

Geneva Trust Company SA (formerly known as Rawlinson & Hunter Trustees SA) v D

Jurisdiction:	Jersey
Judge:	J. A. Clyde-Smith O.B.E.
Judgment Date:	03 June 2020
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Text

[2020] JRC 104

ROYAL COURT

(Samedi)

Before:

J. A. Clyde-Smith O.B.E. **Commissioner, sitting alone**

In the Matter of the Representation of Rawlinson & Hunter Trustees SA

And in the Matter of the D Discretionary Trust, the D Discretionary 'A' Trust, the G Trust and the Connected Trusts Listed in the Schedule to the Representation of Rawlinson & Hunter Trustees SA

And in the Matter of Articles 51 and 53 of the Trusts (Jersey) Law 1984 (As Amended)

Between

Geneva Trust Company SA (formerly known as Rawlinson & Hunter Trustees SA)

Representor
and
D
First Respondent

and

Fort Trustees Limited
Second Respondent

and

Balchan Management Limited
Third Respondent

and

E
Fourth Respondent

Advocate C. J. Swart for the Representor.

Advocate P. D. James for the Second and Third Respondents.

Authorities

In the matter of the Bird Charitable Trust [\[2012\] \(1\) JLR 62](#).

Lewin on Trusts 18th and 20th Edition

Disclosure — summons of Second and Third Respondent

THE COMMISSIONER:

- 1 The second and third respondents (“Fort & Balchan”), in their capacity as the current trustees of the D Discretionary Trust (the “DDT”), allege that the Representor (“GTC”), the former trustee of the DDT, is in breach of a disclosure order made against it.

Background

- 2 There has been extensive correspondence between the legal advisors to the parties over two years and five affidavits have been filed in support and defence of the summons brought by Fort & Balchan. It would not be proportionate for me to attempt to navigate through all this evidence in this judgment and I will limit this judgment to what I see as the

key events.

- 3 GTC is a Swiss based trust company and under its former name of Rawlinson & Hunter Trustees SA, it was trustee of eleven discretionary trusts governed by Jersey law associated with the first respondent, D. The relationship between GTC and D broke down in 2017, and difficulties were encountered over the terms upon which it should retire as trustee of these trusts in favour of Fort & Balchan, two Guernsey based and regulated trust companies.
- 4 GTC applied to the Court by way of representation dated 5th October 2017 for orders approving its decision to retire from all of these trusts and for Fort & Balchan to be substituted for it in a number of actions outside Jersey in which it had acted as plaintiff. There was a potential for substantial adverse costs orders being made against GTC personally and for which it claimed it had an indemnity from D; the validity of which was denied by D. There were also fees due to a number of professional advisors which it had no trust monies to discharge.
- 5 This application is concerned solely with the DDT. It is relevant to note that GTC, as trustee of the DDT, had nothing to administer in that the assets of the trust had been placed into the hands of receivers in proceedings in Guernsey. All the fees and costs of GTC had been funded through or at the instance of D. Its only function was to act as plaintiff in those and other proceedings. In that litigation, it was advised by Herbert Smith Freehills LLP ("HSF") and the litigation was conducted in close liaison with D and R20 Advisory Limited ("R20"), which provides services to the various trusts associated with D. The head of its legal department is Ms Nicole Ann Martin, who has deposed the affidavits filed in support of Fort & Balchan's summons.
- 6 D, as protector, appointed Fort & Balchan as co-trustees of the DDT on 4th September 2017 and on 3rd October 2017 and in the same capacity he removed GTC as co-trustee.
- 7 On 8th November 2017, the Court made the following orders, *inter alia*:-
 - "2. the Second and Third Respondents shall use their best endeavours to ensure the novation of all liabilities (third party costs whereupon the Second and Third respondents shall bear responsibility for the third party costs so that the Representor shall cease to have responsibility for them, other than in respect of adverse costs orders;*
 - 3. the Second and Third Respondents shall use their best endeavours to secure their substitution for the Representor as parties to any of the extant litigation and the release of the Representor from that litigation."*

The Court also gave procedural directions for the determination of the issue of the indemnity.

- 8 On the same day, and pursuant to a summons issued by Fort & Balchan, the Court made orders for the delivery by GTC to Fort & Balchan of certain specified documentation in relation to the DDT, principally correspondence between Messrs. Dickinson Gleeson, the legal representatives of GTC as trustee, and GTC and third parties. No issue arises as to GTC's compliance with these orders.
- 9 On 11th January 2018, and pursuant to another summons issued by Fort & Balchan (and D), the Court by consent ordered GTC to disclose documentation pursuant to orders for discovery made in proceedings in the High Court of Justice, Commercial Division, such disclosure to be undertaken through the offices of Swiss FTS. This was a substantial exercise for which Fort & Balchan were ordered to lodge the sterling equivalent of 100,000 Swiss Francs, to meet the costs of GTC and Swiss FTS. No issue arises as to GTC's compliance with this order.

10 The Court also made this general order:-

"1. The Representor shall forthwith deliver to the Second and Third Respondents all documents (including, for the avoidance of doubt, both electronic and physical documents) in its possession belonging to the D Discretionary Trust"

It is GTC's compliance with this order that is in issue. I will refer to it as "the Disclosure Order"

- 11 On 15th January 2018, Advocate Swart, acting for GTC, reported to the Court on the steps taken to comply with the Disclosure Order. He confirmed that it had delivered everything contained on its "H" drive, GTC's local computer network hard drive upon which GTC stores trust records within subfolders for the trusts it administers, and the steps it was in the process of taking in relation to the physical/paper documents belonging to the DDT. No issue arises as to the delivery of physical/paper documents.
- 12 On 19th January 2018, Advocate Mistry, acting for Fort & Balchan, e-mailed Advocate Swart saying that certain documents held by HSF may not have been included in the documents delivered up and asking for confirmation that instructions had been given to HSF for these documents to be delivered forthwith.
- 13 Advocate Swart responded the same day, saying that the records of HSF were not in GTC's possession, and therefore not within the range of documents contemplated by the Disclosure Order. However he confirmed that consent had been given that day to HSF for these documents to be delivered up to Fort & Balchan.
- 14 At that time, HSF were owed £98,762.50 by GTC for services rendered for and in respect of

the DDT (which GTC had no funds to discharge) and Ms Martin had informed HSF that it was not possible to resolve the issue of its outstanding fees until it was ascertained whether they had been incurred on behalf of the DDT or GTC personally. I note that the narratives supplied by HSF showed on their face that all the work conducted by HSF during the relevant period did relate to the DDT and there is no indication in those narratives of any advice being given to GTC personally.

- 15 On 31st May 2018, the Court directed Fort & Balchan to prepare a report on the steps they had taken to comply with the best endeavour orders of 8th November 2017, which included the outstanding liability to HSF. On 23rd July 2018, the Court declared itself satisfied that Fort & Balchan were complying with their best endeavour obligations in this respect, but HSF's fees remained unpaid as it exercised its right to a lien over the documents it held until such time as its fees were paid. Fort & Balchan's position, communicated through Ms Martin, was that it would not pay the fees until it had been able to inspect HSF's files. There was thus an impasse as between Fort & Balchan and HSF.
- 16 On 5th December 2018, Advocate Swart e-mailed Advocate James, then acting for Fort & Balchan, advising that he had asked GTC to send him all of the e-mail correspondence with HSF for the period covered by the unpaid fees, namely April – November 2017, which he stated was not a concession that it had not complied with the Disclosure Order. This had been done at the suggestion of Advocate James that sight of such correspondence should give Fort & Balchan some of the visibility they needed to engage properly with HSF so as to facilitate a settlement of the fees issue.
- 17 Before that exercise was completed, Fort & Balchan issued its summons dated 7th January 2019, seeking the following relief:-

“1. That, the Representor being in breach of order 1 of the Act of Court of 11 January 2018 (“the Act”), the Representor shall forthwith deliver to the Second and Third Respondents all documents (including, for the avoidance of doubt, both electronic and physical documents) in its possession belonging to the Discretionary Trust not already delivered up including all written communications and advices to and from Herbert Smith Freehills LLP....”
- 18 On 13th February 2019, GTC produced two lever arch files of correspondence with HSF extracted from its own employee's e-mail accounts for the relevant period. Advocate Swart commented that Ms Martin would be familiar with the documentation as she was invariably included in the exchanges, or where she is not, they concerned events with which she was very familiar.
- 19 These documents were reviewed by R20, but Ms Martin explained in her twelfth affidavit of 5th March 2019 that in their view there were still gaps:-

(i) In relation to the indemnity purportedly given by D, and

(ii) In relation to advice Ms Martin was aware was given by HSF to GTC in February 2017 (possibly on the 14th February 2017) in relation to the information barrier established at GTC between those administering trusts associated with D and those administering trusts associated with his brother.

- 20 In his fourth affidavit of 15th April 2019 in response, Mr Rodney Hodges of GTC confirmed that HSF had been providing independent advice to GTC at that time, to which he said Fort & Balchan were not entitled. The fees for that advice had been paid in full. The outstanding fees did not relate to that advice.
- 21 Fort & Balchan's summons came before the Master on 12th June 2019, but he referred it to the Royal Court as it alleged a breach of an order made by the Royal Court.
- 22 On 18th June 2019, Advocate Swart wrote to Advocate James confirming that there was no formal HSF advice paid for by or from the DDT funds which was being withheld by GTC, but to the extent that HSF may retain copies of such advice, then GTC authorised the release of it to Fort & Balchan upon and following the settlement of the amounts owing to HSF. Ms Martin was concerned that the qualifier "*paid for by or from the DDT funds*" was ambiguous, giving rise to the legitimate concern that not all advice had been provided and that GTC was intentionally taking this approach in order to prevent the release of this advice. Fort & Balchan's summons was re-issued in the same terms before the Royal Court on the 20th November 2019.
- 23 Between July 2018 and February 2020 a number of proposals were put by Collas Crill, acting for Fort & Balchan, to HSF to resolve these issues, culminating in HSF's letter of 6th February, 2020, to GTC, in which it said that resolution with Fort & Balchan had not proved to be possible and requiring GTC's proposal for the payment of its outstanding fees then in the sum of £109,762.50, plus accrued interest of £9,229.76. HSF reiterated that it had always been willing to provide copies of advice to others if requested and authorised, but provided that it had first been fully paid in respect of its outstanding fees. It said that Collas Crill had attached ever more extensive conditions before payment of the outstanding fees. HSF had put forward pragmatic proposals to resolve matters on the 7th November 2019, but had heard nothing thereafter from Collas Crill until 21st January 2020, over two and a half months later, with counter proposals which it said represented a significant step backwards. Collas Crill's latest proposal was even more unrealistic than their proposal in November, and HSF said nothing was to be gained by further exchanges with them. Given the suggestion that it might be involved in the Jersey proceedings, HSF stated that for the avoidance of doubt, it did not submit to the Jersey jurisdiction, the engagement letter with GTC being governed by English law and the exclusive jurisdiction of the English courts. It said it would no longer communicate with Collas Crill or any other representative of the new trustees.

24 Notwithstanding this, HSF did respond on 21st February 2020 to Collas Crill following a further letter from Collas Crill and an e-mail from Ms Martin of 14th February 2020, as follows:-

“As set out in our previous letter, we had been prepared, at the urging of GTC and given your clients' apparent economic interest, to discuss matters with you. However, after expending considerable management time, those discussions had run their course.

So far as your latest proposal is concerned, in short, it envisages further rounds of discussions about document requests, with a yet further revised set of categories. It also appears to envisage an entitlement to demand all documents on our files, which, as you will be aware from law Society Guidance, is not the case. As we have said, we will consider requests beyond the scope of the Guidance but we emphasise that this is not an entitlement (even leaving aside issues as to non-payment).

For the avoidance of doubt, and in a final attempt to progress matters, we reiterate that when we are paid in full and subject to GTC's consent documented in an engagement letter:-

We will provide copies of those documents to which GTC are entitled under the Guidance, on payment of our costs in retrieving those documents. We suggest you identify the periods and/or issues in respect of which you require us to search to keep costs down but that is a matter for you;

We will engage constructively regarding copies of any other documents you wish to obtain, again on payment of our costs in retrieving those documents we agree to provide – we will act professionally, as you would expect; and

In the event that access is required at a later stage to further documents to which you are entitled, we will again provide such documents on payment of our costs in retrieving them.

In each case we will provide you with an estimate of the costs we envisage incurring in the search, we will then provide you with a bill after the search and copying is complete. On payment of that bill we will provide the documents to you. We stand ready to discuss the draft terms (including the details of the search) with you and with GTC just as soon as we have been paid the amounts that are outstanding. In the meantime we are entitled to and do exercise our lien over all client papers.”

25 In his eleventh affidavit of 5th March 2020, Mr Hodges confirmed that GTC did not have an e-mail advice from HSF dated 14th February 2017 or any other similar document. He said he had made it absolutely clear that GTC authorises HSF to disclose all and any of their

records for the period of their instruction by GTC and it was well within Fort & Balchan's gift to settle HSF's fees and then ask for a copy of the advice. He reiterated that GTC had no further documents in its custody, possession or control relating to the DDT, all of which had been handed over pursuant to the Disclosure Order.

- 26 Seemingly accepting the position of HSF, on 20th March 2020 Advocate James proposed to Advocate Swart that the parties should enter into a form of Tomlin order, a draft of which was appended as a schedule to a proposed Act of Court. A Tomlin order is, of course, a form of consent order.
- 27 Under the schedule drafted by Advocate James, Fort & Balchan would discharge HSF's fees, resolving an accounting dispute as to the precise quantum of those fees, and GTC would give a number of confirmations and undertakings. One of those confirmations was that GTC “*had previously provided to the respondents all copies of all communications (including, but not limited to, e-mails or text messages sent to the personal accounts of the directors of the representor) that relate to the DDT*”
- 28 Advocate Swart regarded the schedule drafted by Advocate James as being deliberately designed “*to have another crack at my clients*” and produced an amended and much reduced draft schedule. Since when, he asked, do text messages constitute trust records? Bar one or two further amendments, those were the rival schedules presented to the Court at the hearing.
- 29 Fort & Balchan sought leave to amend their summons by the addition of the following:-
- “2. Subject to the Second and Third Respondents making payment to Herbert Smith Freehills LLP so as to discharge the representor's liability for the same, the Representor shall be directed to give the confirmations and undertakings set out in the schedule to a draft Tomlin order supplied to its Advocates on 20 March 2020, further or alternatively 15 April 2020: alternatively such other confirmations and undertakings as the court thinks fit.”*
- 30 Thus, in the absence of an agreed Tomlin order, Fort & Balchan sought an order requiring GTC to give the confirmations and undertakings set out in the schedule.

Decision

- 31 Unusually for a contested case brought before the Court for adjudication, as at the date of the hearing the parties were agreed as to what was required to resolve the matter, namely that:-

The depth of mutual suspicion between the parties was such that they were unable to agree on how this should be put into effect.

- (i) the fees of HSF should be paid by Fort & Balchan as the new trustees, and
- (ii) Fort & Balchan as the new trustees, should have the same right of access to the files of HSF to which GTC was entitled as the original client.

32 As to the duties of a retiring trustee, the Court said this in the case of *In the matter of the Bird Charitable Trust* [2012] (1) JLR 62 at paragraph 23:-

“23 One starts from the position that a successor trustee is stepping into the shoes of a retiring trustee. He is assuming the same duties as the retiring trustee towards the beneficiaries. He is therefore on the face of it entitled to be placed in the same position as the retiring trustee so far as possible. Thus, if the retiring trustee has information or documents about the administration of a trust, he must normally make these available to the incoming trustee.”

33 In this case, the sole activity of GTC as trustee of the DDT was the conduct of litigation to which it was party in a number of jurisdictions; litigation, I believe it is fair to say, it had engaged in at the behest of D and which was conducted in close liaison with D and R20. Fort & Balchan had been directed by the Court on 8th November 2017 to use their best endeavours to secure their substitution for GTC as parties to this litigation and the release of GTC from its liability to third parties such as HSF. It was manifestly just that it should be released from such liabilities as it had no trust monies with which to discharge the same.

34 There is a distinction to be drawn between records, books and other papers which belong to a trust and information relating to that trust. In *Re Bird Charitable Trust*, the Court approved this passage from the 18th edition of Lewin on Trusts:-

“Transfer of trust papers on change of trusteeship

23–97 A new trustee is entitled to require the former trustee to deliver up to him all records, books and other papers belonging to the trust. He is also entitled to inspect and copy other papers (not belonging to the trust) in the hands of the former trustee so far as they contain information relating to the trust. The papers to which he is so entitled include the minutes of meetings of the trustees and the internal memoranda of a corporate trustee, and correspondence files .

Judicial discretion

23–98 We consider that the court may, in exercise of the trust supervisory jurisdiction, qualify the above rights of [a] new trustee to delivery up and disclosure in special circumstances. But we do not consider that the **same restrictions apply as in the case of disclosure to and inspection by beneficiaries.** A beneficiary, for example, is not normally entitled to a sight of documents concerning the trustees' exercise of discretions under discretionary

trusts or fiduciary powers, but they contain precisely the kind of information which a new trustee may need to have from the former trustee to enable him to exercise the discretions in the light of what has been done before. The same applies to a settlor's letter of wishes .

Provision of information by outgoing trustee

23–99 The new trustee may need to approach a former trustee for information and explanations not apparent from the trust papers. The former trustee is, to the extent that the request for information or explanation is reasonable in the circumstances, under an obligation to supply the information requested, and he must take reasonable care that any information which he does supply is accurate.”

The same extract is contained in the Twentieth Edition of Lewin at paragraphs 21–119 to 121.

35 The Court went on to say this in relation to legal advice:-

“In relation to legal advice obtained at the cost of the trust, this will often be disclosable to a beneficiary in any event (see Lewin, op cit., paras 22–45 – 22–46, at 778–779). However, it is likely to be even more relevant for an incoming trustee to see legal advice obtained by a previous trustee as it may well be relevant for the future administration of the trust.”

36 The summons issued by Fort & Balchan does not allege that GTC is in breach of its obligation to provide information in relation to the DDT, but it alleges that it is in breach of the Disclosure Order, and that order was limited to GTC delivering all documents “ ***in its possession belonging***” to the DDT. Advocate James acknowledged the linguistic limits of the word “ ***possession***” and did not argue that GTC itself had an obligation to produce the files of HSF. In her nineteenth affidavit at paragraph 18 Ms Martin complains that Mr Hodges had not deposed to having delivered up “*all documents in GTC's possession relating to the DDT save for any documents actually owned by GTC*”. The Disclosure order requires GTC to deliver up all of the documents owned by the DDT, not everything relating to the DDT other than the documents GTC owns.

37 Whilst Ms Martin referred in her twelfth affidavit to a number of emails and enclosures she said were being withheld, there was no evidence that these belonged to the DDT as opposed to comprising information about the DDT, but in any event Mr Hodges had confirmed on oath that nothing was being withheld. In particular he confirmed that GTC had no advice from HSF in its possession, but to the extent that such advice had been given by HSF, GTC had no objection to Fort & Balchan having access to the files of HSF and authority to that effect had been given. GTC could do no more.

38 The suggestion that the personal e-mail and text messages of the various officers working

for GTC at the material time belongs to the DDT is not sustainable and was not pursued by Advocate James. Fort & Balchan may request to inspect such documents, if it is reasonable to do so, but as the Court said in *Re Bird Charitable Trust* at paragraph 25:-

“25 Although one starts from a presumption that an incoming trustee should be placed in just as good a position in all respects as the outgoing trustee, nevertheless the court has, in our judgment, a discretion as to whether specific documents or information are to be supplied in a particular case. We say that for the following reasons:

(1) The only case to which we were referred (apart from *Ogier Trustee*) which deals specifically with this issue, namely *Tiger v Barclays Bank Ltd* (6), suggests that there is such a discretion, albeit that that observation is obiter because of the way in which the case proceeded before the Court of Appeal.

(2) Given that the obligation of an outgoing trustee extends to providing explanations to questions asked by an incoming trustee, it seems to us important that there be some element of control as to the reasonableness of such requests for information. One can envisage a situation where an outgoing trustee is plagued with unreasonable requests. There must be a mechanism for resolving a dispute of this nature and the court must therefore be able to adjudicate on whether or not a particular matter needs to be explained .

(3) The existence of a discretion is consistent with the approach of the Privy Council in *Schmidt v Rosewood Trust Ltd*. (5). That case was, of course, concerned with questions of disclosure to a beneficiary rather than to an incoming trustee, but the Privy Council made it clear that questions of disclosure were best approached as one aspect of the court's inherent jurisdiction to supervise and, where appropriate, intervene in the administration of trusts. We see no reason why that approach is not equally applicable to issues as between retiring and incoming trustees.”

39 Advocate James explained the importance to Fort & Balchan of seeing all of the correspondence between GTC and HSF in this way:-

(i) It is relevant to the dispute as to the purported indemnity given by D to GTC and may well add highly material context to this dispute that is due to be heard before the Court this October. The communications disclosed by GTC in this respect were, he said, very limited.

(ii) It was clear that HSF had given advice to GTC in February 2017, paid for by the DDT, in relation to the communications barrier within GTC itself, which advice had not been shared with R20, and was therefore “independent” in this respect. Fort & Balchan not unreasonably wanted to consider whether this advice was properly

chargeable to the DDT. He said it was critical from D's perspective that relevant confidential information should not cross this barrier and as matters transpired, it did so in highly contentious circumstances, evidenced elsewhere in these proceedings. More generally, Mr Hodges, who had administered the trusts relating to G, had become involved in these trusts, as is evident from his deposing for GTC in these proceedings.

- 40 However the Disclosure Order did not require GTC to disclose all of the correspondence between GTC and HSF and the summons issued by Fort & Balchan did not seek a disclosure order to that effect; it simply alleged a breach of the Disclosure Order, the terms of which were much more narrowly drawn.
- 41 Focusing on what the Court had actually ordered, GTC's position is that everything it has in its possession and which belongs to the DDT has been disclosed. It has gone beyond its obligation under the Disclosure Order and conducted a search of the e-mails of its officers, which cannot be said to belong to the DDT, and disclosed the same to Advocate James on 13th February 2019. In so far as advice was given by HSF in February 2017 (potentially just one email from HSF), GTC has not been able to find any, but has no objection to HSF's files being inspected. Contrary to the position taken by Mr Hodges in his fourth affidavit of 15th April 2019, that Fort & Balchan were not entitled to see the independent advice given by HSF, Advocate Swart had confirmed to Advocate James on 18th June 2019 that no formal advice paid for by or from the DDT funds was being withheld by GTC, and if and to the extent that HSF may retain a copy of the advice being sought, GTC authorised the release of the same to Fort & Balchan, following settlement of the amounts owing to HSF. In his eleventh affidavit Mr Hodges stated on oath that GTC had no further documents in its custody, possession or control relating to the DDT, all of which had been handed over pursuant to the Disclosure Order.
- 42 I was informed that the proceedings in relation to the indemnity issue had been the subject of the usual orders for discovery, and, although I have not seen it, the discovery made by GTC would have been accompanied by the usual affidavit, that everything relevant to the issue of the indemnity in its possession, custody or power had been discovered, an obligation that goes beyond GTC's obligations under the Disclosure Order, which are limited to documents in its possession that belong to the DDT. It would seem therefore that anything material to that dispute would already have been discovered by GTC in those proceedings.
- 43 In his skeleton argument, at paragraph 17, Advocate James recognised that there was now little more that Fort & Balchan could realistically ask the Court to do about what he described as the apparent inadequacy of the delivery of documents made by GTC, given the confirmation on oath by Mr Hodges that no documents were being withheld and that GTC consented to Fort & Balchan having access to the files of HSF. The summons of Fort & Balchan alleges that GTC is in breach of its obligations under the Disclosure Order and Advocate James conceded that there was no such breach established, although he said

this was technical, given that GTC was willing to allow Fort & Balchan access to the files of HSF. Looking at what GTC was actually ordered to disclose, I find that no such breach has been established.

- 44 I am not prepared to allow the summons to be amended and to direct GTC to give the confirmations and undertakings sought when no breach of the Disclosure Order has been established. The confirmations already given by Mr Hodges on oath suffice. However it would not be appropriate for the Court to simply dismiss the summons and send the parties away, in particular when legal work has been undertaken for the DDT by HSF, whose fees have been outstanding for some three years. The Court's inherent jurisdiction to supervise trusts has been invoked by GTC's representation, under which the summons has been brought, and the Court should give directions to help bring this matter to a close.

Conclusion

- 45 I therefore formally find that GTC is not in breach of the Disclosure Order and dismiss Fort & Balchan's summons.

- 46 Subject to the further input of counsel, I propose giving the following directions:-

(i) Fort & Balchan are directed to pay in full all outstanding sums properly due to HSF without further delay. It is fair to give such a direction as Fort & Balchan have already agreed to assume this responsibility and clearly have the means to do so. Furthermore the fees of HSF have been outstanding for far too long.

(ii) Subject to the payment of such sums in full, GTC is directed to facilitate access by Fort & Balchan or their legal representatives to the files of HSF and to any information held by HSF in relation to the DDT to which GTC would have been entitled as the original client, unrestricted by GTC, and in particular, by giving its consent to such access in an engagement letter as proposed by HSF in its letter of 21st February 2020. I have given thought as to whether GTC should have its costs in doing this paid by Fort & Balchan as ordinarily would be appropriate, but GTC's costs in approving and signing the letter of engagement prepared by HSF should be minimal. It has the protection of this Court in giving its consent to unrestricted access and its only interest will be in ensuring that it is not responsible for HSF's fees and expenses. Given the history of antagonism between the parties, allowing GTC to charge for this work will have the potential to give rise to a yet further costly dispute.

- 47 There will be liberty to apply and I leave over the issue of the costs of this summons.