Lab-Tech Industries Pty Limited (“Lab-Tech”) and the other was Ausland Australia Pty Limited. In relation to Ausland, a search showed that 45 shares were held by AC, 15 by PC, 30 by JCL and 5 by EL.

122 On 13th January, 2009, PC advised the executors that he recognised the name of the company with the words Lab-Tech and believed that this was the company associated with EL's factory. PC also advised that he was not aware of the company called Ausland and was unsure why he held shares in this company.

123 On 26th January, 2009, Advocate Binnington wrote to JCL asking her to provide the name of the company that received the loan and requesting copies of the relevant company accounts. JCL responded to the effect that the arrangements had been cleared during the testator's lifetime and she was not prepared to provide any further information. Subsequently on 27th March, 2009, Advocate Binnington wrote to EL indicating that company searches had revealed two companies as potentially relevant, namely Lab-Tech and Ausland and requesting that copies of the relevant company accounts evidencing the loan and its treatment be provided. EL responded by email on 11th April, 2009, to the effect that the money was remitted to Lab-Tech and had nothing to do with Ausland. He indicated that Lab-Tech had stopped trading three years ago and it had not been able to repay its financier (the testator) or its directors. Further requests to EL for production of the accounts elicited no response. Furthermore PC and AC refused to obtain the accounts for Ausland on the basis that there was no evidence that Ausland was the company involved.

124 At an executors' meeting on 24th July, 2009, PC and AC indicated they were not prepared to authorise any further costs being expended on this issue as they considered the issue should be referred to the residuary beneficiaries. In view of the impasse it was agreed (MC dissenting) that the matter be referred to the residuary beneficiaries.

125 This does not appear formally to have been done. However, they have since expressed views as summarised below.

126 Essentially, the matter rests there although, when preparing her third affirmation, MC established (through her advisers) that Lab-Tech had been de-registered from the Australian registrar of companies on 25th May, 2011.

127 MC has expressed concerns about the position. She points out that, if in truth the loan was waived as alleged by JCL/EL, it would be straightforward for Lab-Tech's accounts to be produced which would show this to be the case. The fact that JCL and EL have refused to assist — and that JCL at one stage even refused to identify the name of the company to which the loan had been made — was highly unsatisfactory. She is therefore reluctant to see the matter dropped, although she will accept this if the Court so orders. Mrs C shares her view.

128 At para 2.4 of her position paper, CG summarised the position as follows:–

> *"Investigations into these assets had been met with delay, non-cooperation and bitterness.* In CG's opinion, the executors have taken the investigations as far as practicable in light of such non-disclosure and such investigations may now, if the Court so orders, be terminated; alternatively, this matter may be remitted for final decision by the residuary beneficiaries."

129 BNP considered the matter at some length in its position paper of January 2010. It concluded that on balance and having regard to the amount in question and the costs and chances of success of recovery, no further action need be taken by the executors and the matter could now be dropped. That remains its position. PC/AC are also of the view that the matter should not be pursued further.

130 We agree with the views of CG and MC that there has been a disappointing lack of cooperation, particularly by JCL and EL. Nevertheless the Court and the executors have to deal with the position as they find it. We have concluded on balance that it is reasonable for the executors not to make any further investigations into this matter. We would summarise our reasons as follows:–

> (i) The only evidence available at present comes from JCL and EL. This is to the effect that there was a loan of A$1m from the testator to Lab-Tech but that this was waived by the testator following the flooding of the company's factory.
>
> (ii) The only realistic possibility of showing that the loan was not waived is if Lab-Tech's accounts and records show the loan as still being due. In the absence of voluntary disclosure, it will be necessary to institute proceedings in Australia seeking production of the accounts. Legal advice is to the effect that the executors would need to show at least an arguable case that there was such a loan. It is not clear that that threshold would necessarily be met. Any proceedings would therefore be uncertain in their outcome.
>
> (iii) Even if such proceedings were successful and an order were obtained, the outcome would only be worthwhile if Lab-Tech had assets with which to repay the loan. It now transpires that the company was de-registered — which we take to mean dissolved — in 2011 and accordingly it is very unlikely that any liability could be

successfully enforced against it.

(iv) Any action by the executors must of course ultimately be for the benefit of the residuary estate, which will also bear any costs incurred. BNP is the 99% residuary beneficiary and it has expressed the clear view that it does not wish further expense to be incurred on this issue. We appreciate of course that Mrs C does not take this stance.

131 Nevertheless for the reasons given, we conclude on balance that it would not be right to direct the executors to take further action on this matter.

(iii) Singapore Property Infringement Issue

132 Before and after the death of the testator, subsidiary companies of Yee Tak Charitable Foundation (International) Limited ("YT") and Jan Yee International Limited ("JY") purchased properties in Singapore. These purchases may well have been in breach of the Singapore Residential Properties Act ("SRA") which prohibits foreign ownership of certain Singapore properties. YT and JY are both Jersey companies. YT is the trustee of a charitable foundation established by the testator in 1987. It held the shares carrying the economic rights in JY, which is a substantial investment company. The shares in YT and the shares carrying the voting rights in JY were owned by the testator until the date of his death.

133 Under clause 6 of his Will he gave all the shares he owned in YT and JY to his executors for the purpose of pursuing his charitable objectives. An issue arose as to the validity of that gift and in 2004, a compromise was reached in proceedings before this Court whereby those shares in YT and JY which had been owned by the testator were removed from the estate.

134 Advice has been taken from the Singapore legal firm of Drew & Napier on a number of occasions as to any potential exposure of JY and YT, their directors and executors to the criminal penalties which may be levied for a breach of the SRA.

135 Drew & Napier have advised on a number of separate occasions. Their final advice on the issue of the exposure of the executors to prosecution under the SRA for breach of the SRA is contained in an email dated 23rd March, 2011. They said that they had been asked to advise whether it would be possible for any of the testator's executors to be prosecuted in the event that the testator was found to be in breach of the SRA by reason of the fact that he was an officer of YT at a time when YT acquired some residential properties in Singapore. The advice was clear to the effect that any penal liability of the testator was extinguished upon his death. It would not be possible for any criminal proceedings to be brought against his estate or any of his executors in respect of any breach on his part of the SRA. The advice pointed out that any other persons who were office holders of YT at the time it

acquired the properties could be prosecuted and would remain liable to pay a fine of up to S$10,000 each.

136 Following receipt of this advice, CG agreed that the issue could be taken off the estate agenda. In her position paper CG said that she remained of the view that this was an issue which had been comprehensively examined and which could now be laid to rest. PC, AC and BNP are of a similar view.

137 However, MC remains concerned there may be some exposure for the executors in respect of any acquisition of property in Singapore by YT or JY or a subsidiary at a time between the death of the testator and the compromise of 2004.

138 It would seem from the advice of Drew & Napier that the offence is committed by the company which acquires the property in breach of the law, although there is a provision in the SRA which enables criminal penalties also to be levied against any officers of the offending company at the time of the breach of the law. Thus, whilst any individual who was a director of YT at a time it committed a breach of the SRA could in theory be prosecuted, it would be in that capacity. We have not been referred to anything which suggests that the executors (in their capacity as such) could be prosecuted for any breach committed by YT at a time when the shares in YT were held by the estate.

139 In the circumstances we agree with all the other executors and see no need for this matter to be taken further.

Summary of Conclusions

140 We invite counsel to liaise with the Greffier in order to agree the exact form of order to reflect the decisions which we have reached and we will hear counsel further on the exact form of order should this become necessary. However we would summarise our conclusions as follows.

141 In relation to Mirador, we direct the executors to transfer the shares in Mirador and any loan account owed by Mirador to the estate as to 99% to BNP and 1% to Mrs C. If Mrs C and BNP reach an agreement for a 100% distribution to BNP as envisaged in paragraph 29, the executors may proceed in accordance with any such agreement.

142 In connection with the remaining matters, we have directed Advocate Binnington to carry out certain investigations on behalf of the executors. One of the difficulties of the present position is that Advocate Binnington is merely the administrator employed by the executors. He therefore has to obtain the agreement of all the executors before he can act. He is accordingly hamstrung where they disagree. We wish to emphasise what is said at paragraph 103 of the judgment to the effect that Advocate Binnington is to carry out such

investigations as he reasonably thinks fit in order to attain the objectives described in this judgment. If, for example, the result of a particular enquiry opens up a further line of investigation, he may take any follow up action which he reasonably considers appropriate and proportionate without the need to seek the authority of the executors or this Court.

143 In deciding what further enquiries to make, Advocate Binnington should of course have regard to the need for proportionality. On the one hand, it is appropriate to make reasonable enquiries to ascertain the nature and extent of the estate but on the other, it may no longer become appropriate to incur further time and expense if it emerges that any disputed asset will in any event be of little or no value.

144 As to Green Projects and 618, Advocate Binnington is directed on behalf of the executors to carry out investigations with a view to establishing (i) whether those companies are owned directly or indirectly by the estate, (ii) whether (regardless of ownership) they are indebted to the estate, and (iii) the financial position of the companies so as to establish whether there is any value in any claim to ownership of or indebtedness by these companies. The investigations should comprise those described in paragraphs 42 and 44 of this judgment together with such further enquiries as he may reasonably think fit.

145 As to Community Service Projects, Advocate Binnington should on behalf of the executors carry out the investigations summarised at paragraphs 63(ii) and (iii) together with such other enquiries as he may reasonably think fit.

146 As to clause 3(A) documents, we direct that Advocate Binnington, on behalf of the executors, should send the letters referred to at paragraph 88 and take such steps as may be necessary to collate and gather in any documents identified as a result of the letters. He is further authorised to send any similar letters to other persons whom he considers may be in possession of documents falling within clause 3(A).

147 As to PC and AC, we direct each of them to swear an affidavit/affirmation within a time to be fixed containing the following information:–

(i) all information of which each is aware which relates to the ownership and affairs of Green Projects and 618 (including any information as to the value of Natural Components and any other asset of Green Projects or 618) and any documents relating thereto which are in their possession or which they are able to obtain;

(ii) all facts and matters relied upon (including any documentary evidence) in relation to the assertion that the sum of S$495,000 contributed by the testator to Greenware Technology was a gift rather than a loan;

(iii) the information in relation to Community Service Projects described at paragraph 63(i).

148 We direct that no further steps need to be taken by the executors in relation to (i) JYA and YTA, (ii) the JCL loan, and (iii) the Singapore property infringement issue.

Costs

149 The Court orders that the costs of the executors be paid out of the estate on the trustee indemnity basis and those of BNP and Mrs C, as residuary beneficiaries, be paid out of the estate on the indemnity basis.