

Jacobus Broere v Maurant & Company (Trustees) Ltd and

Jurisdiction:	Jersey
Judge:	Sumption JA, Rokinson JA
Judgment Date:	10 September 2003
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Text

[2003] JCA 159

COURT OF APPEAL

Before:

Miss E. Gloster, **Q.C.**, **President** J.P.C. Sumption, **Esq., Q.C.**, and K.S. Rokison, **Esq., Q.C.**

Between
Jacobus Broere
Representor/Respondent
and
Maurant & Co (Trustees) Limited
First Respondent/Appellant
and

Fusina Trust Co. Limited
Second Respondent/Appellant

and

Cornelis Broere
Third Respondent

and

Elizabeth Broere
Fourth Respondent

and

Jacoba (Jacqueline) Broere
Fifth Respondent

and

Cornelia A.K. Broere
Sixth Respondent

Advocate M.J. Thompson for the Representor/RESPONDENT.

Advocate A.D. Robinson for the First and Second Respondents/APPELLANTS.

Authorities

In Re Abacus (C.I.) Ltd [\(2000\) JLR 165](#).

Maister v Rind (14th June 1995) Jersey Unreported; [1995/111].

[UBS Trustees v Ismail \[2003\] JRC 147](#).

Appeal by the First and Second Respondents/APPELLANTS from the Judgment of the Royal Court of 14th January, 2003, whereby it was adjudged that: (1) the First and Second Respondents/APPELLANTS, as trustees of the Cornelis Broere Trust, should continue as parties to the proceedings; and (2) the Representor/RESPONDENT be awarded his costs of and incidental to the application in the Royal Court.

Leave to appeal was refused by the Royal Court on 14th January, 2003; the application was renewed to a Single Judge and was granted on 6th June, 2003; an application for leave to intervene in the appeal by the Third Respondent was refused by the Single Judge on 6th June, 2003.

THE PRESIDENT:

- 1 This is an appeal against the decision of the Royal Court, (Sir Philip Bailhache Bailiff and Jurats), dated 14 January 2003, whereby the Royal Court refused the application of Mourant & Co (Trustees) Limited and Fusina Trust Co Limited in their capacity as trustees of the Cornelis Broere Trust, ("the CB Trustees" and "the CB Trust" respectively), to be removed as parties to proceedings brought by Jacobus Broere, ("Jacobus") by Representation dated 18 July 2002 ("the Representation").
- 2 Leave to appeal was refused by the Royal Court but granted by the Deputy Bailiff, sitting as a single judge of the Court of Appeal, on 6 June 2003. A preliminary point has arisen in relation to this grant of leave. It has been submitted, albeit faintly by Advocate Thompson who appeared on behalf of Jacobus, that the leave granted by the Deputy Bailiff was limited, or conditional, in the sense that leave had only been given to present argument on appeal that the CB Trustees were not necessary or proper parties to the Representation, but that no leave had been granted to present argument in relation to Article 47 of the Trusts (Jersey) Law (1984) as amended ("the Trusts Law") and that, accordingly, leave to appeal was required to enable the CB Trustees to present argument in relation to that Article.
- 3 I do not read the judgment of the Deputy Bailiff as attaching any conditions to the leave which he granted, or as limiting the entitlement of the CB Trustees to take such points as they wished on appeal. Moreover, since a new point has, in any event, been taken on this appeal on behalf of Jacobus in relation to Article 47(2) and Jacobus's entitlement to maintain proceedings against the CB Trustees under that Article, there could be no justification for not allowing the CB Trustees to present such arguments in relation to Article 47 as they see fit. As I said, I do not consider that any further leave to appeal is required in the light of the Deputy Bailiff's order but, if I am wrong on that, and a further leave is required, I would grant it.
- 4 A brief summary of the background facts and procedural history of this matter is as follows. On 17 October 1980, Bastiaan Broere, ("Bastiaan") as Settlor, by instrument in writing, established a trust known as the Bastiaan Broere Trust (which I shall refer to as "the BB Trust"). The Respondents, Mourant & Co (Trustees) Limited and Fusina Trust Co Limited, are currently the trustees of the BB Trust. They are also, in that capacity, Respondents to the Representation instituted by Jacobus. The Settlor, Bastiaan, died on 9 May 1985. He had no children. His brother, Jacobus Broere Senior, who died in 1967, had 2 children: Leendert Broere who died in 1996, and Cornelis Broere whom I shall refer to as Cornelis. Cornelis has no children. He is also a Respondent to the Representation issued by Jacobus. Leendert had 4 children, Elizabeth, Jacobus the Representor in these proceedings, Jacoba, and Cornelia, of whom only Jacobus has issue. Cornelis, Jacobus, Jacobus's issue and his sisters are all beneficiaries under the terms of the BB Trust.
- 5 Other remoter relations of Bastiaan also fall within the definition of beneficiary under the terms of the BB Trust. Jacobus states that he and his sisters are regarded by the BB Trustees as the final beneficiaries of the BB Trust. Mourant & Co (Trustees) Limited is, as its name suggests, the trustee company of Mourant & Co, Advocates. Fusina is partially or

wholly beneficially owned by Cornelis. Cornelis is the Settlor of another trust, namely the CB Trust, established on 30 December 1980. He is also a beneficiary of that trust. Jacobus was at one time a beneficiary of the CB Trust but is no longer such, having apparently been removed as a beneficiary some time prior to the institution of these proceedings. The current trustees of the CB Trust are also Maurant & Co (Trustees) Limited and Fusina Trust Co Limited.

- 6 Until January 2001, the assets of the BB Trust consisted largely of a shareholding in a company called Broere Corporation Liberia Limited ("BCL"). BCL had at that time a shareholding of some 50% in a company called Project Management and Development Construction ("Prodamco") which owned land in the US. Following a resolution by the BB Trustees in November 2000, to distribute the assets of the BB Trust and to sell the BB Trust's BCL shares, there was a sale and buy-back by the BCL Board, and others, of the BB Trust's shares in BCL. As a result, the BB trustees had shares in Prodamco either issued or distributed to them so that, as a result of the sale and buy-back, the BB Trust owned directly approximately a 44.9% interest in Prodamco.
- 7 Up until after the issue of the Representation, the CB Trust also indirectly owned 50% of the shares in Prodamco through an intermediate holding company, Anglo American Finance Company Limited. That ownership interest in Prodamco was entirely separate from the BB Trust's interest in its Prodamco shares. Since the issue of the Representation, the CB Trust shareholding has been disposed of so that CB Trust apparently no longer has any interest, whether direct or indirect, in shares in Prodamco.
- 8 Following the resolution to distribute the assets of the BB Trust, there was considerable correspondence between the advocates acting for Jacobus, on the one hand, and the advocates acting for the BB Trustees on the other. In that correspondence, Jacobus made repeated and extensive requests for information relating inter alia to the BB Trust assets, including Prodamco and other matters. Dissatisfied with the answers which he was getting to his requests for information, on 18 July 2002, Jacobus issued the Representation. The relief sought included, *inter alia*, the following:
 - (i) orders convening Maurant & Co (Trustees) Limited and Fusina in their capacities as both BB Trustees and CB Trustees;
 - (ii) an order setting aside the resolution for final distribution of the BB Trust assets and their distribution on an alternative basis in accordance with a letter of wishes;
 - (iii) an order seeking to set aside an appointment of approximately 38% of the BB Trust funds to Cornelis;
 - (iv) an order directing Maurant & Co and Fusina to resign as BB Trustees and an order that new trustees be appointed to consider how to recover monies allegedly owing to the BB Trust by Cornelis;

(v) an order at paragraph 7 of the prayer directing the new trustees of the BB Trust and Mourant & Co and Fusina, as trustees of the CB Trust, to take control of Prodamco to effect recovery of its assets and to produce adequate and up-to-date accounts.

- 9 The basis for the relief sought in the prayer was Jacobus's contention that the BB Trustees had acted in breach of their fiduciary and other duties as trustees as set out in greater detail at paragraphs 3 (a)-(f) of the Representation, which I quote:

“(a) The Trustees have departed from the final distribution of Trust assets provided for by the Settlor in his letter of wishes to the Trustees to the detriment of the Representor without providing any, or alternatively, any valid, reasons and without adequately considering the personal circumstances of the beneficiaries, as set out... below.;

(b) The Trustees have allowed one beneficiary, the third Respondent (‘Cornelis’) to play an improper role in the administration of Trust affairs and have not allowed other beneficiaries to have similar opportunities, as set out below;

(c) The Trustees have failed to object to or prevent transactions which appear to allow one beneficiary, Cornelis, to obtain direct or indirect benefits from Trust property, as set out... below; and

(d) With respect to Fusina, by reason of its close connection to one beneficiary, Cornelis, and its co-Trusteeship with Mourant & Co. of the Cornelis Broere Trust there is a real and apparent risk of conflict of interest in it making decisions with respect to Trust affairs and accordingly, in the circumstances it has not and cannot act impartially, as set out below.

(e) Cornelis and Fusina have conspired together with the objective of preventing the Representor from receiving the benefits envisaged under the letter of wishes of the settler. They have been guilty of bad faith as set out... below;

(f) The Trustees have failed to monitor and obtain appropriate information in relation to an asset of the Trust namely the shareholding in a company now known as Project Development and Management Consortium N.V. and formerly known as Prodamco (‘Prodamco’) as set out... below”.

- 10 Basically, Jacobus complains that the BB Trustees have acted under the control of Cornelis and with inappropriate and undue favouritism towards Cornelis as a beneficiary of the BB Trust and that a conflict arises because of the BB Trustees' dual capacity as trustees, not only of the BB Trust, but also of the CB Trust.

- 11 On the 25 July 2002, Advocate Robinson, acting for Mourant & Co and Fusina, wrote to Advocate Thompson, acting for Jacobus, to enquire on what basis Mourant & Co and

Fusina had also been convened in their capacity as the CB Trustees, stating that it would appear that the only reason for taking that step was to obtain the order in paragraph 7 of the prayer namely that the CB Trustees should be directed to take control of Prodanco and, in effect, recover its assets and produce adequate and up-to-date accounts.

- 12 Advocate Robinson asked specifically “what right did Jacobus have to seek such an order if he was not a beneficiary of the CB Trust”. In his response dated 26th July 2002, Advocate Thompson for Jacobus replied as follows;

“I should also confirm that the application brought is under Article 47(3) of the Trusts Jersey Law (1984), and my client applies as beneficiary of the BB Trust. You are also correct that your clients have also been convened in their capacity of Trustees of the CB Trust; this is to address the Prodanco issue alone as you identify. My client has the right to seek such an order as Prodanco is owned jointly between BB Trust and the CB Trust as we understand it. What my client has done is to convene before the Court all interested parties so that directions can be given to the trustees of those trusts interested in Prodanco to take all necessary steps to ensure that the affairs of Prodanco are run on the proper footing. Please therefore confirm that your clients are still the trustees of CB Trust.”

- 13 On the 31 December 2002, the CB Trustees issued their summons seeking an order that they should be removed as parties from the representation in that capacity. On 14 January 2003, the Royal Court dismissed the CB Trustees' application for such an order that they should cease to be parties to the proceedings in that capacity.

The Royal Court's decision

- 14 The basis of the Royal Court's decision for its refusal to accede to the CB Trustees' application appears to have been that the Royal Court considered:

(i) that an application had properly been made by Jacobus, as beneficiary of the BB Trust, under Article 47 (2) and (3), for orders in relation to the administration of the BB Trust; and

(ii) that because Jacobus believed “that the CB Trustees were necessarily parties to relief sought in the administrative proceedings against the BB Trustees, that justified the CB Trustees being convened as parties to the proceedings”.

- 15 Unfortunately, as was accepted in oral submission by Advocate Thompson, for Jacobus, the Royal Court did not explain what, in its judgment, was the jurisdictional basis entitling Jacobus to maintain the proceedings and seek relief against the CB Trustees in the form of paragraph 7 of the prayer or otherwise; or why, in its judgment, the CB parties were “necessary parties” to the administrative proceedings brought by Jacobus under Article 47

against the BB Trustees.

- 16 Nor did the Royal Court give any consideration as to whether, in such proceedings, there was jurisdiction to join a person merely because he was a third party shareholder of one of the assets of the subject trust, or whether — even if there were jurisdiction — it was appropriate as a matter of discretion to do so.
- 17 I agree with the view expressed in paragraph 6 of the judgment of the Deputy Bailiff in granting leave to appeal, that the Royal Court did not focus adequately on this issue. The Royal Court instead appears to have concluded that, because Jacobus' claim against the BB Trustees (that he had been unfairly treated in breach of the BB Trustees' fiduciary duties) was not susceptible to being struck out (as it was not plain and obvious that it would not succeed), that *per se* justified the retention of the CB Trustees as necessary parties to that claim.
- 18 The only apparent justification put forward by the Royal Court to support its decision that the CB Trustees were necessary parties was that “the trustees in their capacity as the CB Trustees have been parties to arrangements for the distribution of assets from the BB Trust and directly or indirectly parties to arrangements in relation to Prodanco, which is, in part, an asset of the BB Trust.”
- 19 In my judgment the Royal Court's approach, and its apparent focus on the issue whether the claim against the BB Trustees was liable to be struck out (which clearly it was not), was wrong as a matter of law and principle. Accordingly, this Court has to approach the matter afresh and exercise its own jurisdiction and discretion.
- 20 In my judgment, the approach the Royal Court should have taken was as follows:
- (i) It should have considered whether under Article 47(2) (a) (iii) of the Trusts (Jersey) Law the CB Trustees were in the circumstances persons “having a connection with the” BB Trust, such that the Court would have jurisdiction to make an order under that Article “concerning the CB Trustees”. I mention that this argument was run on behalf of Jacobus for the first time before this Court.
 - (ii) The Royal Court should have considered whether, if the CB Trustees were indeed persons having such a connection, then, as a matter of discretion, the Court would be likely at the hearing of the representation to make an order “concerning the CB Trustees” in the form of the relief set out in paragraph 7 of the prayer, such as would justify their continued retention as parties to the proceedings.
 - (iii) The Royal Court, irrespective of the position under Article 47(2), should have considered whether, in the circumstances, the CB Trustees were necessary or proper parties to the Article 47 proceedings against the BB Trustees, on the grounds set out in either or both of the limbs of rule 6/29 (b)(ii) of the Royal Court Rules, such as

would likewise justify their continued retention as parties to the proceedings at the suit of Jacobus, as Representor.

- 21 Before turning to express my conclusion on these matters, in the light of the submissions made by Advocate Robinson for the appellant, the CB Trustees, and by Advocate Thompson for Jacobus, I should mention that Advocate Thompson accepted that, given that the CB Trustees had disposed of its shareholding interest in Prodamco, the only relief claimed in the representation against the CB Trustees — namely that set out in paragraph 7 of the prayer — could no longer be sought.
- 22 He contended that, in its place, he could seek relief against the CB Trustees, requiring them to produce the documents identified in paragraph 2.7 of his contentions. These documents principally relate to Prodamco. Apart from its annual accounts and the register of members and directors, the documents sought include correspondence between the CB Trustees and the directors of Prodamco, correspondence between the CB Trustees and Cornelis in relation to Prodamco, minutes of the CB Trustees' meetings in relation to appointing or selling etc such shares in Prodamco and information in relation to Anglo — American Finance Company Limited.
- 23 It is also relevant to record that Advocate Thompson made it clear that it was not part of Jacobus's case that he was asserting at this stage, that either he, the BB Trustees, or the BB Trust, had any claim or cause of action against the CB Trustees or the CB Trust as a result of the complaints made by Jacobus against the BB Trustees for breach of their fiduciary and other duties in relation to the BB Trust.

Article 47(2)(A)(iii) of the Trust Law

- 24 In relation to the first issue, namely whether the CB Trustees were, in the circumstances, persons having a connection with the BB Trust, such as would bring into play the Court's jurisdiction to make an order concerning the CB Trustees in the context of administrative proceedings brought in relation to the BB Trust, Advocate Thompson made the following submissions:
- (i) He submitted that Article 47 confirmed a wide and flexible jurisdiction on the Court to enable it to make more appropriate orders in trust proceedings, and that, accordingly, Article 47 should be construed in such a way as to preserve the width and flexibility of the jurisdiction.
 - (ii) He contended that the CB Trustees had a connection with the BB Trust for purposes of Article 47 (2) because of the combination, in effect, of three factors;
 - (a) the fact that there was an identity between the persons who were the trustees of the two trusts;

(b) the fact that there was a conflict of interest between Mourant & Co Trustee Company Limited and Fusina's position, in their capacity as the BB Trustees because, so Jacobus contended, the CB Trustees were in breach of their fiduciary duties in not obtaining more information in relation to Prodamco and making it available to Jacobus as a beneficiary of the BB Trust, and that such breach was in fact in the interests of the CB Trust and Cornelis as its principal beneficiary; and

(iii) The fact that each trust respectively owned or had owned a 50%, or approximately 50%, interest in the share capital of Prodamco and that that co-ownership resulted in a connection.

25 Advocate Robinson on the other hand contended that there was no such connection and that, if Article 47(2) was construed so widely as to enable a person who was not a beneficiary of the trust to obtain an order directing the trustees of such trust how to conduct themselves, that would, in effect, emasculate the leave requirements of Article 47(3) and in effect render them superfluous.

26 In my judgment, whether a person has a connection with a trust within the meaning of Article 47(2)(A)(iii) must depend on the factual circumstances relevant to the particular case. I do not propose, in this judgment, to attempt any exhaustive definition of those who might fall into the category of persons having a connection with the trust. I can see that such persons might well include, for example, a settlor or protector or the potential object of a discretionary power who is not a beneficiary at the relevant time.

27 In my judgment, however, on the facts of the present case, the CB Trustees cannot be said to be persons having a connection with the BB Trust on any of the grounds put forward by Advocate Thompson. The mere fact that there happens to be an identity between persons who are the trustees of one trust and the trustees of a second trust, cannot result *per se* in there being a connection between, the first trust and the trustees of the second trust or *vice versa*. That proposition is obvious if one tests it by reference to the position of professional trust companies who may well be trustees of many different trusts.

28 Nor, in my judgment, are Advocate Thompson's submissions about the connection arising from the alleged conflict of interest of the BB Trustees any more compelling. Even if one assumes, for the sake of argument, that the BB Trustees in their capacity as such; (1) are in breach of their fiduciary duties or other duties to the BB Trust beneficiaries in not obtaining sufficient information about the Prodamco investment or not monitoring it closely; (2) had placed themselves in a position where their duties as trustees of the BB Trust conflict, with their duties as trustees of the CB Trust (and I interpose to comment that, apart from asserting that the BB Trustees have committed breaches of their fiduciary duties in a desire to favour Cornelis, Advocate Thompson was unable to identify any respect in which there was an actual conflict between the proper discharge of the BB Trustees' duties in relation to the BB Trust's assets and the proper discharge of the CB Trustees' duties in relation to the CB Trust's assets), I do not see how those matters result in the CB Trustees being persons

having a connection in any sense with the BB Trust for the purposes of Article 47(2).

- 29 Likewise the mere fact that each trust, respectively, through intermediate holding companies has or has had a share holding interest in the same company, cannot in my judgment be sufficient so as to make the CB Trustees “persons having a connection” with the BB Trust. It is not as though the shareholding interests were held jointly as joint assets of both trusts. On the contrary, each trust held its own separate shareholding. Nor was it suggested by Advocate Thompson that a connection between the CB Trustees and the BB Trust arose by virtue of any identified transaction between the two sets of trustees or the two trusts.
- 30 I myself very much doubt that a person would be regarded as having a connection with a trust, merely by reason of the fact that he entered into a transaction with it, but that is not a question which we have to decide on this appeal. Accordingly, in my judgment, Article 47(2) did not provide the basis for the exercise of a jurisdiction against the CB Trustees to make the order sought in paragraph 7 of the prayer of the Representation or the amended relief indicated by Advocate Thompson. However, even if I were wrong in that conclusion, and it could be said that there was at least a loose connection between the CB Trustees and the BB Trust sufficient to satisfy the requirements of Article 47(2), I would not, on that ground, maintain the proceedings against the CB Trustees.
- 31 In my judgment, it would be a wrong exercise of the discretion conferred by Article 47(2) for the Court, in effect to have given directions in relation to the CB Trust at the suit of a non-beneficiary of the CB Trust, merely on the basis of the tenuous connection of the identity of two sets of trustees and on unsupported allegations of conflicts of interest, and the fact that the two trusts were common shareholders in the company. To do so would circumvent the leave provisions of Article 47(3), appropriately referred to by Advocate Robinson as the “anti-busybody” provisions, in circumstances where it has not been suggested, and, on the facts, could not have been suggested that either Jacobus or the BB Trustees in their capacity as such have any free-standing right or entitlement at law and equity, outside the provisions of Article 47(2), to claim such relief as against the CB Trustees.
- 32 Accordingly, in my judgment, Article 47(2) provides no jurisdiction or discretionary basis for the existing claim for directions or the proposed claim for disclosure against the CB Trustees. Neither of the two authorities provided by Advocate Thompson, namely *Maister v Rind* (14th June 1995) Jersey Unreported; [1995/111] and [UBS Trustees v Ismail \[2003\] JRC 147](#), assisted in this respect. Nor, for similar reasons, would I accede to Advocate Thompson's fall-back submission that Jacobus should be given leave under Article 47(3) to seek directions in relation to the CB Trust, which leave has any event not been applied for to date.

Necessary and proper party

- 33 I turn now to consider the alternative submission by Advocate Thompson that the CB Trustees should remain as respondents to the representation as they are necessary and proper parties to the proceedings brought against the BB Trustees.
- 34 Under Rule 6/29 (b) of the Royal Court Rules, and under the inherent jurisdiction, the Court has power to join third parties as defendants to proceedings, even in cases where, arguably, the original plaintiff has no direct cause of action against the third party, where certain criteria are satisfied. Under these provisions Jacobus would need to show either:
- (i) that it was necessary to have the CB Trustees as parties to ensure that all matters in dispute in the representation could be effectually or completely determined and adjudicated upon (see Rule 6/29 (b)(i)); or
 - (ii) that there existed a question or issue as between the BB Trustees, Jacobus and/or Cornelis on the one hand and the CB Trustees on the other, arising out of, or related to, or connected with, any relief or remedy claimed in the cause or matter (i.e. the representation) which it would be just and convenient to determine as between one or more of such parties on the one hand and the CB Trustees on the other (see rule 6/29 (ii)).
- 35 As the Royal Court emphasised in *re Abacus CI Limited* ([2000 JLR 165](#)), for a party to be joined in administrative proceedings, pursuant to the provisions of Rule 6/29, it must be proper and necessary for the party to be joined. It is not enough merely that it is convenient or desirable to do so. In my judgment there is no basis upon which it can be said that the CB Trustees are necessary or proper parties under either of the limbs of Rule 6/29 (b), whether the matter is considered by reference to the original relief sought in paragraph 7 of the prayer for directions, (namely that the CB Trustees should take control of Prodamco and effect recovery of its assets and produce adequate and up-to-date accounts) or whether the matter is considered by reference to the proposed amended prayer for an order that the CB Trustees should produce certain documents relating to the CB Trust.
- 36 The reasons for my conclusion may be shortly stated as follows. None of Jacobus' complaints against the BB Trustees in relation to the Prodamco investment and their alleged breaches of duty in relation thereto, as set out in paragraphs 38–40 of the representation, raise issues that require the joinder of the CB Trustees for their determination.
- 37 The complaints against the BB Trustees are not based on any alleged right or entitlement which the BB Trustees may have against the CB Trustees in relation to the Prodamco investment, let alone any right or entitlement which Jacobus might have against the latter. Put another way, whether there is any justification for the complaints which Jacobus makes against the BB Trustees is not a matter that raises any issues that the need the joinder of the CB Trustees to secure their determination. Thus, for example, one of Jacobus' complaints is that there are several million US Dollars cash in Prodamco but it is not clear

where or by whom the funds are held and he further complains that the BB Trustees have not discharged their duties to monitor and obtain information in relation to these valuable assets.

- 38 But even on the assumption that this complaint is justified, it is difficult, if not impossible, to see what basis there is for saying that the issue can only be determined if the CB Trustees are parties to the representation.
- 39 It has not been suggested that the BB Trustees have any right to obtain this information from the CB Trustees, not surprisingly since the CB Trustees were not even a direct shareholder in Prodamco; if the BB Trustees are required to take steps to obtain information they will have to do so invoking such rights as they have as shareholders in Prodamco. However no basis has been put forward to explain why the CB Trustees, as trustees of an entirely separate trust formerly owning different assets, namely an indirect holding of shares in Prodamco, should be under any obligation to assist the BB Trustees in the discharge of the latter's duties in relation to the assets of the BB Trust.
- 40 Likewise the allegation made in paragraph 39 of the representation that Cornelis has profited directly or indirectly from the use of the trust funds employed at his direction and for his private purposes or those of the CB Trust, apart from being vague in the extreme, provides no foundation for the claim that the CB Trustees are necessary or proper parties or that the complaints against Cornelis can only be determined by the joinder of the CB Trustees as parties. The representation specifically does not include any claim for compensation or constructive trust relief against the CB Trust or the CB Trustees. And, as I have already said, when pressed by this Court, Advocate Thompson specifically disallowed any suggestion that Jacobus was at the present time on behalf of the BB Trustees or the BB Trust making any substantive constructive trust type claim against the CB Trustees.
- 41 The relief sought in paragraph 6 of the prayer is merely that the current BB Trustees should be replaced and that the new trustees "should consider how best to recover such monies as owing to the BB Trust by the Third Respondent, Cornelis, and entities under his influence or control". Thus, in the absence of any formulated claim, which necessarily would have to be adequately formulated and pleaded, it is impossible to say that there is any issue between the CB Trustees and the other parties, that it would be just or convenient to determine in these proceedings, or that it is necessary to have the CB Trustees as parties to ensure that the issues between Jacobus and the respondents can be determined. Similar points can be made in relation to the other relief sought against the BB Trustees.
- 42 At the end of the day, I conclude that the attempt to join the CB Trustees in the present circumstances, is or has become, an attempt to obtain information belonging to a third party who is a stranger to the BB Trust and against whom, as presently formulated, no legal rights or claims are presently asserted by either the BB Trustees or Jacobus, either on his own behalf or on behalf of the BB Trustees.

- 43 In my judgment, if Jacobus has any grounds for issuing a witness summons against the CB Trustees for the production of the information he seeks relating to the Prodamco investment, or for applying for a Norwich Pharmacal type order in relation to his administrative proceedings against the BB Trustees — as to which entitlement I express no view at all — then Jacobus should make such applications in the normal way supported by the appropriate evidence.
- 44 In circumstances where I regard the joinder of the CB Trustees to the present Article 47 proceedings as misconceived, I reject Advocate Thompson's final submission that the CB Trustees should only be released from the action on terms that they submit to the issue of a witness summons or a Norwich Pharmacal type order.
- 45 Accordingly I would allow the CB Trustees' appeal and I would order that the first and second respondents should cease to be parties to these proceedings in their capacity as trustees of the CB Trust. Obviously, though, they will remain as parties in their capacity as trustees of the BB Trust.

Sumption JA

- 46 I agree.

Rokinson JA

- 47 I agree, I have nothing to add.