In The Supreme Court of Bermuda

COMMERCIAL COURT

CIVIL JURISDICTION

2013: No 238

BETWEEN:-

(1) TRUSTEE 1
(2) TRUSTEE 2
(3) TRUSTEE 3
(4) TRUSTEE 4

Plaintiffs

-and-

(1) THE ATTORNEY GENERAL
(2) RESPONDENT 2
(3) RESPONDENT 3

Respondents

RULING (redacted)

(In Chambers)

Date of hearing: 7th May 2014
Date of ruling: 5th June 2014

Mr Alan Boyle QC and Mr Christian Luthi, Conyers Dill & Pearman, for the Plaintiffs

Ms Shan Warnock-Smith QC, Mr Rod Attride-Stirling and Mr Shannon Dyer, ASW Law Ltd, for the Second Defendant

Mr David Kessaram and Ms Lilla Zuill, Cox Hallett Wilkinson, for the Third Defendant

The First Defendant did not appear and was not represented

Introduction

1. On 26th February 2014 the Court ruled ("the 26th February ruling") on two applications for disclosure made by the Second Defendant ("D2") in the course of *Beddoe* proceedings commenced by the Plaintiffs ("The Trustees"). The ruling sets out the background to those applications, which I need not repeat.

2. I am now asked to rule on two further applications for disclosure by D2.

   (1) By a summons dated 4th April 2014 ("the First Summons"), he seeks inspection of a number of documents said to have been mentioned in the Trustees' evidence in reply served at the end of January.

   (2) By a summons dated 9th April 2014 ("the Second Summons"), he seeks the production of various categories of document pursuant to the Court's supervisory jurisdiction to administer trusts. Alternatively, he invites the Court to indicate that it would be assisted by the production of those documents.

3. I have had the benefit of extensive submissions from leading counsel. As I am concerned with a practical question – whether to order the production of any further documents, and, if so, which ones – I trust that the parties will forgive me for, in the main, addressing only those submissions that have been central to my reasoning in resolving that question.

First Summons

Order 24, rule 10

4. I dealt with the relevant law in the 26th February ruling. The request must relate to a document to which "*reference is made*" in the affidavit in the sense of a direct allusion. However, the court will not order the production of a document unless it is of the opinion that its production is necessary either for disposing fairly of the cause or matter or for saving costs.

5. The purpose of the court ordering the production of documents referred to in an affidavit is to enable the court and the requesting party to understand the meaning of the sworn statement – rather than the exhibits – and establish that any documents to which it refers, irrespective of whether they illuminate the meaning of the sworn statement, exist and have been represented fairly and accurately. However, the court may more readily conclude that the production of a document which does illuminate the meaning of the sworn statement is necessary for disposing fairly of the cause or matter or for saving costs than one which does not.

6. The first batch of requests relates to paragraphs 86 – 88 of the English language translation of the first affidavit of W1, which is dated 24th January 2014. I am satisfied that, with one exception, none of these requests contain direct allusions to particular documents. They refer either to a generic type of document with which W1 was involved, rather than being a compendious description of a number of particular instances of that document, or merely to information rather than documentation.

7. The exception occurs at para 88, where W1 states:

> "*I am not aware of any payments made by the companies owned by the Trusts other than as properly recorded in the accounts by me or my colleagues under my supervision (or [name] before me) and as approved by the BMC. I do not have any information or knowledge that would support an allegation by [D2] that the directors of the PTCs used the funds of the Trust companies for their own benefit.*"

8. The passage contains a direct allusion to payments properly recorded in the company accounts. D2 wishes to inspect all of the said accounts to ascertain whether the Trustees have benefited from any payments made by the companies. This, his counsel Ms Warnock-Smith QC submits, is relevant to the issue of who has benefited from the Trusts and hence who has a real interest in their enforcement. D2 also wishes to test the veracity of W1's claim that the payments recorded in the accounts were recorded "*properly*".

9. Mr Boyle QC, counsel for the Trustees, resists this application. He submits that the Trustees have made clear that they will produce up to date accounts for each of the Trusts and that these will set out the value of the Trusts' underlying assets. Beyond, that, he submits, the companies' accounts are not relevant to the issues in the *Beddoe* application. He refers the Court to passages in the affidavits filed by A and other members of her family who are involved in running the Plaintiff Trust Companies in which they state that they have not received any financial benefit from this involvement.

10. The production of the accounts, Mr Boyle submits, would not allow the Court to test W's evidence as to whether there were any payments made other than as recorded in the accounts, nor enable the Court to determine whether the payments in the accounts were recorded "*properly*". The issue of proper recording is in any case, he submits, of only marginal relevance to the *Beddoe* application.

11. In the premises, Mr Boyle submits, the production of the accounts is not necessary for disposing fairly of the *Beddoe* application and, far from saving costs, would be onerous and disproportionate to the points in issue.

12. I agree with Ms Warnock-Smith that it is relevant to ask "*cui bono?*" when deciding how the main action should be funded. However I am not of the opinion that ordering the production of the accounts of all the underlying companies from 2005 to 2014, which is the relevant period, is a necessary or proportionate step towards answering that question. It can be addressed in a more focused way.

13. D2's attorneys complain that the affidavits filed by A et al say nothing about non-beneficial payments and capital transfers which, it is submitted, a lawyer would not technically call a benefit but which a layperson would regard as benefits, such as loans and expenses. The running costs of the trusts, and to whom they are paid, are also, it is submitted, matters which of which the Court should be apprised.

14. Insofar as it has not already been provided, I should be assisted by information from the Trustees on these matters. However I shall leave it to them and their legal advisors as to how they respond to my request.

15. D2 has one further request outstanding. This relates to para 74 of the English language translation of the first affidavit of W2 dated 15th January 2014. W2 states:

> "*After 2012, following directions given by [name] as the representative of [name], those companies were transferred into a formal Bermuda purpose trust structure.*"

16. D2 seeks production of the trust structure. His request is denied as although the existence of a trust instrument or instruments can be inferred from the reference to a trust structure, that reference is not a direct allusion to them and the structure is not itself a document.

Decision

17. The First Summons is dismissed as D2's requests do not relate to documents to which a direct allusion is made, save in one case where production of the requested documents is not necessary for disposing fairly of the matter or for saving costs.

18. However, as outlined above, I should be assisted by the provision of further information from the Trustees regarding the provision or otherwise of "benefits" in the non-technical sense.

Second Summons

Submissions: *Schmidt* v *Rosewood Trust Ltd*

19. Ms Warnock-Smith relies on the principle in Schmidt v Rosewood Trust Ltd [2003] 2 AC 709. In that case, Lord Walker, giving the judgment of the Privy Council, articulated at para 51 the basis of a beneficiary's right to the disclosure of trust documents:

> "*Their Lordships consider that the more principled and correct approach is to regard the right to seek disclosure of trust documents as one aspect of the court's inherent jurisdiction to supervise, and if necessary to intervene in, the administration of trusts.*"

20. Lord Walker stated at para 52 of his judgment that their Lordships were therefore in general agreement with the approach adopted in the judgments of Kirby P and Sheller JA in the Court of Appeal of New South Wales in Hartigan Nominees Pty Ltd v Rydge 29 NSWLR 405. He cited with approval a passage from the judgment of Kirby P at pages 421 – 422 which included reference to:

> "*... a right of access which the courts will enforce to uphold the cestui que trust's entitlement to a reasonable assurance of the manifest integrity of the administration of the trust by the trustees.*"

21. It is submitted that, in order to assess the integrity of the Trustees' decision making with respect to this particular *Beddoe* application, the Court should adopt a strongly interventionist role in calling for the production of documents. This might fairly be characterised as akin to the role of an examining magistrate in inquisitorial criminal proceedings.

22. Ms Warnock-Smith submits that in the present case there are two ways in which the exercise by the Court of its inherent jurisdiction might arise. First, I have ruled in the 26th February ruling that for the purposes of this *Beddoe* application D2 has standing to enforce the Trusts. Consequently, it is submitted, he should have the same right of access to trust documents as a beneficiary.

23. Secondly, if the Court has jurisdiction to order disclosure of trust documents if so requested by a beneficiary, then, it is submitted, the Court must have jurisdiction to do so of its own motion and for its own benefit irrespective of whether disclosure has been requested by a beneficiary. Particularly where, Ms Warnock-Smith submits, the Trustees have surrendered their discretion to the Court. She relies on a passage in the 26th February ruling which states that, in a case where the trustees are seeking not merely the guidance of the court but its approval for a particular course of action, they are surrendering their discretion to the court.

24. Mr Boyle takes issue with the above submissions for a variety of reasons. He submits *inter alia* that in the context of enforcement of a purpose trust, the court's jurisdiction to order the production of documents is not inherent but statutory, arising under section 12B(1) of the Trusts (Special Provisions) Act 1989, as amended. There is therefore no room for Smith v Rosewood Trust Ltd disclosure. However, he submits, the Court has no jurisdiction to order the production of documents on the application of D2 because D2 is not seeking to enforce the Trust and does not recognize its validity.

Submissions: *Res Judicata*

25. Mr Boyle takes a preliminary point that D2 is prevented by operation of *res judicata* from seeking relief on the ground of the Court's alleged inherent jurisdiction to order disclosure. The relevant law was recently summarised by Lord Sumption in the UK Supreme Court, with whose summary the other members of the Court agreed, in Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd [2014] AC 160.

26. *Res judicata*, Lord Sumption noted at para 17, is a portmanteau term which is used to describe a number of different legal principles with different juridical origins. He went on to identify them. The principles on which Mr Boyle relies are (i) cause of action estoppel; (ii) issue estoppel; and (iii) the principle in Henderson v Henderson 3 Hare 100, which precludes a party

from raising in subsequent proceedings matters which were not, but could and should have been, raised in earlier ones.

27. As to the principle in Henderson v Henderson, the relevant passage from the judgment of Wigram VC at 381I – 382A bears repeating in full:

"*In trying this question I believe I state the rule of the Court correctly when I say that, where a given matter becomes the subject of litigation in, and of adjudication by, a Court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time.*"

28. This statement of principle was approved by the Privy Council in Hoystead v Commissioner of Taxation [1926] AC 155 at 170 and applied in Yat Tung Investment Co Ltd v Dao Heng Bank Ltd [1975] AC 581 at 590. It is therefore binding on this Court.

29. *Res judicata* is to be distinguished from abuse of process. As Lord Sumption stated at para 25 of his judgment in Virgin Atlantic:

"*Res judicata and abuse of process are juridically very different. Res judicata is a rule of substantive law, while abuse of process is a concept which informs the exercise of the court's procedural powers. In my view, they are distinct although overlapping legal principles with the common underlying purpose of limiting abusive and duplicative litigation.*"

30. The above principles were distilled yet further by Sir Terence Etherton Ch, drawing on Lord Sumption's summary, in Price v Nunn [2013] EWCA Civ 1002 at paras 67 – 69:

"*Cause of action estoppel is a form of estoppel precluding a party from challenging the existence or non-existence of a cause of action where that has already been decided in*

earlier proceedings. It arises where the cause of action in the later proceedings is identical to that in the earlier proceedings, the latter having been between the same parties or their privies and having involved the same subject matter. In such a case, unless fraud or collusion is alleged such as to justify setting aside the earlier judgment, the bar is absolute in relation to all points which had to be and were decided in order to establish the existence or non-existence of the cause of action. ***Cause of action estoppel also bars the raising in subsequent proceedings of points essential to the existence or non-existence of a cause of action which were not decided because they were not raised in the earlier proceedings, if they could with reasonable diligence and should in all the circumstances have been raised****. [Emphasis added.]*

Issue estoppel is a form of estoppel precluding a party from disputing the decision on an issue reached in earlier proceedings even though the cause of action in the subsequent proceedings is different. It may arise where a particular issue forming a necessary ingredient in a cause of action has been litigated and decided and in subsequent proceedings between the same parties or their privies to which the same issue is relevant one of the parties seeks to re-open that issue. In such a situation, and except in special circumstances where this would cause injustice, issue estoppel bars the re-opening of the same issue in the subsequent proceedings. ***The estoppel also applies to points which were not raised if they could with reasonable diligence and should in all the circumstances have been raised, but again subject to special circumstances where injustice would otherwise be caused****. [Emphasis added.]*

Res judicata operates as a substantive rule of law. It is to be distinguished from the court's exercise of its procedural powers to control the court's processes from being abused. They are juridically very different even though there are overlapping legal principles with the common underlying purpose of limiting abusive and duplicative litigation. In the case of the exercise of the court's procedural powers to prevent abuse the court should take a broad, merits-based judgment taking account of the public and private interests involved and all the facts of the case, focusing on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before."

31. The principle in Henderson v Henderson is both part of the law of *res judicata* and also a rule of public policy concerned with abuse of process. See the judgment of Lord Sumption in Virgin Atlantic at paras 23 – 25. In the context of *res judicata*, it overlaps with cause of action estoppel and issue estoppel. See the highlighted passages in the extracts from the

judgment of Sir Terence Etherton. However it is not necessary to prove either kind of estoppel to establish the principle. In the Thyssen-Bornemisza case, Civil Appeal No 4 of 1999, 2nd August 1999, at page 9, Huggins JA, giving the judgment of the Court of Appeal, coined the phrase *res non judicata* to describe its operation.

32. Ms Warnock-Smith refers me to Steliou v Compton [2002] 1 WLR 2558 EWCA[1], in which the Court of Appeal of England and Wales suggested that the principle in Henderson v Henderson should be applied less strictly with respect to interlocutory applications. Steliou v Compton is cited as authority for this principle in Spencer Bower and Handley, Res Judicata (4th Edition) and Clerk and Lindsell on Torts (20th Edition).

33. The judgment of the Court in Steliou v Compton was given by Brooke LJ. The relevant passage of his judgment is at para 56:

> "*In our view, although the policy that underpins the rule in Henderson v Henderson has relevance as regards successive pre-trial applications for the same relief, it should be applied less strictly in relation to a final decision of the court, at any rate where the earlier pre-trial application has been dismissed.*"

34. It is important to consider this passage in its factual context. The claimant was seriously injured in a road accident. He sued the defendant in negligence. At trial, the judge found in his favour on the question of liability, albeit with a finding of contributory negligence on his part, with damages to be assessed. It was clear, the Court of Appeal found, that the damages would be substantial.

35. The case unfolded during the transition from the Rules of the Supreme Court to the Civil Procedure Rules. A Transitional Arrangements Practice Direction provided that if any existing proceedings had not come before a judge between 26th April 1999 and 25th April 2000 they should be stayed,

[1] There were two appeals that were heard together: Woodhouse v Consignia plc and Steliou v Compton. However the Henderson v Henderson point only arose in Steliou v Compton.

with liberty to apply to lift the stay. Any such application had to be supported by evidence.

36. The claimant decided not to seek directions from the court in relation to the trial of the assessment of damages until the prognosis became clearer. However he took active steps to clarify the medical position and the defendant's solicitors were kept informed.

37. In the event, the case did not come before a judge during the period specified in the Practice Direction and was therefore automatically stayed. The claimant applied to set aside the stay but did not file any evidence in support of his application. The application was dismissed, as was an appeal against that decision. The claimant made a fresh application to set aside the stay, this time supported by evidence. It was struck out as an abuse of process. The claimant appealed, and his appeal was dismissed. He appealed to the Court of Appeal, and this time his appeal was successful.

38. The Court held that if the first application to lift the stay had been supported by the evidence supporting the second application then the first application would have been successful. The result of a stay would be (a) to deprive the claimant of substantial damages in a case which would be very likely to settle out of court, in view of the fact that the principal evidence was that of jointly instructed experts, and (b) to encourage the claimant to start proceedings against his legal advisors. In the Court's view, such an outcome would not further the overriding objective of enabling the court to deal with cases justly, nor would it reduce the call on the court's resources.

39. The Court concluded that the penalty imposed by the courts below on a seriously injured claimant whose solicitor had made a pardonable mistake in his interpretation of a transitional rule was disproportionate to the error that was made. The error could be remedied by an order for costs and deserved no greater penalty "*on the unusual facts of this case*".

40. Ms Warnock-Smith also refers me to the decision of the New South Wales Court of Appeal in Nominal Defendant v Manning [2000] NSWCA 80 (28

August 2000). A majority of the Court held that there was no general rule that would preclude an unsuccessful applicant for interlocutory relief from repeating the application simply because the applicant sought to rely on additional facts which did not amount to fresh evidence. Some other factor had to be present before an abuse of process was established.

41. Heydon JA, who was one of the judges in the majority, stated at para 67 of the judgments:

> "*Respondents have a very strong entitlement to finality once a trial of the merits has occurred and all appellate processes are exhausted, and their entitlement is protected by the various doctrines relating to res judicata. But their entitlement to finality is less compelling in relation to applications to extend time with a view to ensuring a trial on the merits in due course.*"

42. The learned judge attached importance to the fact that the issue with which the Court was concerned was whether the applicant for an extension of time would ever have the case considered on the merits. As he stated at para 73 of the judgments:

> "*failure in the application will prevent any judicial examination of the applicant's substantive claim, which may in turn have catastrophic consequences for the applicant and the applicant's family*."

43. Ms Warnock Smith further submits that there is no authority for the proposition that *res judicata* applies with respect to a subsequent interlocutory application, such as the present, for the production of *different* documents. There appears to be a dearth of authority on the point.

Discussion: *Res Judicata*

44. Returning to the instant case, the issue before the Court at the hearing which gave rise to the 26th February ruling was, stated narrowly, whether the Trustees' duty of full and frank disclosure included a duty to disclose documents, and, stated broadly, whether the Court had jurisdiction to compel the production of documents by the Trustees. The Court was only asked to

render a decision on the narrow issue, which it resolved in the negative. But in my judgment the broader issue was impliedly raised by D2's application.

45. If D2 wished to rely on any other grounds in support of the Court's jurisdiction to order the disclosure of documents by the Trustees, such as the inherent supervisory jurisdiction of the Court, then he could and should have done so at that hearing. This is because the Court's ruling on the legal principles applicable to the applications for the production of documents at that hearing would also be applicable to any further application for the production of documents in these *Beddoe* proceedings. Thus it is immaterial that the present application concerns the production of different documents as the principles underlying the Court's jurisdiction to order their production are the same.

46. I therefore uphold the Trustees' preliminary objection on the basis both of issue estoppel and the principle in Henderson v Henderson. The instant case is concerned with the scope of disclosure by the trustees on a *Beddoe* application. The facts are far removed from Steliou v Compton and Nominal Defendant v Manning, and there is no question of D2 being deprived of a trial on the merits of his claim in the main action. In my judgment the facts of this application do not give rise to special circumstances where the operation of *res judicata* will cause injustice.

Discussion: *Schmidt* v *Rosewood Trust Ltd*

47. In deference to counsel's submissions, I shall nonetheless go on to consider what the Court's position would have been if *res judicata* did not apply. I can do so quite briefly. My reasoning applies irrespective of the basis on which the Court is invited under the First Summons to exercise its jurisdiction to order the production of further documents.

48. In the 26th February ruling I held that on a *Beddoe* application the court will want to see a copy of the instructions to, and the advice of, an appropriately qualified lawyer on the matters in issue. Beyond that, the trustees' duty of

full and frank disclosure does not require them to provide the court with relevant information in any particular form, or with copies of the documents from which that information is derived. However, the court may express the view that copies of certain documents would be of assistance. I indicated that I should be assisted by the production of certain specified material by the Trustees.

49. That is how, in the experience of this Court at least, the court generally exercises its supervisory jurisdiction with respect to disclosure in the context of a *Beddoe* application. Having said that, I acknowledge that empirical data on this point is hard to come by, as *Beddoe* applications are generally heard in chambers and go unreported. The fact remains that I was not referred to any rulings in which, on a contested application for disclosure, the *Beddoe* court had ordered the production of documents by the Trustees.

50. On the other hand, in the 26th February ruling I held that a *Beddoe* application was a cause or matter within the meaning of Order 24, rule 10. By parity of reasoning, it must also be a cause or matter within the meaning of Order 24, rule 12, which provides:

> "*At any stage in the proceedings in any cause or matter the Court may, subject to rule 13(1), order any party to produce to the Court any document in his possession, custody or power relating to any matter in question in the cause or matter and the Court may deal with the document when produced in such manner as it thinks fit.*"

51. Order 24, rule 13(1) provides:

> "*No order for the production of any documents for inspection or to the Court shall be made under any of the foregoing rules unless the Court is of opinion that the order is necessary either for disposing fairly of the cause or matter or for saving costs.*"

52. In the premises I accept Ms Warnock-Smith's submission that the Court could, if it so chose, order the production of particular documents. However I am not persuaded that on the facts of this case the Court should order the Trustees to go beyond what their duty of full and frank disclosure requires. As stated in the 26th February ruling, the extensive production of documents

for which D2 contends is inconsistent with the way in which *Beddoe* applications have historically been conducted.

53. I have already indicated the material which I should like to see from the Trustees and, apart from the information which I have requested above with respect to the First Summons, I see no good reason for requesting anything further. I have every confidence that the Trustees will respond positively to that request. I am not of the opinion that the production of further documents, save insofar as the Trustees may choose to produce them in response to that request, is necessary either for disposing fairly of the cause or matter or for saving costs.

Surrender of Trustees' discretion

54. There is one other issue arising. In the 26th February ruling I stated, in the course of reviewing the law on full and frank disclosure, that where, as in this case, the trustees are seeking the court's approval for a particular course of action, they will be taken to have surrendered their discretion to the court. The authority for that proposition was the judgment of the Privy Council, given by Lord Oliver, in Marley v Mutual Security Merchant Bank & Trust Co Ltd [1991] 3 All ER 198, PC, at 201. The relevant passage bears repeating:

> "*A trustee who is in genuine doubt about the propriety of any contemplated course of action in the exercise of his fiduciary duties and discretions is always entitled to seek proper professional advice and, if so advised, to protect his position by seeking the guidance of the court. If, however, he seeks the approval of the court to an exercise of his discretion and thus surrenders his discretion to the court, he has always to bear in mind that it is of the highest importance that the court should be put into possession of all the material necessary to enable that discretion to be exercised.*"

55. It has since been drawn to my attention that this passage was interpreted by Robert Walker J (as he then was) in an unreported judgment given in chambers in 1995. His judgment was cited with approval by Hart J in Public Trustee v Cooper [2001] WTLR 901, Ch D, at 922 – 925.

56. Robert Walker J stated that when the court has to adjudicate on a course of action proposed or actually taken by trustees there are at least four distinct situations (and no doubt numerous variations of those as well): (1) where the issue is whether some proposed action is within the trustees' powers; (2) where the issue is whether the proposed course of action is a proper exercise of the trustees' powers where there is no real doubt as to the nature of the trustees' powers and the trustees have decided how they want to exercise them but, because the decision is particularly momentous, the trustees wish to obtain the blessing of the court for the action on which they have resolved and which is within their powers; (3) surrender of discretion properly so called; and (4) where trustees have actually taken action, and that action is attacked as being either outside their powers or an improper exercise of their powers.

57. Robert Walker J commented with respect to Marley:

> "*It is to be noted that in Marley no authorities at all seem to have been cited to the Privy Council; at any rate, none was referred to by them. The whole thrust of Lord Oliver's speech ... was to distinguish the cases of the court approving a proposed exercise of the trustee's powers, whether in category (2) or in category (3), from a case in category (4). The error which the courts below had made was to assume that, once the fiduciaries had laid the matter before the court, the court should bless the fiduciaries' proposal unless it could be shown positively to be a breach of trust. That was the context in which the passage that I have read from the speech is to be found.*
>
> *I cannot think that the Privy Council in that case was intending to decide, apparently without argument or citation on the point, that what I have called category (2), which is familiar to all Chancery practitioners on the private client side does not really exist as a category at all.*"

58. Lewin on Trusts, Eighteenth Edition, notes at para 29-297 that the judgment in Public Trustee v Cooper has been followed often enough on the distinction between category (2) and category (3) cases to establish the distinction firmly.

59. The instant case appears to be a category (2) case, although perhaps with shades of category (3). On the one hand, the Trustees submit that they

should be directed to defend the main action; on the other, the Originating Summons is phrased neutrally as seeking directions as to the stance in the main action which the Trustees should take.

60. However, as the Court's supervisory jurisdiction is inherent and not conferred by the Trustees, the surrender or otherwise by the Trustees of their discretion to the Court does not affect the ambit of that jurisdiction. Irrespective of how the case is categorized, pursuant to their duty of full and frank disclosure the Trustees must provide the Court with all relevant information which they have or ought to have in relation to the decision which the Court will be asked to make. See the judgment of Clyde-Smith, Commr in the Royal Court of Jersey in In the matter of the A and B Trusts [2007] JLR 44 at para 22. It was in support of that principle, which has proven uncontroversial, that in the 26th February ruling Marley was cited.

Decision

61. The Second Summons is dismissed by operation of *res judicata*. If it had not been dismissed for this reason, I should have dismissed it on the merits.

62. I shall hear the parties as to costs.

DATED this 5th day of June, 2014

Hellman J