PC v LC

Jurisdiction:	Jersey
Judge:	Sir Michael Birt, Jurats Blampied, Ramsden, Birt
Judgment Date:	25 January 2021
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Text

[2021] JRC 23

ROYAL COURT

(Samedi)

Before:

Sir Michael Birt, Commissioner, and Jurats Blampied and Ramsden

Between
(1) PC
(2) AC
Representors
and
(1) LC
(2) MC
(3) Caroline Garnham
(4) Alan Binnington
(5) BNP Paribas Jersey Trust Corporation Limited

(6) Mrs C
Respondents

Advocate R. O. B. Gardner **for the Representors**.

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

Advocate J. M. P. Gleeson **for the Third Respondent**.

Advocate J. P. Speck **for the Fourth Respondent**.

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

Authorities

Re C, Garnham v PC [2012] (1) JLR 204

Re C, Garnham v PC [2012] JRC 050.

Garnham v PC [2013] JRC 088.

Dicey, Morris and Collins, The Conflict of Laws (15th Edition).

Children's Investment Fund Foundation (UK) v Attorney General [2020] 3 WLR 461.

Re Z Trusts [2020] JRC 072.

Estate — reasons for granting the relief sought

THE COMMISSIONER:

1 This is yet another instalment in the saga of the administration of the estate of the testator, who died as long ago as 10 th December 2001. Previous judgments are to be found at *Re C, Garnham v PC* [2012] (1) JLR 204, [2012] JRC 050 ("the 2012 judgment") and *Garnham v PC* [2013] JRC 088 ("the 2013 judgment"). In addition, there have been other applications to the Court.

2 The Court is now requested to make further orders in order to resolve the deadlock between the executors and, hopefully, enable the administration of the estate to be completed in the reasonably near future. Following the hearing, the Court granted the relief sought subject to certain minor amendments. We now give reasons for our decision.

The background

3 The full background is to be found in the 2012 judgment, to which reference should be made as necessary. In briefest outline, the testator was a successful businessman who died on 10 th 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. These four children were named as the executors of his Will, together with not more than two of the partners of Simmons & Simmons. By his Will, the testator left his residuary estate, which was substantial, as to 99% to the Fifth Respondent ("BNP") as trustee of an inter vivos settlement known as the General Distribution Settlement ("GDS") and as to 1% to Mrs C. The GDS is largely for charitable purposes but includes some provision for family members.

4 Probate of the testator's Will dated 30 th June, 2001, was granted in Jersey on 17 th October, 2002, to five executors, namely PC, AC, LC, MC and CG. CG was a partner in Simmons & Simmons at the time but she has since left and ceased to practice. She remains however as one of the five executors.

5 Problems arose in connection with the Will and in particular there was an issue as to the validity of clause 6, which dealt with certain substantial assets. This was the subject of proceedings before this Court, which were compromised at a hearing on 11 th June, 2004.

6 The 2012 judgment related to a loan of some Singapore (S)$21.5m made by the testator to a BVI company referred to as SDL, which was owned by PC and AC. There was uncertainty as to whether that loan remained outstanding. 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 the debt. 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.

7 The Court found that the executors were deadlocked and that it had jurisdiction to resolve the deadlock by reaching its own decision as to what was in the best interests of the residuary beneficiaries. Having considered the matter, the Court directed that the SDL claim should be assigned to BNP.

8 In passing, it said at paragraph 93 (iv):

> ***"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…. 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."

9 The Court went on at paragraph 93 (vi) to say that the interests of all the beneficiaries of the estate would be best served by bringing the administration of the estate to a close as soon as possible.

10 Sadly, that did not occur and in the 2013 judgment, the Court had to consider a number of matters where the executors were once more deadlocked. Again, the dispute was between PC / AC on the one hand and MC on the other. LC and CG were essentially neutral. The residuary beneficiaries were also again split, with BNP and Mrs C taking differing views on most of the issues.

11 At paragraphs 30–90 of the 2013 judgment, the Court considered a number of companies which were thought either to have been beneficially owned by the testator or which were thought to owe money to entities owned by the testator (and hence the estate). PC and AC felt that further investigations were not necessary or proportionate given the perceived value of the entities in question, whereas MC contended that the position had not been fully investigated in accordance with the executors' duties.

12 The Court directed that certain further matters should be investigated and it appointed Advocate Binnington to carry out these investigations. Advocate Binnington had been appointed as administrator of the estate on behalf of the executors in June 2006. He has so acted since then, but the difficulty has been that he needs to have the authority of all the executors in order to progress matters and this has rarely been forthcoming. The Court did its best to address this issue by providing in the Act giving effect to the 2013 judgment that Advocate Binnington was authorised to exercise his own judgment and discretion as to the exact nature and extent of the investigations, and that he should carry out such reasonable and proportionate investigations as he thought fit in order to comply with the order. The Court further ordered that he should prepare a report to the executors containing the results of his investigations and any recommendations as to the way forward, or whether matters had been taken as far as they could be. The reader should refer to the 2013 judgment for details of the exact nature of the investigations and the matters at issue.

Events since the 2013 judgment

13 Advocate Binnington produced a draft report for comment in August 2016 and a final report (although it was still labelled *'draft'*) in March 2017. His report ("the Report") considered each of the areas which he had been instructed to investigate, reported on his findings and made certain recommendations as to how matters should be brought to a conclusion in respect of each company or issue which he had investigated, including whether no further steps should be taken.

14 Unfortunately, it has not been possible for the executors to agree on whether to accept his recommendations. Indeed, the executors have not even been able to agree to hold a meeting since delivery of the Report in order to discuss its conclusions. As has been the history of the administration of this estate, the executors are divided and deadlocked.

15 In these circumstances, the Representors, PC and AC, issued the present Representation on 18 th March, 2019, seeking directions from the Court. The Representation has subsequently been amended and, when we refer to the Representation, we are to be taken as referring to the Amended Representation.

16 The deadlock has continued since the issue of the Representation. To take but two examples:

(i) Certain resolutions, payment instructions and other documents needed to be signed by the executors in order to complete the winding up and dissolution of certain BVI companies which form part of the estate. All the executors except MC had signed, but MC made clear at paragraph 21 of the position paper dated 25 th September, 2019, circulated on behalf of her and Mrs C ("the Position Paper") that she would not sign any documents in relation to the BVI companies, although she understood that the Court might authorise the Viscount to sign in her stead. The Court made such an order on 21 st November, 2019, authorising the Viscount to sign the necessary documents on behalf of MC.

(ii) In 2019, BNP Paribas made an internal decision to move all banking arrangements from its Jersey branch to BNP Paribas (Suisse) SA. It was necessary for the executors to sign various documents in connection with this transfer of the banking arrangements of the estate. MC would not agree to sign the necessary documents, with the result that Advocate Binnington issued a summons on 24 th February, 2020, seeking an order that the Viscount be authorised to sign on her behalf. On 28 th February, 2020, MC confirmed through her advocate that she was not taking any position in relation to the summons but would not sign any documents in relation to the transfer of the estate's banking arrangements. She understood that the Court might authorise the Viscount to sign the necessary documents in her stead and the Court duly made such an order on 20 th March, 2020.

The relief sought by the Representation

17 The Prayer of the Representation sets out in considerable detail the draft order requested of the Court. We would summarise its broad effect as follows:

(i) Advocate Binnington to be authorised to take all necessary and desirable steps to wind up the estate as soon as practicably possible without recourse to the executors and to execute all documents as may be necessary for that purpose on behalf of the

executors. Such steps should include the following:

(a) To pay any further fees and take any other steps necessary to procure the dissolution of the remaining BVI companies.

(b) To appoint Malaysian advisers with a view to negotiating a full and final settlement of certain claims in respect of four Malaysian companies, namely Victory Towers (M) Sdn Bhd ("Victory Towers"), Quality Prospects (M) Sdn Bhd ("Quality Prospects"), Natural Components (M) Sdn Bhd ("Natural Components") and Southern Blossom (M) Sdn Bhd ("Southern Blossom") (collectively the "Malaysian Companies"); determination of any amount necessary to settle the claims to be decided in the absolute discretion of Advocate Binnington.

(c) To sell the remaining assets (four condominiums) of Southern Blossom.

(d) To arrange for the books and records of the Malaysian Companies to be brought up to date, to settle any non-estate related creditor claims and then arrange for the winding up / striking off of the Malaysian Companies.

(e) To obtain any necessary waivers from estate related creditors, save that any sum left shall be used to pay any amounts due beneficially to Mirador Investment Limited (a company which formed part of the estate but is now owned 99% by BNP as residuary legatee (and 1% by Mrs C) following the decision of the Court in the 2013 judgment).

(f) To procure the winding up of Humana Health Care (Natural) Centre Pte Limited.

(ii) Advocate Binnington to have the right to request that any funds necessary for the above purposes be loaned by the executors from the estate bank account.

(iii) Advocate Binnington to issue quarterly reports reporting on his progress in relation to the above matters.

(iv) A process to be established whereby Advocate Binnington can, if he wishes, canvas the executors' views prior to implementing a decision. This will involve giving notification to the executors and receiving any comments. If Advocate Binnington decides to maintain his decision, a disagreeing executor will have fourteen days in which to bring the matter before this Court; if no executor does so, Advocate Binnington may implement his decision.

(v) Where a majority of the executors are prepared either to approve a loan or to sign any documents in relation to the estate, the Viscount to be authorised to sign on behalf of any executor who fails to do so provided that, if a non-consenting executor brings that matter back to Court within a specified time limit, no further action is to be taken until the Court has ruled upon the matter.

(vi) Finally, the Court to direct that no further steps shall be taken, whether by the executors or Advocate Binnington, in respect of nineteen specified matters. These

matters are set out in paragraph (7) of the Prayer to the Representation. For the sake of simplicity, we shall continue to refer to paragraph (7) although, when the Act was prepared, the numbering changed and paragraph (7) became paragraph (6).

18 Advocate Binnington has set out a step plan ("the Step Plan") as to the various steps which would be necessary to achieve the above objectives.

19 The position of the executors in relation to the relief sought in the Representation was as follows. Naturally, PC and AC, as Representors, supported it. CG had a few queries but was essentially supportive of the relief sought. LC was neutral, having played no part in these proceedings. MC did not consent to the proposed directions. She believed that further enquiries needed to be carried out in a number of areas but said in her skeleton argument that she was neutral in relation to the Representation. She said, however, that she was not willing to sign resolutions authorising payment of any fees, nor was she willing to sign the accounts of the estate or any related resolutions. Mrs C associated herself entirely with the submissions of MC. In a letter dated 28 th May, 2020, Messrs Ogier, on behalf of BNP, wrote as follows:

> *"BNP considers that the Royal Court's observations from eight years ago to be (sic) of equal weight now.* BNP is not seeking to attribute blame for that position nor is it wishing to be drawn into any disputes as between the executors. However, the Court is now faced with a great deal of evidence from the executors which is disproportionate to the outstanding issues that need to be resolved.
>
> *As 99% beneficiary, BNP supports an approach that brings matters to a conclusion swiftly and proportionately.* In that regard, BNP has considered all of the evidence that has been filed by the executors. In particular, BNP notes the considered response of Advocate Binnington in his third affidavit, which endeavours to take into account the concerns raised by [MC]. BNP also notes the proposals made by [PC] and [AC] in their affidavits very recently served.
>
> *Whilst BNP is neutral on the disputes raised, it is not opposed to the steps proposed by Advocate Binnington in the Steps Plan (as amplified in his third affidavit) and the further measures proposed by [PC] and [AC] in their Amended Representation (and evidence) which prima facie are measured and proportionate and which would see the administration of the estate brought to a conclusion as swiftly as is possible in all of the circumstances presently prevailing."*

At its request, BNP was excused from attending the hearing, being content to rest on the above statement of its position.

Jurisdiction

20 The Representors are effectively asking the Court to direct that the executors delegate their powers in connection with the Malaysian Companies, the BVI companies and the winding up of the estate to Advocate Binnington. The question arises as to whether this Court has power to make such an order.

21 As the Court said at paragraph 12 of the 2012 judgment, even though the Will is expressed to be governed by English law, this aspect is governed by Jersey law. That is because it is Jersey which has issued the grant of probate to the executors and from which they accordingly derive their authority. Matters of administration (as opposed to interpretation or essential validity of the Will) are governed by the law of the country from which the executors derive their authority; see Rule 143 of Dicey, Morris and Collins, The Conflict of Laws (15th Edition) at 26R-030.

22 It is common ground that the executors are deadlocked. We entirely agree. It is noteworthy that the position is not really any further advanced than it was at the time of the 2013 judgment. Advocate Binnington has submitted his Report as directed by the Court in the 2013 judgment, but nothing has really happened since then because the executors have been unable to agree on anything. It is extremely unfortunate that so many legal and other costs have been incurred (at the ultimate expense mostly of charity) because of the executors' inability to act as a body.

23 In the 2012 judgment, this Court held at paras 62–89 that the Court has a general power to intervene and give directions where executors (or trustees) are deadlocked and the estate or trust cannot be properly administered. The United Kingdom Supreme Court has recently referred with apparent approval to the 2012 judgment when summarising the position to similar effect in *Children's Investment Fund Foundation (UK) v Attorney General* [2020] 3 WLR 461. Lord Briggs (speaking for the majority) said this at [219]:

> ***"There is a useful parallel in the situation which arises where trustees who have to act unanimously in deciding whether or how to exercise a fiduciary power find themselves deadlocked and, exceptionally, the Court needs to resolve that deadlock in order to enable the trust to be duly administered.*** The Court may be called upon to do so by one or more of the trustees, without a surrender of discretion by all of them, or indeed on the application of any interested party, such as a beneficiary. The opposing sides among the trustees may each have perfectly reasonable and bona fide views about whether the exercise, or non-exercise, of the relevant power would best serve the interests of the beneficiaries. Where in such a case the Court ***chooses to decide whether or how the power should be exercised, in the best interests of the beneficiaries, then it becomes the duty of all the trustees to act in accordance with the Court's decision, regardless whether they agree with the court's view about the merits of the matter.*** If necessary the Court may direct them to do so. For a useful summary of English and Commonwealth authorities on this aspect of the Court's jurisdiction in the administration of trusts, see *Garnham v PC* [2012] JRC 50."

24 What is sought in this case is a direction that the executors should exercise a power of delegation. We need to consider first whether the executors have such a power, as the Court does not have power to direct executors (or trustees) to exercise a power which they do not possess.

25 Clause 7 of the Will provides as follows:

> *"In the management and administration of all assets falling to be invested or held under the trusts of this my Will or any Codicil to it my Trustees shall have the powers which are lawfully capable of being conferred on trustees to the same effect as if such powers were expressly conferred by this my Will and specified in full and the Trustees may exercise or omit to exercise all or any of such powers as my Trustees think fit [as] if they were absolute beneficial owners of such assets."*

Clause 2.4 of the Will states that references to *'my Trustees'* includes the executors.

26 Clause 12 of the Will provides:

> *"The trusts powers and provisions of this my Will shall be governed by and interpreted according to the law of England and Wales."*

It follows that Clause 7 must be interpreted according to English law.

27 Section 11 of the Trustee Act 2000 provides, so far as relevant, as follows:

> ***"(1) Subject to the provisions of this Part, the trustees of a trust may authorise any person to exercise any or all of their delegable functions as their agent*** .
>
> ***(2) In the case of a trust other than a charitable trust, the trustees' delegable functions consist of any function other than…."***

There then follow four functions which are not delegable functions, but they are not relevant to the present case.

28 Section 35 of the 2000 Act provides that it applies in relation to personal representatives administering an estate as it applies to a trustee carrying out a trust. Accordingly we are satisfied that the executors in this case have the power to delegate to Advocate Binnington those matters which are referred to in the Prayer to the Representation and which we have summarised at paragraph 17 above.

29 As the executors have power to make such delegation but are deadlocked as to its exercise, this Court has power to break the deadlock by directing such delegation if it

considers that this is in the interests of the beneficiaries of the estate. In passing, we note there is another Jersey case where this Court has directed the exercise of a power of a delegation (albeit in very different circumstances where the trust had become insolvent), namely *Re Z Trusts* [2020] JRC 072.

Exercise of the jurisdiction

30 In the joint skeleton argument filed on behalf of MC and Mrs C, it was stated at paragraph 3 that they were both neutral in relation to the Representation. However, in her affirmation prepared for these proceedings (which essentially reflected the contents of the Position Paper) MC set out various *'concerns'*, some of which were also addressed by Advocate Dickinson in his oral submissions. Although Mrs C has joined in all of MC's submissions, we shall, for convenience, refer simply to the submissions as being made on behalf of MC.

31 As an overarching point, MC is critical of the Report. She says that it took far too long in its preparation and leaves many questions unanswered. Following its production, she asked a number of questions of Advocate Binnington, but says that they were not answered satisfactorily. Similarly, she considers that the Step Plan is insufficiently detailed and does not give an indication of the potential costs. She questions whether Advocate Binnington is the right person to bring matters to a conclusion.

32 We addressed the issue of who should carry out the investigation and prepare the Report at paras 98 – 103 of the 2013 judgment. We concluded that Advocate Binnington was the right person. In our judgment, many of the remaining uncertainties arise not from inadequacies in the Report but from the way in which the testator managed his affairs. It is clear that he was an influential figure whose word people were accustomed to act upon. It would seem that he put very little in writing and relied on people he trusted. As a result, there is often no satisfactory evidence as to whether shares in companies were owned outright by the registered shareholders (with the testator being content to trust them to act in accordance with his wishes) or whether they were holding them as nominee for the testator (in which case they would be legally obliged to act in accordance with his instructions).

33 Having considered the points made by MC in her affirmation, we are quite satisfied that, if the winding up of the estate is to be delegated to anyone, it should be delegated to Advocate Binnington. Given his involvement over many years, he has an enormous knowledge of the estate; he is a lawyer and experienced trustee and he is amenable to the Court's jurisdiction. We have no reason not to have confidence in his ability to carry out the functions which it is proposed should be delegated to him.

34 We turn next to the proposed delegation concerning the Malaysian companies and the associated claims. At paragraphs 32–128 of her affirmation, MC raises questions in relation to each of the four companies in turn and makes suggestions as to where she considers further information is required and further investigations could be carried out. At paragraphs

129 – 148, she points out where further information is required in connection with the possible claims.

35 We do not think it necessary in this judgment to recount those concerns in detail. Suffice it to say that we have carefully considered each of the above paragraphs in her affirmation as well as the points she makes in the Position Paper and asked ourselves whether it is right that further enquiries should be carried out. In our judgment, it is necessary to maintain a sense of proportion. It seems clear that, apart from the four condominiums owned by Southern Blossom and modest cash balances in some cases, there is little or no value in the four Malaysian Companies. This is not surprising. They seem to have been established for the testator's charitable and medical activities in Malaysia and were not expected to profit. He appears to have contributed funds by way of loan (directly or indirectly) as and when required.

36 This is a very substantial estate which is intended largely for charitable purposes. The Malaysian Companies and the associated claims are virtually the only matters which remain outstanding, the rest of the administration having essentially been completed some time ago. In our judgment, to carry out further investigations and enquiries as suggested by MC would incur further costs which would be out of all proportion to any value in the companies, particularly given the uncertainties as to whether or not they were beneficially owned by the testator and their limited financial position. Furthermore, it seems unlikely that further enquiries would produce definitive answers to the remaining uncertainties. The Prayer of the Representation in relation to the Malaysian Companies is essentially consistent with the recommendations contained in the Report.

37 What is proposed is that the affairs of the Malaysian Companies be wound up and the companies dissolved as soon as possible and at reasonable cost. Similarly, it is necessary to resolve any claims. If there are surplus funds following these actions, such funds can be returned to Mirador Investments Limited (which originally formed part of the estate but which is now owned 99% by BNP as trustee of the GDS (and 1% by Mrs C) following the decision of this Court in the 2013 judgment) by reduction of the loan accounts with that company; if further funds are required to be injected to bring matters (including the claims) to a conclusion, Advocate Binnington will seek the approval of the executors and, provided that a majority is in favour, there is a mechanism for resolving that request if the executors cannot agree.

38 There is no agreement among the executors as to how to proceed and we have no doubt that, if the delegation is not ordered, these matters will drift on for years to come. That would not be in the interests of the beneficiaries of the estate. In the circumstances, given the deadlock which exists and which we are satisfied would continue to exist, we direct that delegation of the executors' powers to Advocate Binnington take place in the terms of the Prayer of the Representation as further amended in minor respects during the course of the hearing. This should enable the administration of the estate to be concluded within a reasonable period and the final accounts signed off.

39 We also make the direction for creating the mechanism for resolving any future disagreement when Advocate Binnington seeks a decision from the executors as set out at paragraph 17(ii), (iv) and (v) above.

40 We turn next to paragraph (7) of the Prayer of the Representation. This lists some nineteen matters (reduced to eighteen during the hearing) where the Court is invited to direct that no further steps should be taken either by the executors or by Advocate Binnington. That application is made on the basis that, following the Report, there are either no further enquiries which can reasonably be made or that any further enquiries would simply be disproportionate given the lack of value in the assets in question. The suggestions in paragraph (7) follow, for the most part, the recommendations to that effect in the Report.

41 In her affirmation, when considering paragraph (7) of the Prayer, MC reiterated that it had not been possible to obtain full and frank disclosure from those who assisted the testator during his lifetime and that, because enquiries were delayed, some of the relevant individuals had died, relevant files had been destroyed, and other relevant information had either become lost or was no longer available. She said that accordingly she did not take any position in relation to paragraph (7) of the Prayer save for three matters. This was also the position of her and Mrs C in their skeleton argument and in the Position Paper. Two of these matters related to minor drafting inconsistencies which were resolved during the course of the hearing.

42 The third related to Greenware Technology Pte Limited ("Greenware Technology") where she felt that further enquiries needed to be carried out. We deal with this at paragraphs 52–58 below.

43 Somewhat surprisingly, despite the limited nature of what was said about paragraph (7) in the skeleton argument, MC's affirmation and the Position Paper, in his oral submissions Advocate Dickinson raised a number of other areas where MC had *'concerns'* and felt that they should not be included in paragraph (7). We shall consider each of these in turn.

(a) Green Projects Donations Limited ("Green Projects") and 618 Nominees Limited ("618 Nominees")

44 The background to these two companies is set out in paragraphs 30 – 42 of the 2013 judgment and we do not repeat it. The Court directed at paragraph 44 of the 2013 judgment that, although it was finely balanced, certain further enquiries should be carried out. It was finely balanced because there was no evidence of any value in either company even at that stage.

45 Enquiries have been carried out following the 2013 judgment but they have not advanced the position. One of the directions was that enquiries should be made of Rocky Shek

("RS"). However, he was not cooperative and is now deceased. The files of Legiste Law Corporation ("LLC") were exhaustively searched but no evidence was found that the draft letters of authorisation, referred to in the fax from RS dated 21 st June 2001 ("the RS fax"), were ever executed. (As more fully described at paragraph 40 of the 2013 judgment the RS fax contains a draft of a form of authority to be signed by the directors of companies including Green Projects, Mirador Investments Limited, Medibest Pte Limited, Complementary Therapies Pte Limited and Community Service Projects Pte Limited to the effect that the testator is fully authorised to instruct Lui Lee and Leong, the predecessor firm to LLC, in all matters on behalf of each of the named companies). The only suggested asset of Green Projects was a shareholding in Natural Components, but the Report shows that there is no value in Natural Components, which has been dormant for many years. 618 Nominees appears only to have acted as a nominee company and again does not appear to have any assets. Finally, Green Projects has been struck off the Register of Companies in the BVI due to non-payment of its annual fees. No accounts have been produced for it.

46 MC does not believe that the position has been fully and properly investigated. However, even if Green Projects was beneficially owned by the testator (as to which there is considerable doubt), the company no longer exists and there is no evidence of any value in it. This is not surprising as the testator's Malaysian activities seem to have been of a charitable nature rather than a commercial nature. In the circumstances, we agree that it would be wholly disproportionate to seek to investigate the position further in relation to either of these companies.

(b) Medibest Pte Limited

47 This is not a company which is mentioned in the 2013 judgment or in respect of which it was directed that further investigations should be carried out. It was apparently a company incorporated in Singapore. The Report considers it briefly and states that it is understood that it was a company set up by the testator to purchase health products and equipment to be sold to the clinics. Investigations show that it no longer exists on the Singapore Register of Companies, and during the course of his oral submissions, Advocate Dickinson stated that it was struck off in 2007 and its records have been destroyed. Despite this, MC considers that its affairs have not been properly investigated (although no indication is given as to what investigations could now be carried out) and therefore has concerns about the Court directing that no further steps should be taken.

48 In the absence of any evidence that the company had any assets and given that it was struck off in 2007, we agree with the recommendation in the Report that no further action should be taken in respect of this company.

(c) Complementary Therapies Pte Limited

49 This too is a company which is not mentioned in the 2013 judgment. The Report shows

that it was a company incorporated in Singapore. It was apparently used to employ chiropractors, naturopaths and other practitioners at the Singapore clinic. The Report further states that the company was dissolved following a members' voluntary winding up, although no date is given.

50 Advocate Dickinson said that MC notes that this is one of the companies listed in the attachment to the RS fax referred to earlier and does not consider that it has been properly investigated. The Report recommends that no further action be taken unless new information is forthcoming which suggests that it had any assets.

51 No such evidence has been shown to us and we agree that, given the nature of its activities and the fact that the company has been dissolved, it is highly unlikely that there are any assets which are due to the estate even if – as to which the only evidence is the RS fax – the company was beneficially owned by the testator. We agree therefore that this company should be included in paragraph (7) and that no further investigations need be carried out.

(d) Greenware Technology Pte Limited

52 The background to this company is set out at paragraphs 46 – 50 of the 2013 judgment. In brief summary, Greenware Technology is a company which was incorporated in Singapore on 13 th May 1991. The testator provided the sum of S$500,000 (referred to in the 2013 judgment as S$495,000) which was used to provide the initial share capital. The issue is whether this was a loan by the testator (and therefore an asset of the estate) or a gift. The current shareholders of the company are PC and AC.

53 In the 2013 judgment, the Court directed PC and AC to swear affirmations setting out their knowledge as to whether the sum of S$500,000 was a loan or a gift.

54 PC and AC duly swore their third affirmations. PC explained that the company was set up to assist him and his aunt, FK, in gaining rights of permanent residency in Singapore by establishing a business. The initial shareholders were PC and FK (with AC holding one share). The initial accounts of the company show issued share capital of S$500,000 divided into 500,000 shares of S$1 each. Of these 375,000 are in the name of PC, 124,999 in the name of FK, and 1 in the name of AC. The accounts do not show any loan to the company, but this does not of course establish one way or the other whether the sum contributed by the testator to enable PC and FK to subscribe for their shares was a gift or a loan to them.

55 In their affirmations, PC and AC assert that it was a gift. This is supported by FK who, in a letter dated 8 th November 2017 to Advocate Binnington, states that the initial capital funding of S$500,000 was a gift from the testator and that, when AC moved to Singapore

after the testator's death, she transferred her shares to him for no consideration.

56 In the Report, Advocate Binnington states that he has not discovered any loan documentation or other information which would contradict PC's version of events; and since the date of the Report, FK has, as stated in the preceding paragraph, confirmed that the sum of S$500,000 was a gift from the testator, although it appears that no enquiry has been made of the other director of the company named in the Report. The Report recommends no further action being taken in respect of this company.

57 Advocate Dickinson submits on MC's behalf that she remains unconvinced as to whether the sum of S$500,000 was not in truth a loan rather than a gift.

58 However, in the circumstances, we agree with the recommendation in the Report that no further action be taken. There is at present no evidence to contradict the assertion by PC, AC and FK that the contribution from the testator was a gift to the shareholders to enable them to subscribe for the shares in the company and, apart from an enquiry of the other director, it is hard to see what further investigations could realistically be carried out. Even if the other director were to say that it was a loan rather than a gift, one would then simply be faced with her word against that of PC, AC and FK in circumstances where the actual recipients of any loan or gift were PC and FK, not the other director. We therefore agree that this company should remain listed in paragraph (7).

(e) Community Service Projects Pte Limited

59 Community Service Projects was incorporated in Singapore in 1997. Its initial issued share capital was S$100,002 divided into 100,002 shares of S$1 each, of which 100,001 were issued to FK and 1 to Dorothy Tan (“DT”). FK and DT are said to have transferred their shares to PC and AC on 22 nd May 2001, as a result of which PC and AC have since each held 50,001 shares.

60 The background is set out at paragraphs 51 – 64 of the 2013 judgment. In summary, there was some circumstantial evidence (e.g. the RS fax) that FK and DT were holding their shares as nominees for the testator. There was also evidence from one of the directors (the husband of MC) that, as a director of Community Service Projects, he had only signed the resolution approving the transfer of shares from FK and DT to PC and AC in July 2002, even though the resolution was dated 22 nd May 2001. It was therefore suggested on behalf of MC that ownership of a company beneficially owned by the testator had been transferred out of the estate after his death, which had occurred on 10 th December 2001.

61 In the light of these concerns, although not without some hesitation, the Court decided in its 2013 judgment that certain further enquiries should be carried out. It ordered that PC and AC should file affirmations giving full details of the financial position of Community Service

Projects and responding to the allegations concerning beneficial ownership of the company and the transfer of shares from FK and DT to PC and AC. Secondly, it directed that enquiries be made of LLC to see whether the draft documents attached to the RS fax were ever executed. Thirdly, it directed that enquiries be made of FK and DT as to whether they owned their shares beneficially or as nominees for the testator.

62 As to the second line of enquiry, as already stated, LLC have informed Advocate Binnington that a thorough search of their records has found no trace that any of the draft documents attached to the RS fax were ever executed.

63 As to the third line of enquiry, FK confirmed to Advocate Binnington in a letter dated 4 th November 2015 that she owned the shares in Community Service Projects beneficially, but no response has been received from DT.

64 As to the first line of enquiry, PC and AC filed detailed affirmations as directed. PC's affirmation in turn exhibited an affirmation from Lam Khai Cheong (“Mr Lam”) who has at all times been the company secretary of Community Service Projects and is an accountant. His firm was also the company's auditors until 2008 at which point audited accounts became no longer obligatory. However, he continued to prepare the company's annual accounts. He said that he was not aware of any nominee arrangement in respect of the shares and that he had not seen any document to suggest that FK and DT were holding their shares as nominee for the testator.

65 He gave a detailed account of the circumstances in which the transfer of shares from FK and DT to PC and AC took place. He confirmed that the transfers took place on 22 nd May 2001 and that he witnessed the share transfers, copies of which he exhibited to his affirmation. He said that these transfers were recorded in the audited accounts of the company for the year ended 30 th June 2001, which were filed with the annual return on 28 th November 2001. It is correct that those accounts record that, as at 1 st July 2000, FK owned 100,001 shares and DT 1 share, whereas by 30 th June 2001 PC and AC each owned 50,001. The audited accounts are therefore consistent with the transfer of shares from FK and DT to PC and AC having taken place in May 2001.

66 However, Mr Lam pointed out that the annual return of shareholders, filed at the same time as the audited accounts, was incorrect. It showed FK as still owning 100,001 shares and PC (rather than FK) owning 1 share as at 15 th November 2001. He says that this was simply an error and that the audited accounts filed with the annual return recorded the correct position.

67 He accepts that the board resolution may not have been signed by all the directors until later. The practice in relation to resolutions in writing was that the resolution was passed around the directors and signed as each director received it. Nevertheless, the effective

date of the transfer of the shares was, he said, 22 nd May 2001 as set out in the audited accounts which were filed with the annual return on 28 th November 2001, i.e. prior to the testator's death.

68 As to the financial position of the company, Mr Lam's affirmation exhibited all the accounts of the company up to the year ending 30 th June 2012 (his affirmation being sworn in July 2013). He states that the purpose of the company was to provide funds, donations, teaching equipment, clinical and other equipment for the promotion of community healthcare services. The accounts showed that the company has essentially been dormant. Apart from the initial share capital, it has received a loan from Merlion Management Limited ("Merlion"), which is owned by PC and AC. This loan in the sum of US$1m was provided in 2002. The proceeds of the loan have been placed on deposit by Community Service Projects and, apart from receipt of interest on the deposit, the meeting of expenses and minor donations, that remains the position. The company's balance sheet as at 30 th June 2012 shows a net deficit of S$488,328, with the amount which it holds on deposit being less than the amount which it owes to Merlion.

69 As a result of these enquiries, the Report suggests that there is no reason not to accept that the share transfer was carried out as a bona fide transaction between the parties involved and recommends no further action being taken in relation to the company.

70 As already stated, there was no suggestion by MC in the Position Paper, her affirmation or her skeleton argument that she had concerns about Community Service Projects. It was only during the course of Advocate Dickinson's oral submissions that such concerns were raised. In particular, Advocate Dickinson drew the Court's attention to the apparent inconsistency between the annual return filed in November 2001, and the suggestion that the transfer of shares took place in May 2001. He did not, however, refer us to Mr Lam's affidavit, which explained the apparent inconsistency, or refer us to the audited accounts filed with the annual return. In the light of the apparent inconsistency between the annual return and the suggested transfer date of 22 nd May 2001, we directed that MC should have the opportunity of filing any written submissions in relation to Community Service Projects, so that the Court might have an opportunity to consider her concerns.

71 By email dated 8 th December 2020, Advocate Dickinson confirmed that MC and Mrs C had instructed him not to file any written submissions pursuant to the opportunity given by the Court, although the email did then go on to raise certain concerns. The Representors then filed written submissions in response to the concerns expressed in the email, as did Advocate Binnington.

72 We do not consider that the points raised in the email take the matter any further for the reasons set out in the responses of the Representors and Advocate Binnington. There is at present no satisfactory evidence that Community Service Projects ever formed part of the estate. There is no documentary evidence to suggest that FK and DT were holding their

shares as a nominee for the testator. Mr Lam as company secretary throughout does not consider that they were and FK has stated that she was not holding her shares as nominee for the testator. DT has failed to respond.

73 Even if there were satisfactory evidence that the company was beneficially owned by the testator, it seems to us that it would be wholly disproportionate to direct further investigations at this stage. In the first place, it is by no means clear what further investigations could be carried out. Mr Lam has explained the position in some detail and has accepted that there is an inconsistency between the audited accounts filed with the annual return and the annual return itself, and asserts that the annual return is in error insofar as it relates to the shareholding. He exhibits completed share transfers, which he witnessed, dated 22 nd May 2001. More significantly, there seems little point. It is clear that this company has no value and indeed is in a deficit position in that its liability to Merlion exceeds its assets.

74 In the circumstances, we direct that no further enquiries need be carried out and that Community Service Projects remain included in paragraph (7).

75 We should add that, in the course of his oral submissions, Advocate Dickinson referred to a concern on the part of MC that monies which the testator had apparently settled during his life into a trust in the Isle of Man had been paid to Merlion but had not thereafter been applied for the purposes envisaged by the trust deed. On any view, that is not a matter for the executors. If there is a concern, it should be taken up with the trustees of the Isle of Man settlement.

Bank records

76 Finally, MC (supported by Mrs C) has asserted via Advocate Dickinson's email of 8 th December that there has not been full disclosure of all of the historical banking information and records held by BNP Paribas SA (BNP Paribas) relating to the testator and his business affairs. MC and Mrs C are of the view that a proper investigation in relation to Community Service Projects and the various other issues which concern them will not be possible unless all of the banking records are disclosed. They have therefore requested in this email that the Court directs that such historical banking information and records be delivered up by BNP Paribas.

77 Although MC raised this concern about the banking records in an email from Dickinson Gleeson as long ago as 14 th November 2017 and referred to the issue briefly in the Position Paper and in her affirmation, no application for the order she is now seeking was made in any written or in oral submissions on her behalf. Furthermore, in an email dated 9 th January 2020 in response to a query by Advocate Binnington's office, BNP Paribas stated that it did not have any such documents as they fell outside the document retention policy time frame of the bank.

78 In the circumstances, we consider that it is far too late to raise such a wide-ranging issue after the conclusion of the hearing before the Court and without leave to do so. The Court had only permitted supplementary written submissions after the hearing on the Community Service Projects issue. The executors have had eighteen years since the grant of probate in which to obtain any banking records which they have considered relevant, or to make application to the Court in the event of disagreement over the matter or a refusal on the part of the bank. The Court declines to make such an order at this very late stage.

Conclusion

79 In summary, for the reasons set out above, the Court granted the relief sought in the Prayer of the Representation, subject to certain minor modifications as reflected in the Act of Court.