Neutral Citation Number: [2020] EWHC 1020 (Ch)

Case No: PT-2018-000789

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
PROPERTY TRUSTS AND PROBATE LIST

Rolls Building, Fetter Lane,
London EC4A 1NL

Date: 05/05/2020

Before:

CHIEF MASTER MARSH

- -

Between:

JONATHAN MACARTNEY BALL	**Claimant**
- and -	
(1) CHRISTOPHER BALL	
(2) JENNIFER WESTWAY	**Defendants**

- -
- -

Brie Stevens-Hoare QC (instructed by **Wright Hassall LLP**) for the **Claimant**
Josh Lewison (instructed by **Clarke Willmott LLP**) for the **Defendants**

Hearing dates: 5 and 6 March 2020

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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CHIEF MASTER MARSH

Chief Master Marsh:

1. This claim concerns a dispute between three siblings. I will, as at the disposal hearing on 5 and 6 March 2020, use the parties' given names: Christopher, Jennifer and Jonathan. I will refer to their parents as 'Father' and 'Dorothy'. Wroe's is a store that was set up by Father and Dorothy at 13 Belle Vue, Bude, Cornwall in 1954. They acquired an additional part of that property in 1958 and initially operated the business in Ladies Fashions in partnership. In August 1962 Wroe's (Bude) Limited ("Wroe's") was incorporated and the business has been operated through the company ever since. Wroe's now operates from three locations in Cornwall and its business has broadened to become a department store. It is still wholly owned and controlled by members of the Ball family.

2. Christopher Edward Ball (Father) died on 26 June 1978 leaving a will dated 9 January 1978. He left the income from his estate in trust for his wife Dorothy for life and the residue of his estate as one third each for Jennifer and Jonathan, with the remaining one third left to Christopher's children. Christopher is the eldest child and is now aged 82. Jennifer is aged 78 and the claimant, Jonathan, is aged 72. Christopher, Jennifer and Jonathan were appointed Father's executors and trustees by his will. They all accepted the appointment and probate was granted to them on 7 March 1979.

3. Dorothy died on 1 June 2016 leaving a will dated 7 September 2005. She appointed her solicitor, Simon Gregory, and her accountant, Nigel Cox, as her executors. They were originally the third and fourth defendants to this claim. However, the claims against them were discontinued. A grant of probate of Dorothy's estate has not been obtained because Jonathan filed a caveat, despite it being clear that he does not dispute the validity of his mother's will.

4. Some 38 years elapsed between Father's death and Dorothy's death during which time she was entitled to receive the entire income from his estate. She had no entitlement to capital. During that period of 38 years Christopher, Jennifer and Jonathan were trustees of the will trusts created by Father's will, although Jonathan's case is that he was excluded from all involvement as a trustee. There has been a notable failure on the part of all three trustees to consider with sufficient care what their duties as trustees required them to do and Jonathan maintains that his siblings always put their role as directors of Wroe's before their duties as trustees. There may be some force in this part of his case but it masks the reality that, in day to day terms, running the family business understandably was more of a preoccupation for Christopher and Jennifer than acting as a trustee of Father's estate. As will be seen, the amount of income the assets in Father's estate produced was modest and Dorothy herself remained a director of Wroe's for many years. None of the trustees took advice about their role and there is little evidence to show that Jonathan gave much thought to his role until many years after his father's death. If there is force in his accusation that his siblings adopted a casual approach to their duties as trustees, the same accusation applies with equal force to him.

5. Jonathan has never had any involvement with Wroe's. He qualified as an architect and became one of the founders of the Eden Project. Sadly, relations between him and his siblings are very strained. The principal relief Jonathan seeks in this claim against Christopher and Jennifer as trustees is an account of his Father's estate. He makes this claim as a beneficiary of that estate albeit that he is a co-trustee.

6. The claim came on for hearing on the basis of directions made on 5 September 2019. The order determined that witnesses need not attend the disposal hearing for cross-examination. A request made at that hearing to file further witness evidence was refused. There has been no order for disclosure. This is not uncommon in Part 8 claims because the parties are required to provide all the written evidence upon which they rely at the outset of the claim.[1]

7. At the hearing on 5 September 2019 the court approved a list of issues. It proved to be a useful template for the hearing and it is equally useful for this judgment. The issues were defined in the following way (adapting the issues to the terminology used in this judgment):

> "1. What monies were paid to Dorothy pursuant to her life interest in Father's Will Trust?
>
> 2. What monies have been paid by Christopher and Jennifer to Simon Gregory and Nigel Cox in their capacity as trustees of Dorothy's Will Trust?
>
> 3. Have Christopher and Jennifer already provided a sufficient account of the administration of Father's Will Trust?
>
> 4. If the answer to the issue at 3 above is 'no', should the Court in the exercise of its discretion decline to make an order for an account in view of:
>
> > 4.1 acquiescence on the part of Dorothy in the administration of Father's Will Trust; and/or,
> >
> > 4.2 any other matters the Court considers relevant including the fact that the underlying claims are stale or serve no practical purpose?
>
> 5. If the Court in the exercise of its discretion makes an order for an account:
>
> 5.1 what is the scope of the account in terms of assets and period;
>
> 5.2 what records and documentation should Christopher and Jennifer provide in support of the account?"

8. The list of issues was agreed after Christopher and Jennifer had failed to strike out the prayer for relief that seeks an account of what money was due to Dorothy under Father's Will Trust, what money was paid to her and what money has been paid to her executors. Issues 1 and 2 are a more concise version of this claim to relief. Since no money has been paid by Christopher and Jennifer to the executors of Dorothy's Will Trust, because probate has not been obtained, Issue 2 is not contentious and has to be answered in the negative.

9. Despite the failure of the strike out application, the legal basis upon which Issue 1 arises is not free from challenge. Jonathan is a trustee and a beneficiary of Father's Will Trust. He clearly has locus to apply for an account in relation to that trust as a beneficiary. The fact that he is trustee as well, so that notionally he applies for an account against himself, does not create a difficulty. It appears to be settled, however,

[1] CPR rule 8.5.

that a capital beneficiary is not entitled to an account in respect of income payable under the trust to a different beneficiary: see *Royal National Lifeboat Association and others v Headley* [2016] EWHC 1948 (Ch) per Master Matthews [24] to [28]. It seems to me, however, that a capital beneficiary does have an interest in the way the income trust has been managed, if income has been wrongly categorised as such or improperly paid away. And it is certainly the case that Jonathan has an interest that is a sufficient basis for an account to be ordered if assets belonging to the trust have been transferred to the income beneficiary.

10. Jonathan is a beneficiary under Dorothy's Will Trust but that does not give him locus to seek an account of Father's Will Trust insofar as it affected her. Only her executors could bring such a claim. Mr Gregory has renounced his entitlement to be an executor of Dorothy's will and Mr Cox has made it clear in correspondence that he does not intend to bring such a claim when probate is granted. It would only be open to Jonathan to bring a derivative claim under the exceptional category of cases explained in *Roberts v Gill* [2010] UKSC 22.

11. On 5 February 2020 Jonathan' solicitors supplied to the defendant's solicitors two lever arch files of additional documents that had not been disclosed previously. The vast majority of the documents had been extracted from Companies House and related to Wroe's. The defendants are both shareholders and directors of Wroe's. At the outset of the hearing Mr Lewison, who appeared for Christopher and Jennifer, objected to the additional documents being relied upon. He submitted that the documents could not be relied on by Jonathan because they had neither been exhibited to a witness statement nor provided with the court's permission. He pointed out that the documents had been provided without any explanation and without providing any indication about why they were thought to be relevant. It was left the defendants' advisers to go through them and to work out why they might be relied on.

12. In response, Ms Stevens-Hoare QC, who appeared for Jonathan, submitted that the documents contained no surprises for the defendants and no request had been made to explain which documents in the additional bundle were relevant and why.

13. The position under the CPR is not in doubt. The Part 8 regime requires the parties to provide all their written evidence at the outset. However, it is common for the court to permit further evidence to be relied on and disclosure is also ordered on occasions, formerly under CPR 31 and now by adapting as appropriate PD51U. CPR 8.6(1)(b) permits the court to give permission for further written evidence to be relied on if the court gives permission. The rule undoubtedly contains a sanction although I have to say that in my experience the court adopts a pragmatic approach and will generally permit further written evidence to be relied on without requiring an application for relief from sanctions. The Part 8 procedure is used in a wide range of cases and is compulsory in claims that are very likely to require additional evidence beyond that permitted by CPR rule 8.5 which sets a very strict framework with the evidence 'front-loaded'. It will usually be right to permit further evidence to be filed.

14. At the hearing I made an order permitting Jonathan to rely on the additional documents and said I would provide reasons in this judgment. I did not require Jonathan to make a formal application for permission or for relief from sanctions. My reasons are:

(1) It seemed likely that at least some of the documents would be helpful in explaining the formal history relating to Wroe's.

(2) The prejudice to the defendants was minimal since they would already be aware of the documents filed at Companies House. If it transpired that the documents are of little value, the defendants may be compensated in costs for the wasted time they spent reviewing the documents.

(3) To the extent that it is necessary to go through the *Denton* exercise, I need only say that I do not regard the breach as serious, the explanation that it was thought to be helpful to have the documents available for hearing is a sensible one and all the circumstances of the case and the interests of justice make it appropriate to give permission.

15. I would add that when assessing the seriousness of the breach, it is right for the court to take account of the rule that has been breached. Here, the claimant has fully engaged with the claim. The inflexibility of the Part 8 regime is unhelpful in cases of any complexity and the only criticism that can be levelled at the claimant is that an application for permission should have been made before the outset of the hearing. It seems to me that had that been done, the defendants would have been hard pressed to oppose it.

Father's Will

16. The material parts of the will are:

Clause 6(iv)

"… in particular my Trustees have my authority to retain invest and employ in the business of Wroe's ……any monies forming part of the trust funds whether such business is run by one person or in partnership or as a limited liability Company and may do so on such terms and conditions as they may think proper. In the event of any divergence of opinion between my Trustees I would like to record it as my wish that they would continue to retain any monies of mine in the said business of Wroe's."

Clause 6(v)

"…without wishing to impose any legal trust in any way I express my strong desire that the beneficiaries of this my Will …..will not take their share of the estate in such a manner as to financially embarrass the aforementioned firm or business of Wroe's but will be willing to leave their share in the business for at least two years and thereafter if they wish to take their share out of the business they will do so by instalments over a period of not less than seven years."

17. The purpose that is expressed in these provisions is clear. Clause 6(iv) provided a power to invest in Wroe's. Father wanted his children, acting as his trustees during the period in which their mother received the income from the estate, to retain any monies he had invested in Wroe's. The purpose expressed in clause 6(v) is different. It is an expression of Father's wish that either upon Dorothy's death or before that their share of the estate would be left in the business for at least 2 years and removed over a

period of 7 years. Neither provision directly deals with shares held by Father in Wroe's. Clause 6(iv) could relate to Father's director's loan account.

18. Importantly, the Trustees did not have express power to release capital to Dorothy as the income beneficiary. The power concerned preservation and retention of capital during Dorothy's lifetime.

Dorothy's Will

19. Her will appointed Nigel Cox, who is a Chartered Accountant, and Simon Gregory, who is a solicitor, as her executors. After some legacies the residuary estate was to be divided into seven parts in the following proportions:

    (1) Three parts for Jonathan.

    (2) Two parts for Jennifer.

    (3) Two parts for Christopher's children.

20. Jonathan has lodged a caveat that has prevented a grant of probate being obtained. He has at the same time complained that his mother's estate has not been distributed. Plainly the two positions are inconsistent.

The Law

21. There are three points that arise.

    (1) What does a beneficiary have to establish as the basis for the court making an order for an account in common form to be taken?

    (2) To what extent does the court have a discretion to refuse to order an account?

    (3) What is involved in providing an account?

22. The beneficiary must show that an account has not been produced or that the account is inadequate. What will comprise an adequate account will depend on the circumstances. It is not necessary, however, for the claimant beneficiary to show that the trustees have acted in breach of their duties (other than by failing to account). An account in common form is, in essence, the provision of information by the trustees to the beneficiaries. If the beneficiary considers there have been breaches of trust, a further step must be taken to challenge the account.

23. There is a discretion whether or not to order an account. In *Henchley v. Thompson* at [25] I observed:

> "There is no absolute entitlement to obtain an order for an account. It is one thing for the duty to account being part of the irreducible minimum obligations of trustees, but quite another to say that the court must always, without exception, make an order for an account to be provided. The duty and an entitlement to an order from the court are quite different. I can accept, however, that the court will, in the exercise of its discretion,

> ordinarily make an order for an account where an account has not been provided and furthermore, there may be very limited circumstances in which the court will decline to make such an order. Nevertheless, it is plain to my mind there is a discretion even if it is one which will be applied sparingly."

20. In *Al-Dowaisan v. Al-Salam* [2019] EWHC 301 (Ch), HHJ Hodge QC having considered the decision in *Henchley v Thompson* said at [146]:

> "In the present case, it seems to me that the result of the mass of information now produced in the course of these proceedings means that the court may be in a position to consider whether any underlying claims would be time-barred. To the extent that any such claim is, it seems to me that that must be a relevant factor in the exercise of the court's discretion whether to order an account. It is one of the maxims of equity that the court does not act in vain; and if no order for monetary payment is likely to follow from an account, then I see no reason why an account should be ordered, with all of its attendant costs and demands upon court resources."

21. I respectfully agree with that observation. In the context of a business dispute, such as *Al-Dowaisan*, the court is not only concerned with whether there has been a failure to account but also whether ordering an account to be taken is likely to be of practical utility. As HH Judge Hodge QC observed, the court is unlikely to order an account if no order for monetary payment is likely to follow. However, in relation to a conventional trust, the provision of an account itself will often provide real benefit in itself because a beneficiary is entitled to know what the assets of the trust comprise and how they have been dealt with. The provision of information in this context does not have to be connected with a claim.

22. As to what the provision of an account by trustees means in practice it is again helpful to refer to *Henchley v Thompson* at [62]:

> "I have earlier in this judgment made some observations about the nature of trusts and accounts. They are different to trading accounts for a business entity. In the case of the latter, the accounts, in accordance with accounting conventions, provide a balance sheet which gives a snap shot as to the asset position on a date and a trading report covering a period. Trust accounts, particularly where there are beneficiaries with interests which have not vested, must be able to show from period to period (the frequency of accounts is not fixed) how the trust assets have been dealt with, including what distributions and disposals have taken place. A beneficiary reading trust accounts must be in a position to assess whether the trust assets conform with the trust instrument, that the class of assets held is appropriate for the trust. The style of the accounts, and the level of detail provided will necessarily vary. The accounts produced for 1990 and 1991 may have been suitable for submission to the Inland Revenue, as it then was, for the

> purposes of assessing tax liability and providing a general summary of the trusts position.
> However, they were not suitable to provide a beneficiary with an adequate understanding of how the trustees had managed the trust assets in the relevant periods."

23. In a similar vein, Master Matthews (as he then was) in *RNLI v. Headley* [2016] EWHC 1948 (Ch) observed at [11]:

> "There is some danger of misunderstanding here. When the books and cases talk about beneficiaries' "entitlement to accounts" or to trustees being "ready with their accounts" they are not generally referring to annual financial statements such as limited companies and others carrying on business (and indeed some large trusts) commonly produce in the form of balance sheets and profit and loss accounts, usually through accountants, and – in the case of limited companies – file at Companies House. Instead they are referring to the very notion of accounting itself**.** Trustees must be ready to account to their beneficiaries for what they have done with the trust assets**.** This may be done with formal financial statements, or with less formal documents, or indeed none at all. It is no answer for trustees to say that formal financial statements have not yet been produced by the trustees' accountants."

24. I accept Mr Lewison's helpful summary of what is required from the trustees in providing an account to the beneficiaries:

    i) They must say what the assets were;

    ii) They must say what they have done with the assets;

    iii) They must say what the assets now are;

    iv) They must say what distributions have taken place.

25. It hardly needs to be said that the level of detail the trustees must provide and the formality of the statements and documents will vary with the size and nature of the trust.

Evidence

26. The court was provided with two witness statements from Jonathan and a witness statements from each of Christopher and Jennifer, and from Christopher's son Ronald, Simon Gregory and Nigel Cox. Christopher and Jennifer's statements were lengthy and set out their knowledge of relevant events in considerable detail. Given that Father died in 1978, it is unsurprising that their recall of some events is imperfect.

27. The court formed the view at the directions hearing that this claim did not require there to be a trial with cross-examination despite there being some issues of disputed fact. That is because the claim is based upon an alleged failure to account. The

threshold for making such an order is low. It should not normally be necessary for there to be a trial for the purposes of establishing whether there is an entitlement to an account, whether an account (in whatever form) has been provided and, if not, whether it is appropriate to order that one is produced. The making of an order for an account, if there has been a failure to account is a matter of discretion and the court will wish to have regard to past events that may affect the court's approach to the exercise of the discretion. But, again, it should not normally be necessary for evidence to be challenged for that purpose. In my judgment the court needs to be astute, particularly where there are issues that arise between members of a family, to avoid providing the luxury of a full trial on the question of whether an account should be ordered with the inevitable corollary that the costs they incur will be far greater than otherwise. A trial may provide members of a family with the benefit of catharsis, but it is not a feature of the overriding objective and is not one of the primary functions of the conduct of litigation.

28. Jonathan's suspicions about the way in which his co-trustees have conducted themselves is based on the premise that they have at all times favoured Wroe's over Father's Trust. That they have put their duties as directors first over their duties as trustees and therefore have acted in breach of their duties as trustees; they have had a conflict of interest that they have failed to recognise. However, this is not a claim about the self-dealing rule and I was not addressed about it at the hearing. He is merely seeking an account.

29. On 1 February 2019 Wright Hassall wrote to Clarke Willmott and made a detailed request for documents relating to Wroe's falling into 17 categories. The request was stated to be based upon Jonathan's wish to "understand what has happened to the assets/income of [Father's Trust] and the assets/monies of his mother's estate". The requests included the provision of Wroe's statutory books, board minutes, shareholder resolutions, financial statements and management accounts, dividends declared and distributed, valuations of shares and pension provisions covering a period of over 40 years. In their reply dated 18 February 2019, Clarke Willmott rightly noted that:

    (1) The request for information was wholly disproportionate.

    (2) No explanation had been given why, if the information was genuinely needed, it had not been made before the claim was issued because the requests could not be said to arise out the defendants' evidence.

30. On 28 October 2019 the board of Wroe's met to consider whether the information that had been requested should be provided in the context of a proposed mediation between the parties. Furthermore, the board considered (a) whether Christopher and Jennifer were authorised to act for Wroe's for the purposes of the mediation and (b) if not, whether Wroe's would attend the mediation (by some other representation). Neither Christopher nor Jennifer attended the meeting. The minutes record that the board were not willing to permit Christopher or Jennifer to represent Wroe's or that the company should be otherwise represented at a mediation. As to the request for documents, the directors considered that they would support any effort to resolve "this awful family dispute" but their duty as directors was to the company. They considered that if documents were supplied, Jonathan would simply want more. The minute ends:

> "In summary, we are happy to disclose any specific documents if it will help clarify any misunderstanding. However, it is agreed that all working directors must stay focussed on operations in this critical period and not be drawn into the wider family dispute."

31. During the course of the claim, Jonathan did not seek an order for disclosure against Christopher and Jennifer and did not apply under CPR 31.17 for third party disclosure. At the hearing Ms Stevens-Hoare submitted that Jonathan was entitled to see documents relating to Wroe's business. However, the submission in the absence of an application that would have to have been made earlier in the claim does not assist Jonathan. In any event, there were considerable difficulties Jonathan would have to overcome including:

    (1) A request for documents by the trustees would have to be made by all of them or in the absence of unanimity pursuant to a direction of the court.

    (2) The trustees hold only a minority holding of shares. It is difficult to see on what basis they could demonstrate an entitlement to see documents other than annual accounts. I was referred to the decision in *Butt v Kelson* [1951] 1 Ch 197. However, in that case the trustees held 22,100 out of 22,852 shares that had been issued and I do no t find it to be of assistance in the rather different circumstances of this case.

32. I can see no basis for drawing an adverse inference against Christopher and Jennifer arising from the board of Wroe's declining to provide the documents Jonathan wishes to see. The board was acting entirely properly in acting in the manner that is reflected in the minute to which I have referred.

The issues

33. Father's Will Trust took effect on his death nearly 42 years ago. Unfortunately, the records of his estate are poor. Parnall Goodwin & Chegwin, a firm of solicitors in Bude, were instructed to act on behalf of the executors and they obtained the grant of probate and wound up the estate. They produced estate accounts which set out receipts and payments and list the estate's assets. They provide, therefore a helpful starting point.

34. The estate accounts show there was a cash balance of £2,652.79 paid to Leicester Building Society. Up to the hearing before me, Jonathan disputed this figure but it is now agreed by him. By a series of mergers and a demutualisation, the sum was by the date of Dorothy's death held in an account with Santander. According to Christopher's evidence, the original sum was supplemented demutualisation payments. There was also some accrued income of £688.88 from investments due to Dorothy.

35. The list of assets comprised:

    (1) Father's half interest in 13 Belle Vue[2] which was occupied by Wroe's.

[2] Dorothy held the other half interest beneficially. She was therefore entitled to 100% of the income from 13 Belle Vue.

(2) 182 shares in Wroe's.

(3) Father's director's loan account with Wroe's.

(4) 15,000 income units in Practical Investment Company (later re-named 'Consistent').

(5) A modest portfolio of shares.

(6) Cash paid into Leicester Building Society.

36. There are no substantial issues about items (4), (5) and (6). Income from the Practical/Consistent shares was paid to Dorothy until her death. The shares remain part of Father's estate. The small portfolio of shares was at some point made over to her. It is recognised that this should not have happened and an adjustment on the winding up of Father's and Dorothy's estates will be required. The point is not contentious. There is less certainty about the history of the account now held in Santander. It is surprising that the account was retained over 38 years and it might the case that the trustees could have invested the fund more beneficially. There is some evidence in Dorothy's tax returns that she was treated as having received the modest interest and it is reasonable to assume in the lack of evidence to the contrary that she did receive it.

Father's shares in Wroe's

37. The principal areas in relation to which it is said an account is needed concern Wroe's. The starting point is to consider whether an account is needed in relation to Father's holding of 182 shares. Ms Stevens-Hoare sought to establish that there was real doubt about the number of shares that were held in light of a number of documents dating from the late 1970's and early 1980's. Parnall Godwin & Chegwin wrote to Jonathan on 5 March 1980 enclosing the estate accounts. He was one of three proving executors and it is a reasonable assumption that a letter in the same terms was sent to his siblings because the letter asks him to indicate his approval to the estate accounts by signing and returning "the enclosed form". Understandably the solicitors wanted the comfort of knowing that there was no dispute about the estate accounts. It not suggested by any party that the estate accounts were disputed and it is a reasonable assumption that they were approved. There is certainly no suggestion to the contrary in the evidence. It is therefore deeply unsatisfactory that Jonathan, as a fiduciary both as executor and trustee, should now raise issues about the estate accounts after such a long period. He would have needed to satisfy himself about the estate's assets before taking the executor's oath at the time of applying for the grant.

38. In 1971 the issued share capital in Wroe's comprised 11 shares. Three shares were held each by Father and Dorothy and 5 shares were held by Christopher. The holding of shares appears to have been re-arranged with further shares being issued in the year in which Father died leaving Father and Dorothy each holding 182 shares, Christopher holding of 500 shares and Jennifer holding 236 shares. Each parent held (rounded) 27% of the shares before 11 issued shares became 1100 issued shares. Prior to the issue and allotment of new shares, the parents held 54% of the issued shares. Afterwards, the parents each held 16.5% of the shares with Christopher and Jennifer between them holding a majority interest. Jonathan points to three documents in

particular which he says cast doubt on whether the claimed dilution of his parents' interest in Wroe's in this way took place:

(1) In the estate accounts, Father's shares are described as being a controlling interest in the company. This does not accord with the position either before or after the issue of new share capital. It might, however, have been a reference to Father and Dorothy's holding taken together at one time being a controlling interest but that is merely speculation about what appears to an error.

(2) There is a barely legible copy of handwritten minutes of the AGM held on 6 January 1979. The meeting was held some months after Father's death. The minutes appear to record that on 21 January 1978, 1089 shares were issued. The date of allocation is not given but the minutes record that as at 31 January 1978 the dilution of shares had already taken place with the shares held being 182:182:500:236.

(3) The Directors' accounts for the year ended 31 January 1978 record all the directors introducing capital during that financial year with Father and Dorothy each introducing £2,000. Ms Stevens-Hoare submits that the introduction of capital is inconsistent with the dilution of shareholding. However, the document is not a record of the price paid (if any) for the shares that were allocated to the shareholders. This is clear from the document itself which records capital being introduced by Gladys Ball (Christopher's first wife) albeit she was never a shareholder. It is not possible to draw any conclusions about shareholdings from the state of the directors' accounts. The introduction of capital qua director need bear no relationship with the proportions in which the shares were held.

39. The oddity is the description in the estate accounts of Father holding a controlling interest. However, it was incorrect both before and after the issue and allocation of new shares. In my judgment, the court is unable on the evidence that is available to conclude other than that the minutes of the AGM held on 6 January 1979 accurately reflect the position.

Directors' remuneration and dividends on shares

40. Dorothy remained a director of Wroe's until 10 January 2003. On that date she resigned as a director, transferred her shares in Wroe's to Christopher's children and together with Simon Gregory (who was appointed as co-trustee of the title to 13 Belle Vue) granted a lease of the premises to Wroe's at a headline rent of £26,500 pa subject to a concessionary arrangement under which only £22,000 was payable.

41. Dorothy received remuneration from Wroe's up 10 January 2003 principally in the form of a director's salary. There was, however, an informal approach taken to her position as the landlord of part of the premises occupied by Wroe's and her entitlement to rent as income beneficiary of Father's Trust. No rent was paid to her but the remuneration paid to her was treated as being compensatory payment in lieu of rent and at varying points the minutes of the AGM show her being paid a pension. A spreadsheet produced by Christopher shows total payments to Dorothy through Wroe's PAYE system of £219,781.

42. The approach to the distribution of profit in Wroe's was to ensure that the working directors received a share of the profits that reflected their contribution to the company agreed at the AGM. No dividends were declared until 1999 when it was realised that the distribution of profit would be more tax efficient if dividends were paid to the working directors. Up to January 2003 Dorothy was entitled to dividends on her own shares. During that period and for the remainder of her lifetime she was also entitled to dividends declared on Father's shares.

43. Dorothy signed a letter to Jonathan, Christopher and Jennifer in their capacity as trustees of Father's estate dated 20 October 1999 requesting that they waived their entitlement to dividends on Father's shares saying she (as income beneficiary) did not need this extra money. She ended her letter with the aphorism: "Money is a good servant but an evil Master". She had made her position clear! In subsequent years there is evidence, albeit incomplete, that she signed dividend waivers in respect of dividends due to her on her own shares. There are patchy records showing the trustees signed waivers in respect of dividends on Father's shares. On some occasions Jonathan signed and on some occasions he did not. In this respect, as with others, his approach was not consistent.

44. Ms Stevens-Hoare submits that it was not open to the trustees to waive the right to dividends in respect of Father's shares and that the only person who could do so was the income beneficiary. She was the person with the right to receive the dividend and only she could waive that right. It would follow that the action of the trustees, including Jonathan on the occasions he signed the waiver, was in breach of trust. It seems to me that in the context of this company and this family Ms Stevens-Hoare's submissions, if right, would amount to a triumph of form over substance. Dorothy had made her views about dividends clear. She had an interest in supporting the running of Wroe's and her family and she did not need the dividend payments due to her from either holding of shares.

45. It also appears to me that the analysis that lies behind these submissions is not in fact right. Father's shares were held beneficially by the trustees for the trust. The trustees were entitled to receive dividends from the trust's holding of shares. They were not under an obligation to distribute the dividends in specie to Dorothy. They were entitled to receive the dividends and, subject to there being a surplus of income over expenses, to distribute the net income. It was open to the trustees to act on the wishes of the income beneficiary and to waive an entitlement to receive the portion of the net income that was attributable to dividends. This would have been of benefit to Wroe's by making a modest addition to its capital and at least notionally of benefit to Father's estate and Dorothy in light of their holdings of shares.

Father's loan account

46. The sum in Father's director's loan account with Wroe's at the date of his death was shown in the solicitor's estate accounts as being £1,967. It is now suggested that the sum was slightly higher and the figure at the date of his death was £2,724. In any event, the account was transferred to Dorothy and she had the benefit of it. Of course, this should not have happened as she was only entitled to any interest paid on it (there was none). This is a further adjustment between the two estates that will be required when they are wound up.

Father's half share of 13 Belle Vue

47. I have dealt with Dorothy's rental receipts up to January 2003. From that date onwards, following assistance from Simon Gregory, Wroe's occupation of 13 Belle Vue was put on a more formal footing with the grant of a lease at an initial rent of £26,500 but subject to a concession reducing the rent to £22,000. All this was done with Dorothy receiving independent advice from Mr Gregory whom she appointed later as one of her executors. £22,000 was paid by Wroe's up to September 2016 when Mr Gregory, after Dorothy's death, ended the rent concession. It would have been open to Dorothy and Mr Gregory as the trustees of the interest to have served notice much earlier to remove the concession and to review the rent. Clearly, they chose not to do so.

The issues

48. The conclusions I have summarised above deal with issue 1.

49. The answer to issue 2 is that no monies have been paid to the trustees of Dorothy's Will Trusts.

50. The third issue concerns whether Christopher and Jennifer have provided a sufficient account of the administration of Father's Will Trust. Mr Lewison relies on three occasions when he submits an account has been provided:

    (1) On 29 March 2018, before the claim was issued, Clarke Willmott acting on behalf of Christopher and Jennifer wrote to Carter Ruck who were then acting for Jonathan.

    (2) After the claim was issued, Christopher and Jennifer each provided a lengthy witness statement setting out in detail their dealings with Father's estate.

    (3) A further letter was sent by Clarke Willmott on 2 August 2019.

51. The letter dated 29 March 2018 runs to 5 closely typed pages. It was accompanied by a copy of Father's will, a spreadsheet setting out Dorothy's income received from Wroe's from 1977 to 2004 and pages extracted from Wroe's accounts. The letter summarises the assets forming Father's estate at the date of his death and then sets out the income paid to Dorothy in her lifetime. The letter accepts that Father's loan account and the small parcel of shares had been transferred to Dorothy. Aside from these acknowledgements, Clarke Willmott refuted Jonathan's allegation that assets belonging to the estate were missing.

52. Shortly after the letter was sent, Jonathan instructed Wright Hassall to pursue his claim. Clarke Willmott sent a copy of their letter dated 29 March 2018 to Wright Hassall on 24 May 2018. In that letter they asserted that Jonathan himself had, or had had, records of the small parcel of shares transferred to Dorothy and he was asked to return them for the purpose of providing an account. The whereabouts of these records has proved to be an area of disputed fact and it is not possible to establish which side is right. The point is, however, of peripheral importance because the transfer of the shares to Dorothy should not have occurred. Whether it took place with

the knowledge and approval of one or more of the trustees is not certain. It is in any event a matter that is relatively easily rectified.

53. The letter from Wright Hassall in reply to Clarke Willmott sent on 17 July 2018 records that the letter of 29 March 2018 has been considered and advice from leading counsel obtained. The response was said to be unacceptable and it was said there had been a failure to provide an inventory of the assets in Father's estate. Wright Hassall also note that their requests for information from Wroe's had not generated a positive response. They go on to deny that Jonathan had at any time signed any waivers. On 12 October Clarke Willmott provided four dividend waiver forms that had been signed by all three trustees saying they were the only ones that has been located.

54. The claim was issued on 15 October 2018.

55. I have already commented upon the defendants' witness statements and the very full detail that was provided in them.

56. On 2 August 2019 Clarke Willmott wrote to Wright Hassall a letter running to seven pages with four pages of schedules. It asserts that an account was provided on 29 March 2018 and expanded upon in the defendant's witness statements. It goes on to say that Jonathan was never excluded from performing his role as a trustee of Father's trust but rather he chose to not to be actively involved. They go on:

> "We are concerned that your client's position that he does not understand the position in respect of [Father's Trust] is disingenuous. With respect, this was a simple family will trust consisting of eight assets. These assets were managed in the context of the family business and the life tenant's own wishes and views. We consider that your client's continued pursuit of this claim is as a result of your client's distrust of and/or disagreement with our clients on another matter and a misunderstanding of his mother's position as life tenant."

57. The letter then goes on to set out again the defendants' account relating to Father's estate in considerable detail with schedules of compiled information. Wright Hassall briefly acknowledged the letter on 9 August 2019. The only point made in response concerned a comment by Clarke Willmott that Wroe's had achieved growth over many years by constantly reinvesting surplus monies. Wright Hassall used this comment as a basis for demanding that management accounts for Wroe's should be provided. It seems to me this response neatly illustrates Jonathan's approach to this claim. His real interest lies in Wroe's, not his Father's estate. However, this claim does not directly concern the business of Wroe's. Father's shares in Wroe's were a minority holding that gave the trustees no greater rights than any other minority shareholder. They formed part of his estate when he died and were held by the trust. A claim for an account of capital and income is not the occasion for an enquiry into the conduct of the directors of the business or whether they might have achieved better value for shareholders. It is notable that as a trustee of Father's shares, no attempt was made by Jonathan to convene a meeting of trustees to raise concerns.

58. My conclusions on the claim for an account can be stated briefly. As the authorities show there is no set form in which trustees are required to account. At heart, the obligation is to inform and where explanation is required to explain. The trust held a small number of assets over a lengthy period during which Jonathan at all times was a

co-trustee. It has been accepted for the purposes of this claim that there is an obligation between trustees to account. In my judgment, Christopher and Jennifer adequately discharged such obligation as they may have in the letter from Clarke Willmott dated 29 March 2018. The account they provided in that letter was supplemented on two subsequent occasions without there being a requirement to do so. It follows that the claimant's case fails and the claim will be dismissed.

59. In light of that conclusion, it is unnecessary to determine issues 4 and 5. However, I would observe that:

(1) It is clear from the evidence that Dorothy was content with the approach adopted by the trustees with regard to rent and dividends and if there were any failures on the part of the trustees she acquiesced in those failures: see *Lewin on Trusts* 19th ed. at 39-106.

(2) On any view making an order for an account would serve no purpose. If Jonathan were to have any basis for complaint arising from the account that has been provided, and I do not consider that he has, he has had the material with which to pursue such a complaint for over two years.

60. The claim will be dismissed.

61. This judgment will be handed down during the period of the Covid-19 lock down. It will therefore be handed down in a hearing conducted remotely and, if necessary, in the absence of the parties. If that occurs, all consequential issues will be adjourned to be dealt with at a later date.