

The Representation of Barry Kassar (“The Representor”); and The Sabba Trust

Jurisdiction:	Jersey
Judge:	Bailiff
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Text

[2014] JRC 16

ROYAL COURT

(Samedi)

Before:

W. J. Bailhache, **Q.C.**, **Deputy** Bailiff, **and** Jurats Clapham **and** Milner.

In The Matter of the Representation of Barry Kassar (“The Representor”)
And In The Matter of The Sabba Trust

Advocate S. M. Le Cocq for the Representor.

Authorities

Trusts Act 2001.

Companies (Jersey) Law 1991.

Trusts (Jersey) Law 1984.

Trust — representation seeking declarations from the Court as to the validity of certain deeds of appointment and appointment or capacity of trustees.

Bailiff

THE DEPUTY

- 1 The representation of the Representor was presented to the Court on 22nd November, 2013, and adjourned for a hearing on 9th December, 2013. The representation concerned two declarations of trust, one made by Hemery Trustees Limited (“Hemery”) under the name of the Sabba Trust, and the other made by Pall Mall Trustees Limited (“Pall Mall”) which also established a trust under the name of the Sabba Trust. Both declarations of trust are dated 15th January, 2002. In this judgment we shall refer to the declaration made by Hemery Trustees Limited as “the Hemery Trust” and the declaration made by Pall Mall Trustees Limited as “the Pall Mall Trust”. The Representor is a beneficiary of both trusts. The prayer in the representation is that the Court should make a number of declarations as to the validity of certain deeds of amendment which are supplemental to the Pall Mall Trust, and declarations as to the validity or otherwise of the appointment or capacity of various trustees of the two trusts from time to time. The Representor also seeks a declaration that, in respect of the Pall Mall Trust, Hemery Trustees Limited, Dinard Trustees Limited (“Dinard”), Management Trustees (Emirates) FZC (“MTE”) and Vizor Limited (“Vizor”) were not validly appointed as trustees and acted as trustee de son tort. Finally the Representor asks for a series of orders by which Schindlers Reg Treuunternehmen (“Schindlers Liechtenstein”) be appointed as a trustee of both trusts, that Lloyds Bank Plc transfer trust assets into the name of Schindlers Liechtenstein and that any assets held in the name of Hemery, Pall Mall, Dinard, MTE or Vizor on behalf of the Hemery or Pall Mall trusts be transferred to Schindlers Liechtenstein as trustee of the Hemery and Pall Mall Trusts respectively.
- 2 We record that none of these entities has been convened to the hearing of the representation. For reasons at which we will arrive later, we have agreed to hear the representation in their absence, but the Court grants to each of those entities liberty to apply, as indeed is contemplated by the draft order put before us.
- 3 In his affidavit the Representor deposes that Mr Wulf Sebba (“the Settlor”) decided in or about 2001 to set up a trust for the benefit of his daughter AvraKassar, née Sebba, wife of the Representor, the Representor and their children. The Representor says they are a close

family. He had assisted the Settlor with various of his financial matters for many years. The arrangements which were agreed with a Mr Stanley Chesed ("Mr Chesed") of PrimeGlobal LLC ("PrimeGlobal") and a Mr Andrew Peat ("Mr Peat") both financial advisers, were that a single trust would be set up of which Mr Peat would be the Protector and a company of which Mr Peat was director would act as investment adviser. As a result of these arrangements, which the Representor considered had been agreed, he gave wiring instructions to send funds to Hemery on behalf of the Settlor. These funds were transmitted in three tranches, the first on 13th December, 2001, and the second and third at some point after February 2002.

- 4 The Representor deposes that neither he nor his wife has in fact ever had any contact with any of the trustees of the Sabba Trust. The Representor has been successful as a medical doctor and neither he nor his wife has ever required the trustees of the Sabba Trust to make any distributions to either of them. The only contact that either of them have had with professionals in respect of the trust has been with Mr Peat and Mr Chesed, who have provided them with information from time to time as to the trust assets.
- 5 The Representor deposes that until April 2008 the only documentation he and his wife had relating to the Sabba Trust amounted to the following:—
 - (i) A copy of the Settlor's initial application to Peat First Global (which we understand subsequently became PrimeGlobal).
 - (ii) A copy of the Settlor's Letter of Wishes to Hemery.
 - (iii) Extensive email correspondence in December 2001 and April 2002 in relation to the wiring instructions by which the Settlor's funds were transmitted to Hemery. Hemery apparently subsequently passed these funds into the Pall Mall Trust, although no paperwork records why this was done.
- 6 It appears that the Settlor died on 25th June, 2004. He does not appear to have had any trust documentation available to him either. In the circumstances it has taken time to put together such paperwork as exists to establish what has taken place. It is an understatement to say that the paperwork does not reflect any credit on the professionals who have been involved in this trust.

The Hemery Trust

- 7 Hemery made a declaration of trust on 15th January, 2002. The trust declared was to be known as the Sabba Trust. The Beneficiaries were named as the Settlor, the Representor and his wife, their three sons and any persons added by the trustees in exercise of their powers to add. The settled fund was £1,000 and Mr Peat was named as the Protector. Clause 1(k) of the Hemery Trust contemplated that further money investments of other

property might be accepted by the trustees as additions to the trust fund. The proper law of the Hemery Trust is Jersey, and the Courts of Jersey are stated to have exclusive jurisdiction in the application of the proper law. No supplementary deeds in relation to the Hemery Trust have been identified.

Pall Mall Trust

- 8 On the same date, 15th January, 2002, Pall Mall also made a declaration of trust, the trust having the same name as that made by Hemery, that is to say the Sabba Trust. Although the identity of the directors who signed on behalf of Pall Mall is not disclosed by the documentation itself, the signatures of the two directors who signed the Pall Mall Trust appear to be identical to the signatures of the two directors who signed the Hemery Trust. A subsequent communication with the Jersey Financial Services Commission seems to identify one of the directors as Mr V A Fisher. The terms of the Pall Mall Trust appear to be almost identical to those in the Hemery Trust — the Beneficiaries are the Settlor, the Representor and his wife and their three children and any persons added by the trustees in exercise of their powers. Mr Peat is said to be the Protector, and the protected powers are the same. There is one difference, namely that the Pall Mall Trust had a declared initial trust fund of US\$100, as opposed to £1,000 which was the initial fund in the Hemery Trust.
- 9 Clause 2 of the Pall Mall Trust provides, in similar fashion to the Hemery Trust, that the proper law of that trust is Jersey and the Courts of Jersey have exclusive jurisdiction in the application of the proper law.
- 10 It is not obvious why the same directors should create two different trusts on the same terms other than the identity of the trustee and the currency and quantum of the initial trust fund.

Pall Mall Trust — supplementary deeds and relative issues

- 11 Although no supplementary deeds have been identified in relation to the Hemery Trust, there have been a number of supplementary deeds in relation to the Pall Mall Trust. By a deed made by Pall Mall on 12th February, 2002, Pall Mall appointed Andrew Peat Group Holdings BV (“APGH”) to act as Protector to the Settlement, purportedly exercising the powers given to them under Clause 13 of the trust deed. This deed has been signed by the same two directors who signed the declaration of trust in the first instance. The first difficulty in connection with this document is that the powers which Pall Mall as trustee purported to exercise are not to be found in Clause 13 of the trust deed. Clause 13 is headed “*Power to ignore interests*” and contains the powers frequently seen in discretionary trust deeds enabling trustees to ignore the interests of one person interested under the trust in making an appointment or advancement to other persons interested under the trust. The Clause has nothing to do with appointments of new protectors. If this were the only objection, it may be that one could see it as an issue of form and not of substance. However that is not the

case. Clause 19 of the trust deed provides that the power to appoint a new Protector vests in the Protector for the time being; and only if he is dead or has been dissolved or is otherwise incapable of acting does the power to appoint a new Protector then vest in the trustees. We are satisfied that the Protector, Mr Peat, is not dead, and is not lacking in capacity, because we have received an affidavit from him in the current proceedings. It follows that the appointment of APGH by Pall Mall on 12th February, 2002, was wholly ineffective because Pall Mall had no power to act in this way. As a consequence, the Protector continued to be Mr Peat and was not APGH.

- 12 On the same day, 12th February, 2002, Pall Mall also executed a deed of appointment by which APGH was appointed as investment adviser. The appointment of the investment adviser was to enable the trustee to obtain advice in relation to investment matters regarding stocks, shares, insurance and other investment opportunities generally. The deed of appointment contained obligations on the part of APGH as investment adviser, and stated that APGH accepted the appointment. The document is sealed by Pall Mall, and appears to have been signed by the same two directors of that company, but it has not been executed by APGH. No issue appears to arise for the purposes of the present proceedings as to the validity of that deed of appointment. On the face of it, Regulation 5 of the First Schedule does enable the trustees from time to time to employ investment advisers.
- 13 On 2nd December, 2002, the common seal of Hemery was affixed in the presence of the same two directors of that company to what is described as a deed of amendment which is said to be supplemental to the declaration of trust made by Pall Mall on 15th January, 2002, and known as the SabbaTrust. Hemery describes itself as the “*replacement trustee*”. The recitals set out that Pall Mall, although described in the trust instrument as the trustee, did not have the capacity to act as trustee, and accordingly was replaced as trustee by Hemery. The deed provides this:—

“In exercise of the power contained in the trust in that behalf and of every other power it so enabling the replacement trustee is hereby appointed as the trustee with effect from the commencement date so as to be trustee of the trust or such of them as are still subsisting and capable of taking effect and Pall Mall Trustees Ltd hereby has no connection with the trusts of the trust.”

- 14 There are several difficulties with this deed. The declaration of trust contains no power for a third party to come along and replace the trustee. The Fourth Schedule and Clause 22 of the declaration of trust together ensure that the existing trustees, in this case Pall Mall, had the power to appoint new trustees. It is not clear why Pall Mall was said to have no capacity to act as trustee. If that had been the case, the original declaration of trust would have been ineffective. We have not seen anything in the papers before us to suggest that lack of capacity, and in the circumstances we simply treat the deed of amendment of 2nd December, 2002, purportedly made by Hemery Trustees Limited as supplemental to the Pall Mall Trust as void and of no effect.

- 15 Pall Mall was not a party to the deed of amendment of 2nd December, 2002, made by Hemery. However on 27th February, 2003, Pall Mall apparently adopted a special resolution that it should be wound up summarily, and an accompanying statement of solvency stating that the company had no assets and no liabilities was lodged with the Deputy Registrar of Companies at the Jersey Financial Services Commission. The special resolution was certified as correct by Mr Victor A Fisher, a director of Pall Mall, and his signature on the copy document which was submitted to the Jersey Financial Services Commission appears to be the same signature as that which has been added to various documents made by Pall Mall. On 3rd March, 2003, the Deputy Registrar of Companies acknowledged receipt of a special resolution and gave notice that Pall Mall was dissolved on 28th February, 2003.
- 16 Thus, as at March 2003, there were two trusts named as the Sabba Trust. The trustee (Hemery) which received the Settlor's funds had passed those funds to the other trustee (Pall Mall) which was later dissolved, apparently without assets and liabilities, and the trust (Pall Mall Trust) which had these assets was purportedly run by a trustee (Hemery) which had not been properly appointed. In addition there was an invalid appointment of protector.

Things get worse

- 17 On 16th April, 2003, Hemery then executed a deed of retirement and appointment of new trustee. The deed is said to be supplemental to the declaration of trust made by Pall Mall on 15th January, 2002, establishing the Sabba Trust and to the deed of amendment of 12th February, 2002, by which it is said Pall Mall appointed Hemery as trustee of the Sabba Trust. That recital was simply incorrect. The deed then purportedly appointed Dinard, a company incorporated in Mauritius, as trustee of the Sabba Trust in place of Hemery, which was discharged and indemnified by the new trustee against all actions, claims, costs, demands, losses, damages or liability except those arising from fraud, wilful misconduct or gross negligence, or actions to recover trust property. The deed was also executed by APGH although it is not clear why. If Hemery had not validly been appointed as trustee of the Pall Mall Trust in the first place, it had no capacity either to retire as trustee or to appoint a successor.
- 18 The following day Dinard made what is said to be a deed of amendment, also described as a deed poll, by which it purported to change the proper law of the settlement from Jersey to the law of Mauritius, and changed the duration of the settlement to 99 years from 15th January, 2002. Clause 14 of the declaration of trust did enable the trustees to declare from time to time a change in the proper law. However those powers could only be exercised by the trustee with the consent of the Protector. We have not seen the original deed of amendment but only a copy. The copy which has been provided to us shows that it has been executed by two directors on behalf of Dinard, and although there is provision for Mr Peat to sign as protector, it does not appear that he has done so. Though this is a contrast to the deed of retirement and appointment of new trustee by which Dinard were purportedly

appointed, where, although there was no necessity for it, APGH (which was never validly appointed as Protector) appears to have executed the document as Protector by Mr Peat's attestation. Mr Peat has deposed an affidavit which has been put before us which indicates that he does not recall ever being asked to consent to Dinard changing the proper law of the Pall Mall Trust or changing the trust period and he asserts that he did not sign the deed. That being the only evidence we have in this respect, it appears to us to be clear that the deed of amendment/deed poll made on 17th April, 2003, purportedly changing the proper law and the duration of the settlement is wholly invalid. It was made by an entity which was not properly appointed as trustee, and, insofar as the proper law is concerned, a necessary consent from the protector had not been obtained.

- 19 On 14th November, 2003, a deed of amendment was purportedly executed by Mr Samuel Hurley and Mr Dino Camacho on behalf of Dinard. The capacity of Messrs Hurley and Camacho to execute the deed is unclear. They are not described as directors or authorised signatories. The copy document which has been supplied to us has not been executed under seal. The deed is expressed to be made pursuant to Clause 25 of the declaration of trust and Section 48 of the Trusts Act 2001 of Mauritius. The purpose of the deed was to declare that the trusts made by the declaration of trust would no longer be treated as irrevocable, but would be revocable.
- 20 Nothing turns on this particular document for the purposes of the present application; but if Dinard were never properly appointed as a trustee of the Sabba Trust in the first place, then even if all other ambiguities were resolved in favour of the deed of amendment being valid, we could not find that it is.
- 21 On 14th December, 2005, Dinard purported to retire as trustee and to appoint MTE, a company incorporated in Dubai as its successor trustee. The recitals refer to the original declaration of trust made by Pall Mall and, incorrectly, to the appointment of Hemery by Pall Mall as a trustee on 12th February, 2002. Once again, the deed of retirement and appointment of new trustee appears to have been executed on behalf of APGH, although there is no reason for that to have been the case. For the same reasons as apply to the appointment of Dinard in the first place, this deed of retirement and appointment would not be valid if Dinard were not validly appointed as trustee.
- 22 We have been shown a bank statement from Lloyds TSB International in Geneva which discloses that, as at 27th August, 2013, an account existed in the name of MTE as trustee of the Sabba Trust (which remains unhelpful given that what we have described as the Hemery Trust and the Pall Mall Trust were both to be known as the Sabba Trust) with a credit balance of US\$245,822.03. There is a second account, denominated in Euros with a credit balance as at the same date of €54,683.79.
- 23 Notwithstanding that trust assets still appear to be held in the name of MTE as trustee of the Sabba Trust, a deed of retirement and appointment of new trustees appears to have

been made on 2nd October, 2009, whereby MTE retired as trustee and appointed Vizor as its successor trustee. The deed is said to be governed by and construed in accordance with the laws of Jersey, as if the change of proper law to that of Mauritius had never taken place. This may well indeed be the case in law, but it was not apparently the basis on which the predecessor trustees had acted. The appointment of new trustee was endorsed by Mr Peat as Protector. In his affidavit, Mr Peat indicates that he accepted Vizor had become trustee of the Pall Mall Trust. He says that initially he had some contact with the directors of Vizor but the last correspondence he had was dated 12th March, 2010, when he was advised by email from a Mr Baird, purportedly a director of Vizor, that he had transferred to Bachmann the paperwork in respect of the SabbaTrust and for all purposes Bachmann was to be treated as the trustees. Mr Peat deposes that in the summer or autumn of 2010, Bachmann was taken over by Ardel Trust, but a representative of that company had informed him by telephone in December 2010 that it had not accepted the trusteeship of the Pall Mall Trust as it had experienced problems with trusts where it had replaced MTE as trustee. Mr Peat indicates that he collected several of the files relating to the Pall Mall Trust from Ardel, who he believed had acquired them from Vizor. He subsequently transferred those files to Schindlers (UK) Limited in London because the Representor had indicated that he wished a related entity to become the trustee of the Pall Mall Trust and the Hemery Trust.

Parties

- 24 It is obvious from the foregoing that in normal circumstances one would want to convene Hemery, Pall Mall, Dinard, MTE and Vizor as well as Schindlers to the present application. There is also a substantial case for convening the other beneficiaries namely the wife and sons of the Representor, and also the Protector. The facts as set out above would also tend to support the desirability of Jersey having something equivalent to a public trustee. This is a role which the Viscount has sometimes fulfilled in order to assist the Court. It may be appropriate that the relevant authorities give consideration to the establishment of such a facility outside the terms of the Viscount's office.
- 25 Hemery, which was through its officers responsible for creating many of the problems that have been put before us, was struck off by the Deputy Registrar of Companies on 1st October, 2010, pursuant to his powers under Article 205 of the Companies (Jersey) Law 1991 which provides a number of different bases upon which the Registrar's jurisdiction can be exercised. It is not clear from what is put before us as to the reasons for the exercise of power in this case, although we note that the Registrar appears to have issued a notice to the company in June 2006, 2007, 2008, 2009 and 2010, and that no annual return appears to have been filed after February 2005. That seems to suggest that the company was no longer operating or in business when the Registrar determined to strike it off.
- 26 Pall Mall was subject to a summary winding up in February 2003 in the circumstances described above.
- 27 There is no evidence before us as to whether Dinard still exists or not. Mr Peat deposes in

his affidavit that he understood that Dinard was part of the Hemery Group with Pall Mall and Hemery. If it is part of the Hemery Group, there is perhaps an implication that it no longer does exist. Whereas we would normally want to ensure that Dinard was a party to these proceedings before we made any findings in relation to what has been put before us, we have found another way forward here as will be apparent from the orders and directions which we give later in this judgment.

- 28 As to MTE, apparently incorporated in Dubai, enquiries have been made which show that MTE is not registered in Dubai. A search has been made with the Dubai Financial Services Authority which is the regulator for the Dubai International Financial Centre, a financial free-zone located in the Emirate of Dubai. A search of the Dubai International Financial Centre showed that MTE was not registered there. It was suggested by the Dubai Financial Services Authority that it might be possible for MTE to be an unregulated entity, and that a check could be made with the Dubai economic department or other free-zones located in Dubai or on the website of the Dubai International Financial Centre. We have been shown documents which support the conclusion that MTE is not registered anywhere in Dubai.
- 29 As to Vizor, this company was initially registered in Nassau, Bahamas. It was struck off the Bahamian companies register in December 2010 for non-payment of fees and we have been shown email correspondence with the Bahamas Financial Services Board which shows that the company is no longer operating or in existence.
- 30 The Court has been provided with a letter dated 8th November, 2013, from Mr Peat to Advocate Le Cocq. In it he confirms that if the Royal Court requested his attendance he would be willing to travel to Jersey, but that he had nothing more to say which was not already set out in his affidavit a copy of which was before the Court. Mr Peat indicates that he would require fees and expenses to attend before this Court. Given the relatively small amount of money remaining in the trust and the apparent probability that Mr Peat has nothing more to add to these proceedings, the Court has resolved to proceed in his absence.
- 31 We have also received a copy of an affidavit from Mr Chesed of PrimeGlobal. Mr Chesed is no more than a witness and there is no obvious basis for convening him before the Court as a party. The same conclusion is reached in relation to Mr James Peat who was once employed by APGH and/or by Mr Peat, but who now runs his own company. He has deposed an affidavit a copy of which has been put before us. What he says in his affidavit is relevant evidentially, but there is no basis upon which he needs to be convened as a party.
- 32 Lloyds Bank International Limited, formerly Lloyds TSB Offshore Limited, hold two accounts in the name of the trustees of the Sabba Trust. A director for Lloyds Bank International Limited confirms that the bank will act as the Court directs with regard to these two accounts, and that the bank does not wish to be a party to the representation in which the Representer seeks the removal of the trustees (whoever they are) and the appointment of new trustees. The bank indicates it does not wish to be heard by the Court in respect of

any matters relating to the Sabba Trust or the accounts maintained in the trustees of the Sabba Trust. In the circumstances, we have proceeded in its absence.

- 33 The Representor is clearly a party because he brings the representation. The Court has seen a letter from his wife and each of his three sons confirming that they are aware of the representation, that they have provided an affidavit and can assist no further, and that they do not wish to be heard. In the circumstances, there seems little purpose in formally convening them.

Analysis

- 34 Given that two declarations of trust were executed on 15th January, 2002, the Hemery Trust with an initial trust fund of £1,000 and the Pall Mall Trust with an initial trust fund of \$100, the first question is as to whether either of these trusts were ever constituted. If they were not constituted, no trust can arise. Article 2 of the Trusts (Jersey) Law 1984 (“the Law”) provides that a trust exists where a trustee holds or has vested or is deemed to have vested in him property for the benefit of another person or for a purpose which is not for the benefit only of the trustee or for a combination of both benefit and purpose. What is required is that the trustee holds or has vested in him, or is deemed to hold or have vested in him property. If there is no property, there is no trust.
- 35 It is clear that the Representor, acting as agent for the Settlor expected that there would be only one trust created. All the wiring instructions were completed upon that basis.
- 36 The funds which were provided by the Settlor through the Representor were wired to Hemery and not to Pall Mall. The Settlor’s Letter of Wishes is addressed to Hemery. In our judgment, there is every reason for accepting that Hemery were in possession of at least £1,000 which could be treated as constituting the trust fund. There is no reason for thinking that Pall Mall did not have \$100 to its name when it executed the declaration of trust in January 2002. Unsurprisingly, given that the company went into summary liquidation in February 2003, we have no evidence as to whether this trust was in fact constituted but it has not been contended before us that it was not.
- 37 The facts which we have listed above give rise to a number of potential outcomes. It may be that one could conclude that given that there was never any intention to create more than one trust, that only one such trust was created, and that this was the Hemery Trust — Hemery was the company to whom the Settlor addressed the Letter of Wishes and to whom the Representor wired the funds. However we are not inclined to reach that conclusion in the absence of evidence as to the constitution of the two trusts. Accordingly, we have reached the view that we should proceed upon the basis that there are both the Hemery and the Pall Mall trusts.

- 38 As to the Hemery Trust, there being no supplementary deeds, the position therefore is that

the trust is without a trustee, Hemery having been dissolved. Pursuant to Clause 22 and Schedule 4 of the Hemery Trust, the new trustees should be appointed by “the trustees for the time being or the personal representatives or the liquidator of the survivor thereof”.

39 Here the trustee has been struck off under Article 205 of the Companies (Jersey) Law 1991.

40 A new trustee is required. The Court has a statutory jurisdiction under Article 51(2)(a)(ii) of the Law to appoint a new trustee. This was also a power which was exercised by the Court prior to 1984 in the exercise of its inherent jurisdiction. In the circumstances that this reflects the wishes of the beneficiaries, the Court appoints Schindlers Liechtenstein as the new trustee of the Hemery Trust with immediate effect, that having been requested by the Representor in the circumstances which now exist. It may not be thought to be ideal that the trustee of a Jersey trust be beyond the territorial jurisdiction of this Court but there is nothing in the Law or precedent to prevent it.

41 We turn now to the trusteeship in respect of the Pall Mall Trust. Here, Pall Mall were the original trustees. We declare the appointment dated 12th February, 2002, of APGH as Protector in the place of Mr Peat was invalid for the reasons which have been given. We make no declaration in relation to the appointment of APGH as investment adviser. The directors of Hemery and Pall Mall may have been the same but we do not think we can simply pierce the corporate veil and on that basis substitute one company for another as trustee. Accordingly, we declare that the deed dated 2nd December, 2002, which Hemery purported to appoint itself as trustee to the Pall Mall Trust is invalid. Hemery had no right to make that appointment. Accordingly it was never appointed as a trustee of the Pall Mall Trust, and it follows that all subsequent retirements and appointments of new trustees in relation to the Pall Mall Trust were invalid. Equally, the purported change of proper law to that of Mauritius was invalid, not simply because the trustee (Dinard) which purportedly made the change of proper law had never been validly appointed as trustee but also because Mr Peat had never given his consent.

42 In the circumstances that Pall Mall was dissolved in February 2003, new trustees are needed for the Pall Mall Trust. There was no liquidator, because the company was summarily dissolved. That ought not to have been the case, but there it is. In the circumstances, the Court has resolved to exercise its own powers under Article 51(2)(a)(ii) of the Law in similar fashion and we hereby appoint Schindlers Liechtenstein as trustee of the Pall Mall Trust for the same reasons as that given above in relation to the Hemery Trust. The position therefore is that Schindlers Liechtenstein are with immediate effect trustees of the Pall Mall Trust, which is a trust governed by Jersey law and of which Mr Peat is the Protector.

43 We now turn to the question as to what the assets of each trust are, in circumstances where Hemery and Pall Mall did not seem to appreciate that there was a distinction between the two trusts, or indeed that there was a distinction between the two companies. In our

judgment, the Settlor's assets arrived in the Hemery Trust. Such evidence as we have seen so far suggests that, to the extent the assets have been identified, these are currently held in the Pall Mall Trust rather than the Hemery Trust. At one level, that is of little consequence because the beneficiaries are the same and the trusts are the same. However, we do not know what has transpired in the intervening period. The transfer of assets from the Hemery Trust to the Pall Mall Trust could, so it seems to us, be considered in legal terms in one of the following ways:—

(i) It was a mistake.

(ii) There was an appointment by the Hemery trustees to the beneficiaries of the Pall Mall Trust, who were the same as the beneficiaries of the Hemery Trust. However there is no documentary evidence to suggest that Hemery ever considered such an appointment, and indeed all the evidence suggests that it did not.

(iii) There was a loan by the Hemery Trust to the Pall Mall Trust. Once again there is no documentation which suggests that this was the legal route which the Hemery trustees followed — and even if it had existed, the experience which we have of the remaining documentation suggests it would have been invalid or incompetently executed — and there is no other evidence of such a loan taking place.

(iv) The Pall Mall trustees were to hold the assets as agent or bare trustee for the Hemery trustees.

44 Although it could be argued that there was some agency arrangement, we conclude that the transfer of assets from Hemery to Pall Mall was simply a mistake. Accordingly, the transferred assets or whatever assets now represent them are held within the Pall Mall Trust for the benefit of the Hemery trustees, to be held by them as trustee of the Hemery Trust.

45 We are asked by Advocate Le Cocq to declare that Hemery, Dinard, MTE and Vizor acted as a trustee *de son tort* in respect of the Pall Mall Trust. We do not think it ought to be necessary for present purposes to make such a declaration, given the other findings and orders which we have made. If the Representor wishes to take this application further, then it will be necessary to convene Dinard formally before the Court. It is clear that Hemery, MTE and Vizor cannot sensibly be convened and there is no obvious point in seeking to restore any of those companies to the register simply for the purposes of bringing a claim against them, given the apparent absence of any assets which might be used to settle such a claim.

46 The only assets currently held in the name of the Pall Mall Trust appear to be the two accounts in Lloyds Bank International. If there are any other assets held in the name of the Pall Mall Trust, wherever located and whether held currently in the name of Pall Mall Trust or any other person or entity, these should be vested forthwith in Schindlers Liechtenstein as trustee of the Hemery Trust for the reasons which are given above.

SchindlersLiechtenstein will need to consider with the beneficiaries of the Hemery Trust and the Pall Mall Trust the extent to which it is appropriate to spend trust monies making further investigations.

47 There is liberty to apply.