Neutral Citation Number: [2021] EWHC 125 (Ch)

Case No: BL-2019-BHM-045

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN BIRMINGHAM
Property Trusts and Probate List (ChD)

Birmingham Civil Justice Centre
Bull Street, Birmingham B4 6DS

Date: 29 January 2021

Before :

HHJ DAVID COOKE

- -

Between :

Warren Edward Manton (1)	**Claimants**
Madge Manton (2)	
Timothy Edward Manton (3)	
Joanne Claire Manton-Armstrong (4)	
- and -	
Paul Warren Manton	**Defendant**

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John Brennan (instructed by **Grove Tompkins Bosworth**) for the **Claimants**
Jonathan Titmuss (instructed by **GunnerCooke LLP**) for the **Defendant**

Hearing dates: 7-11 December 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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Approved Judgment

HHJ David Cooke:

Introduction

1. In this Part 8 claim, the claimants seek an order that the defendant be removed as a trustee of the Warren Manton Children's Settlement ("the Trust"). All the parties are members of one family and have with their agreement been referred to throughout the proceedings by their first names for simplicity, as I will in this judgment.

2. The Trust was established in 1999 by Lillian Manton. Lillian and her husband Edward (or Ted) Manton had three children, Richard, Roger and Warren. The original trustees were Warren and his wife Madge (or Sue), the first and second claimants. The trust property was settled on them on discretionary trusts for the benefit of a class consisting of Warren and Madge's own children, Paul (the defendant) Tim and Joanne (the third and fourth claimants) and their respective remoter issue, spouses widows and widowers, or a charity.

3. Prior to 2016 the Trust property consisted of:

    i) The entire share capital of a company, Manton Holdings Ltd ("Manton Holdings"), which had a wholly owned subsidiary company, Manton Interlink Ltd ("Manton Interlink"). Manton Interlink owns a business property at Station Rd Coleshill near Birmingham.

    ii) A strip of land at Station Rd, Coleshill with potential value as a ransom strip.

    iii) An apartment in Spain.

4. There was in addition a separate company, Interlink Design and Display Ltd ("IDD") the shares in which were directly held by Warren, Madge and their children. That company occupies and trades from the Station Rd premises owned by Manton Interlink.

5. In 2016 the Trust was reorganised. On 29 June Warren and Madge appointed the income of the Trust to Paul, Tim and Joanne in equal shares. The appointment is expressed to be for life, but is subject to revocation. It is common ground that any revocation would have to be made by all the trustees for the time being acting unanimously. On 30 June Paul, Tim and Joanne were appointed additional trustees.

6. Also on 30 June 2016:

    i) IDD acquired the business of another company, Interlink Graphics Ltd. IDD was itself acquired by Manton Holdings in a share for share exchange, so that thereafter Manton Holdings' shares were held (in rounded terms) as to 64% by the Trust, 11% between Warren and Madge and 8% each by Paul, Tim and Joanne.

    ii) Paul, Tim and Joanne became directors of Manton Holdings and Manton Interlink.

7. As a result, all five parties are simultaneously the trustees of the Trust and the directors of each of the companies in which it holds an interest, ie Manton Holdings and its subsidiaries Manton Interlink and IDD.

8. The principal operating company is IDD. Its business is in the design and construction of exhibition stands. Paul and Tim acted as joint managing directors, each dealing directly with a portfolio of clients for whom they were the principal contact responsible for managing the client's requirements for stands at various trade exhibitions in the UK and abroad. Joanne had a senior administrative role. Paul's wife Jane was also employed in the business, as was Tim's wife Clare.

9. Unfortunately, shortly after the reorganisation in 2016 there was a serious disagreement between Paul on one hand and Tim and Joanne on the other, which has led to these proceedings. The essence of the claimants' case is that Paul should be removed as trustee because, as a result of that dispute, he and Jane have established and operated a company of their own, ID Events Ltd ("IDE"; Jane is its sole shareholder and named director) which competed directly with IDD and has, the claimants say, taken a significant number of IDD's former clients. Paul's involvement with IDE, they say, creates a conflict between his fiduciary duties to the beneficiaries of the Trust on one hand and his self interest and/or duty to IDE on the other.

10. Paul resists his removal. He denies solicitation of IDD's clients and denies that IDE's business has caused any loss to IDD. He makes plain that his concern is that if he is removed as trustee he would no longer be able to prevent the revocation of the appointment of a share of income to himself, which he fears is the claimants' intention.

Relevant legal principles

11. The court has an inherent jurisdiction to remove a trustee. It is a discretionary power, and in addition to the statutory power given by s 41 Trustee Act 1925. S 41 gives power to appoint a new trustee in substitution for an existing one, but that is not relied on in this case because the claimants do not seek to have anyone else appointed in Paul's place.

12. All the main modern authorities refer back to the opinion of Lord Blackburn in the Privy Council case *Letterstedt v Broers* (1884) 9 App Cas 371 at pp 385-9 in which he set out the general principles that should guide the court. The relevant passage was analysed by Lewison J in *Thomas & Agnes Carvel Foundation v Carvel* [2007] EWHC 1314 (Ch):

> "44. It is common ground that, in the case of removal of a trustee, the court should act on the principles laid down by Lord Blackburn in *Letterstedt v Broers* (1884) 9 App Cas 371…At page 386 Lord Blackburn referred with evident approval to a passage in Story's Equity Jurisprudence:
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> "But in cases of positive misconduct, Courts of Equity have no difficulty in interposing to remove trustees who have abused their trust; it is not indeed every mistake or neglect of duty, or inaccuracy of conduct of trustees, which will induce Courts of Equity to adopt such a course. But the acts or omissions must be such as to endanger the trust property or to shew a want of honesty, or a want of proper capacity to execute the duties, or a want of reasonable fidelity."
>
> 45. He continued:

> "It seems to their Lordships that the jurisdiction which a Court of Equity has no difficulty in exercising under the circumstances indicated by Story is merely ancillary to its principal duty, to see that the trusts are properly executed. This duty is constantly being performed by the substitution of new trustees in the place of original trustees for a variety of reasons in non-contentious cases. And therefore, though it should appear that the charges of misconduct were either not made out, or were greatly exaggerated, so that the trustee was justified in resisting them, and the Court might consider that in awarding costs, yet if satisfied that the continuance of the trustee would prevent the trusts being properly executed, the trustee might be removed. It must always be borne in mind that trustees exist for the benefit of those to whom the creator of the trust has given the trust estate."
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> 46. The overriding consideration is, therefore, whether the trusts are being properly executed; or, as he put it in a later passage, the main guide must be "the welfare of the beneficiaries". He referred to cases in which there was a conflict between trustee and beneficiary and continued:
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> "As soon as all questions of character are as far settled as the nature of the case admits, if it appears clear that the continuance of the trustee would be detrimental to the execution of the trusts, even if for no other reason than that human infirmity would prevent those beneficially interested, or those who act for them, from working in harmony with the trustee, and if there is no reason to the contrary from the intentions of the framer of the trust to give this trustee a benefit or otherwise, the trustee is always advised by his own counsel to resign, and does so. If, without any reasonable ground, he refused to do so, it seems to their Lordships that the Court might think it proper to remove him; but cases involving the necessity of deciding this, if they ever arise, do so without getting reported."
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> 47. He added, however, at page 389:
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> "It is quite true that friction or hostility between trustees and the immediate possessor of the trust estate is not of itself a reason for the removal of the trustees. But where the hostility is grounded on the mode in which the trust has been administered, where it has been caused wholly or partially by substantial overcharges against the trust estate, it is certainly not to be disregarded."”

13. It is thus not in all cases necessary to show actual misconduct by a trustee, though of course many cases do rely on such misconduct and if it is shown and is material the court is very likely to exercise its power. Nor is it always sufficient to justify removal that there is friction or hostility between one trustee and the others, though that may be relevant, particularly if it arises from the way the trust has been administered. The

overriding consideration is the proper administration of the trust and the interests of the beneficiaries.

14. Mr Brennan refers me to a number of passages in decisions of Chief Master Marsh, expanding on these principles I will not set them all out (that is not in any way to disagree with them) but for present purposes it is only necessary to record the following:

    i) "… the core concern of the court is what is in the interests of the beneficiaries looking at their interests as a whole.."

    ii) "…the claim is between the … trustees and the beneficiaries, but it is only in part about them. It is primarily about the estate, or the trusts, seen separately from the persons who are its custodians and the beneficiaries…"

    (*Schumacher v Clarke* [2019] EWHC 1031)

15. The interests of the beneficiaries principally to be taken into account therefore are those of the beneficiaries as a whole class in the preservation and due administration of the trust property, not the individual interests of any particular member or members of that class.

16. Mr Brennan submits that by virtue of his involvement with IDE Paul is in breach of the "conflict rule" described in Lewin on Trusts at para 45-033 as follows:

> "A trustee must not, without authority, place himself in a position where his personal interest, or interest in another fiduciary capacity, conflicts or possibly may conflict with his fiduciary duty to protect those whom he is bound by that duty to protect. If he does so, he is obliged by his trust to prefer the interests of his beneficiaries. If, in breach of this duty, he enters into a transaction or other engagement on his own account, thereby preferring his own interest to that of his beneficiaries, he is not permitted to retain the profit, to the extent that it is made within the scope and ambit of the duty which conflicts or may conflict with his personal interest, or interest in another fiduciary capacity. It is not because he has made a profit from trust property or his fiduciary position that the trustee is liable under the conflict rule, but because, being in a fiduciary position, he has entered into a transaction inconsistent with his fiduciary duty of loyalty to the beneficiaries which has yielded the profit, and thereby misused his position. The opportunity to make the profit may not arise from the trustee's fiduciary position; he might just as well as have had the opportunity if he had not been in that position, but even so his liability in respect of the profit arises because of the conflict. Thus, what is crucial to the application of the conflict rule is not that the profit is the fruit of the trust property or the trusteeship, but that it is made in circumstances where the conflict exists and falls within the scope and ambit of the conflicting duty. Normally in a case where the conflict rule applies, the trustee will also have taken advantage of the trust property or the trusteeship. But that will not always be so. For example, where a trustee starts up a

> business in competition with a business owned by the trust, but is not enabled to do so either by reason of the trust property or the trusteeship, he is still accountable for the profits of his competing business."

17. As to whether any conflict has actually resulted in loss to the trust estate, Mr Brennan submits that is irrelevant, referring to *Hamilton v Wright* 8 E.R.357, per Lord Brougham at p 357. That it seems to me is inevitable; if a trustee puts himself in a position of conflict the breach of duty is immediate; it cannot be necessary to wait and see whether any loss actually results. Proof of loss will of course be relevant if an action is brought against the trustee for recovery. But in considering whether a trustee should be removed, where the court focusses on the proper administration of the trust and the interests of the beneficiaries in securing its proper administration, a breach of duty which puts the trust at risk of loss is highly relevant, whether or not it can be demonstrated that loss has actually occurred.

18. Somewhat ironically, Chief Master Marsh observed in *Long v Rodman* ([2019] EWHC 753 (Ch) at para 20) that because of the focus on the interests of the beneficiaries as a whole and the lack of need to prove actual misconduct it should only rarely be necessary for an application to remove a trustee to require a trial of disputed issues of fact. That has not prevented the parties in this case pursuing just such a trial over five days.

The facts

19. I heard evidence from all the claimants except Madge, and from Paul and his wife Jane. The parties produced reports of expert accountants addressing the question whether loss had been caused to IDD. Their conclusions did not agree, but I directed at the PTR that they should not be called to give oral evidence at the trial. Although the oral evidence went into a great deal of factual detail, I consider that it is not necessary to do so for the purposes of this judgment.

20. One of the purposes of the reorganisation in 2016 was to reduce the impact of a potential 10 year charge to Inheritance tax. In particular there was a perceived risk that the assets of the Trust might be held liable for tax primarily chargeable on other family trusts established for Warren's brothers, Richard and Roger, and their respective children, because all three trusts derived from a previous settlement made by Ted and Lillian Manton that had been divided because of conflict between the brothers. The extent of this risk could not easily be evaluated because Warren and the Trust's advisers had little information about how Richard, Roger and their settlements were dealing with their tax affairs, there being little contact between the three brothers. It was envisaged that the facts might become clearer before the next 10 year charge date, and that it might be possible to "break" the Trust, ie distribute its assets between the beneficiaries. I have no evidence however that there was any commitment to do so or, as seemed to be suggested, that the dispute that arose was motivated by any desire on Tim's or Joanne's part to avoid breaking the Trust or distributing any assets to Paul.

21. By 2016 IDD's largest customer, a company called Yankee Candles, accounted for around 40% of its turnover. Paul was concerned about over-reliance and made various suggestions to Tim as to ways in which he considered the size of the business could be increased. These culminated in a set of proposals in bullet point format (Bundle p 283) that he put to Tim and Joanne in June 2016. One aspect of these proposals was a

significant change in the role of a key employee, Mr John Kearney. Paul wanted to discuss this with Mr Kearney. Tim and Joanne said they wanted to be present at any such discussions, but Paul said he preferred to talk to Mr Kearney on his own.

22. There is a conflict of evidence as to exactly what happened, but I am satisfied that Tim reluctantly agreed that Paul could hold this discussion on his own, telling Paul "Don't go promising him anything" or words to that effect and Paul agreed he would not. Tim and Joanne were greatly upset after this meeting when having spoken to Mr Kearney they considered that contrary to his assurance Paul had held out to Mr Kearney the prospect of his receiving a substantial elevation in his position and additional benefits such as an increased bonus and a better car. Paul denies this and Mr Titmuss suggested he could not have made any promise because any such change would require a Board decision, but that shows only that if such prospects had been held out, Paul acted unilaterally and improperly in doing so.

23. Tim told Paul that he and Joanne did not agree with Paul's package of suggestions. This was in part because they felt Paul had attempted to present a fait accompli by his direct discussions with Mr Kearney, but also because they did not share his business view that IDD was too dependent on Yankee Candles, or agree with the measures he proposed to expand the business to reduce that risk. Mr Titmuss put it strongly to both of them, and submitted to me, that Paul's proposals were entirely reasonable, his concerns were proper and it was unreasonable and obstructive the others not to have agreed with his plan, but it is not for the court to take a view on such issues, which are matters for the directors of IDD, of whom Paul was in a minority of one.

24. A particular aspect of Paul's proposal that rankled with his siblings was his suggestion that his wife Jane should in future work mainly from home and principally be involved in internet research to identify potential new clients. If any prospects were identified they would have to be followed up by others, probably Tim or Paul, but if business resulted Jane would be paid a commission of 2.5%. There was a standing arrangement that if any employee who was not directly involved in sales nevertheless introduced a potential new client they would receive a 2.5% commission, but Tim and Joanne regarded this proposal as an attempt to give Jane easy work, involving much less effort than Joanne's role but producing a larger income while Joanne would be "dumped" with the work in the office that Jane would no longer do. According to Paul, Tim described this as "stealth income" for Paul's household, which he resented. Again, it is not for the court to take a view on the merits, for the business or otherwise, of the positions adopted.

25. The decision to reject Paul's proposals resulted in an angry exchange of emails (p 96ff) on 7 July 2016. Those from Paul and Tim are expressed in very intemperate and abusive terms.

26. This dispute has continued since. Paul went to see Warren and Madge, but it is clear that they agreed with Tim and Joanne. There was a family meeting on 27 July at which Warren became very angry with Paul. Paul and Jane then said they would "resign", though it is not clear in Paul's case whether this was intended to be as director or employee of IDD or both. The next day Tim sent an email (p 256) asking Paul to set out the "possible routes forward" he had referred to at the meeting and in particular say what he proposed to do with jobs that were coming up shortly for his customers. Paul replied (p257) proposing "that my jobs continue through the company as normal for the short term, perhaps up until Christmas? This should give sufficient time to organise any restructure and agree a departure date… Jane is unable to return

to work and I would suggest her salary ceases in line with a reasonable notice period." This plainly implies that Paul was considering that there would be a "restructure" involving his departure after a short period and thereafter "[his] jobs" would not continue "through the company as normal".

27. For almost 12 months however Paul continued to work on behalf of IDD, dealing with his portfolio of customers on projects that were invoiced through IDD. In that period Tim and Joanne say that he did so almost entirely working from home, and that telephone and email contact between Paul's customers and anyone else at IDD effectively ceased. Although it would always have been expected that their primary contact would be with Paul, customers would nevertheless normally communicate with the office and other employees such as those who were designing, making or delivering and installing their stands. However, in this period any telephone and email contact must have been made direct with Paul, and any meetings with employees were arranged by him and, so Tim and Joanne say, conducted so as to exclude them and others in the company from any knowledge of what was going on. In this time, they believe, Paul was setting up what was to become his new business and arranging for clients to transfer their business to it. I will return to that aspect later.

28. In August 2016 after a meeting between the three siblings Paul sent a note of proposals to establish a separate business that he and Jane would run (p 286). That note is evidently on the basis of the new company being owned by them (and not by IDD) and, as Mr Brennan showed in cross examination, the figures mentioned for turnover are clearly premised on all the turnover from Paul's clients being transferred to the new company.

29. In the following month, a variation was discussed in which, at one point at least, the suggestion was made that the new company might be a subsidiary of IDD. This was discussed with Mr Bidmead, the family's adviser at the accountants and auditors, but it appears that either Paul or Mr Bidmead or both concluded that this would not be workable. It was suggested it showed that Paul was not seeking to deprive the Trust of income from the profits of a separate business, but the proposal did not go far enough to establish that. True any dividends from the new company could in principle have flowed up through IDD to the Trust, but whether there would be any such dividends and the amount of them would depend on decisions of Paul and Jane, and in particular how much they paid themselves first by way of remuneration.

30. In November Paul discussed three further alternatives with Mr Bidmead (p 281 and 283). The first was that he should set up a new company, take any clients willing to transfer and have one third of the trust assets and a capital sum paid to him, the second was that he return to the role of MD of IDD with the other directors accepting his development proposals and the third was that Paul would remain with IDD "as salesman" with Tim taking responsibility as MD, although "group decisions should be unanimous". These he said were passed on to Tim and Joanne, but he received no response to them. This led him to send an email to Tim on 4 January 2017 in which he proposed that he would remain a director of IDD and that Jane should return to work and be treated as a full time employee, though working from home, at a salary increased from her previous remuneration, plus the 2.5% commission that had previously been so divisive. Tim and Joanne responded that this was regarded as Paul again seeking to dictate matters to his own advantage, and in fact IDD needed to concentrate on cost savings as it had just lost the Yankee Candles business.

31. There were further meetings, but they did not produce a resolution. On 19 May 2017 Tim said in an email (p 301):

> "… we currently have a situation which I cannot believe for one moment you think is acceptable, me and Joanne are here on a daily basis running this business and putting up with the daily crap…whilst you are sitting at home enjoying the fruits of- we haven't a clue what you are doing as you refuse to communicate with us, indeed you completely bypass us and communicate directly with employees whilst utterly undermining the individuals running this business, we haven't a clue what your future plans are… it would appear all your existing customers have stopped calling here so we can only presume you have diverted them under whatever auspices, all whilst you claim to be operating as 'MD' of the company…
>
> Ultimately Paul the ball is in your court, as it has been mostly all along... realistically Paul the only circumstance acceptable to us is for you and Jane to return to Interlink, if this isn't something you are prepared to do and you have alternative plans now is the time for you to bite the bullet and get them into the open so we can plan a way forward… "

32. Paul responded on 26 June (p309):

> "I think it's fair to say there is clearly no way back from the current position so I will cease my employment with IDD at the end of June…I have highlighted many issues over the past twelve months that I am unhappy about and you've done nothing to resolve those problems at all. I remain extremely angry about the poisonous bile you've happily propagated over what I now suspect is many years… I believe you have an illness called Narcissistic Personality Disorder (attached) which can be genetic and more prevalent in twins…I now need to earn a living to support my direct family in the best way I can…"

[The attachment was an article from the internet. Tim and Joanne are twins.]

33. According to Paul's witness statement (para 76, p 227) he had decided to set up IDE in the first or second week of June. He consulted solicitors and accountants, who drew up a bespoke constitution on 20 June and incorporated IDE Ltd on 21 June 2017. Jane is the sole shareholder and recorded director. That company commenced business immediately; a website and social media presence were established in August. It is accepted that its business was in providing design and supply of exhibition stands, and that a very great deal of that business came from companies that had previously been among Paul's customers at IDD, but which ceased to place any further work with IDD. Paul maintains that this was entirely the result of spontaneous decisions of those customers and that he did not solicit them to switch their business, something Tim and Joanne do not believe.

34. IDD instructed its accountants to prepare a report (p 84) which concluded that the business lost to IDE had resulted in a net loss of profit (after allowing for savings in overheads from Paul and Jane's remuneration and benefits) of £110,000 pa and a

reduction in market value of IDD from £910,000 to £250,000. Those conclusions are disputed.

35. After considerable correspondence between solicitors in which Paul was asked to resign as a trustee but declined to do so, these proceedings were issued on 2 April 2018.

36. On 23 December 2019 notice was sent convening a meeting of the trustees to consider a number of items. Paul's solicitor on his behalf objected to them and proposed substantial amendments. The meeting was held on 5 February 2020, and a transcript has been produced. Afterwards, Paul wrote a long letter setting out his objections to the way the meeting had been held, justification for his position and questions that he said should be answered. Tim responded, refusing to engage with these points on the ground they were disingenuous and self-serving. I do not propose to go into this in any detail; it is clear in my view that the entire matter was an exercise in tactics in relation to the proceedings on both sides; Tim and Joanne seeking to advance their position that there were matters that needed to be addressed by the Trustees but could not be because Paul either would not do so or was in a position of conflict, and Paul on the other hand arguing that there was no genuine need for such matters to be raised and if they were he should not be required to deal with them until what he regarded as his reasonable questions had been answered and other matters investigated.

IDE

37. Although ID Events Ltd was not incorporated until June 2017, Tim and Joanne believe that arrangements to establish a separate business and take away a large part of IDD's trade were being made from the time the dispute initially blew up in July 2016. They point to a number of matters.

38. On 6 July 2016, apparently at the same time as Tim and Joanne were meeting Mr Kearney to find out what Paul had discussed with him, Jane sent her husband an email, using IDD's own email system (p 107):

> "FEELING ANGRY
>
> Wish we could just go our own way chuck. You put all effort/thoughts into play and like you say no-one is prepared to change anything in reality. Tossers, the lot of them."

It was suggested that this was found because Joanne was secretly and improperly monitoring Jane's email account, but I accept her evidence that she found it by accident some weeks after Jane departed, when it was necessary to access the computer Jane had used in the office to look at documents relating to the order pipeline that were maintained on it and email traffic that included messages to and from customers. The computer was not a private computer or even one solely used by Jane, and the email account used was a company account, and not a personal one that Jane might reasonably expect to have been treated as private.

39. Other emails on the same account starting from 21 July 2016 showed that Jane began to investigate and purchase a desk and office equipment for delivery to their home, evidently with a view to setting up a home office facility. In the following months Paul and Jane had an extension constructed at their house which was fitted out as a

home office. They maintain this was only because they expected to be working more from home, but on IDD's business and not any separate business of their own.

40. Paul maintains that in this period he was working diligently on IDD's business and not setting up his own. In support of that he produced a list showing some thousands of emails he had sent using his main IDD email account (p 336ff). The list shows only the addressee, subject line and first line of the message, but he provided full copies of what he said was a sample and offered to provide copies of any others on request to show he had nothing to hide. It does not appear that he was asked to do so. However, he was asked by Mr Brennan in cross examination to explain various messages that appeared from the limited material in the list to be related to setting up a new business, mainly forwarding information to another email account that was evidently one of his own. These included:

    i) Details of an office chair for sale (11 August 2016, p 399)

    ii) An attached document he referred to as "plan", sent on 15 August and possibly one of his proposal documents that he emailed on 18 August (p 120) with the same heading.

    iii) A link to information about mail merging and "mass or bulk emailing with Office 365" (19 August, p 397) suggesting he was investigating bulk emails to a list of addresses.

    iv) A link to information about starting a website (26 August, p 395)

    v) 3 designs for "logo options" (29 September, p 391) which Paul accepted were for the new company.

    vi) Various documents sent as attachments without subjects or forwarding incoming emails. It is difficult to make any inference from these without access to the material they refer to.

41. It was suggested that Paul was sending on to his private email material he had produced, obtained or investigated for the purpose of his new business, in order to conceal it from others at IDD. Paul denied that, but not in my view very convincingly, and some of the items above, which he claimed not to remember, certainly suggest they were related to a possible new business that would require a website and logo and would wish to send marketing emails. I note that another email (13 October 2016, p 389) apparently sent to a customer has the first line "Friday Meeting… with your approval I'd like to bring Jane with me…She's very much part of future planning as…". The rest is cut off, and this was not one of the messages put to Paul so I place limited weight on it, but since Jane was not working at IDD in October 2016 it is difficult to see that the "future planning" referred to can have been on behalf of IDD.

42. Paul said that the list of emails was of those sent from his main email account at the IDD domain. He accepted that he had two other email addresses, a personal one at Gmail and a second at the IDD domain that he said he used for IDD business when at home. He plainly also used the main IDD email account from home since he was working from home for most or all of the period covered by the list, so it is not obvious why he would need to send information from one account to the other in order to have access to it at home.

43. Paul has not, however, disclosed any emails from either of the other two accounts, and admitted that he had not included either of them in his search for disclosable documents. It is in my view highly likely that there is other relevant email material he has not disclosed - such as communications with clients who, he said, had made unsolicited enquiries with him about his new business - which may have been conducted using those accounts. Paul maintained that anything on either of his IDD addresses would be available to Tim or anyone at IDD if they looked, but I accept Tim's evidence that that is not the case and that the email server is configured so that once an email is opened it is downloaded to the computer used and deleted from the server, so that all traffic conducted from Paul's computer at home would be available only on that machine.

44. As noted above IDE was incorporated on 21 June 2017 and Paul left his job at IDD less than two weeks later. It is not seriously disputed that IDE began trading immediately, or that the great bulk of its work came from customers who had previously been customers of IDD, dealt with by Paul. Although IDD sent an email to all such customers on 19 July (p 315) notifying them that Paul had left and stating that IDD would still provide their service, very few if any of them thereafter made any contact with IDD about doing so. Nor is it realistically disputed that IDE's work for customers is in substance provided by Paul personally or under his direction, Jane's role being mainly administrative.

45. The largest of these connections was a group called WEG, where Paul's contact was a marketing manager called Marek. WEG had a number of subsidiary companies outside the UK and IDD had done work for several of these. After IDE was formed all further work for the WEG group was placed with that company. Tim and Joanne were cross examined on the basis that Marek was a personal friend of Paul's so it was not surprising that he had followed Paul, and Marek had sent Paul an email confirming that he had done so of his own accord and not as a result of any solicitation by Paul. Their view however was that WEG was a client of IDD not Paul, that that remained so even if Paul had developed a personal friendship with Marek in the course of their dealings, that it was inconceivable that WEG or other clients would have moved their business without having been encouraged to do so by Paul in conversations leading up to his departure. They viewed this as solicitation, and considered that the email from Marek must have been written by him at Paul's request. Paul accepted that he had had discussions with customers before departure in which he told them, in response to their enquiries, that he was starting a new business, but he denied this amounted to solicitation.

46. It is indeed, in my view, inconceivable that so many significant customers would have transferred their business to IDE without substantial prior discussion in which they were informed about Paul's new business and reassured that it would be willing and able to provide the services they had previously had from IDD. That discussion evidently did not take place with Tim or Joanne, and realistically can only have been with Paul. The precise content of it cannot be known, because Paul has not disclosed it. To the extent that any of it was reflected in email traffic, Paul has had the opportunity, at least, to conceal it by conducting that traffic through email accounts not accessible to his fellow directors, which traffic he has not disclosed although, on his account, at least one of those accounts was a company address used for company purposes. The lack of contact or enquiry from the departing customers suggests strongly that their departure was pre-arranged, and the email professing that this was not solicited smacks very much of being written to order.

47. Whether these dealings amount to solicitation by Paul, in the sense of initiating discussion with a view to persuading customers to transfer their business, such as might put him in breach of a non solicitation covenant, is to my mind irrelevant as this is not a case about enforcement of such a covenant. It was reasonable of Tim and Joanne to think there must have been such solicitation, but even if there was not, it is plain that Paul must at least have provided information and encouragement to customers who were considering such a transfer.

48. There can be no doubt that IDE's business even if not identical to that of IDD was so similar that it can be regarded as in direct competition. As to the effects of that competition, it was argued that it has not caused IDD to suffer any loss, because:

    i) All these customers were accustomed to dealing with Paul, so it was natural for them to have transferred their business and they would have done so whether or not solicited;

    ii) There was no proof they would have placed any further business with IDD once Paul had left even if he had not gone on to work for IDE;

    iii) IDD had suffered no net loss of profit from the lost business, after taking account of the reduction in overheads from Paul and Jane's remuneration, the cost reductions from not having to service the lost business and other cost savings implemented. That was said to be shown by Paul's expert's report.

    iv) The exhibitions market is vastly greater than the turnover of IDD (Mr Titmuss suggested it was £40Bn, but Tim said it was over £70Bn) so IDD could not have been impacted by having a new competitor taking a tiny fraction of that amount.

49. I do not accept any of these points. It is beyond doubt that significant customers stopped placing their business with IDD, and not really plausible that all of them would have done so on Paul's departure if he had not become involved in a competing business. Whatever the size of the market, if a business loses existing customers, who would be those most likely to place business with it in future, that is a loss to the business and it is no answer to say it can go into the market and win other customers away from other competitors. Mr Titmuss's own suggestion in cross examination was that IDD's gross margin on turnover was about 30%, so such loss of business would be expected to require it to take steps to save costs to counteract that loss of margin. At best, from Paul's point of view, if his expert's report is correct it shows that IDD has successfully mitigated the impact on its business by cost reductions and other measures that it presumably would not have had to take but for the loss of business suffered.

50. Insofar as I have to consider whether Paul's actions put him in breach of the conflict rule, it is of course irrelevant whether those actions result in financial loss to the Trust or not. I accept however that when it comes to the exercise of discretion whether to remove a trustee, it is relevant to consider whether financial loss to the trust estate has been caused, or a risk of such loss created.

Submissions and consideration

51. The submissions at trial had moved on somewhat from the way in which the claimants set out their case for removal in the Details of Claim. Many of the issues are

interlinked. I propose to group the claimants' points together for the purpose of explaining my conclusion as follows:

i) Paul's involvement with IDE puts him in breach of the conflict rule for trustees, as set out above.

ii) The existence of the conflict is harmful to the operation of the Trust, because it restrains the other Trustees as to what they can discuss with Paul without disclosing information about IDD's business that would be of assistance to a competitor. Further, it puts Paul in a position to seek information in his capacity as a Trustee that could be used for the advantage of his competing business.

iii) The Trust is in particular unable to discuss the merits of taking action against Paul, Jane or IDE while Paul is a trustee, and would be unable to resolve to do so even if it would be merited, because Paul as trustee can and would vote against and prevent unanimity.

iv) Paul has not in fact dealt with any of the affairs of the Trust since the dispute arose in July 2016 and there is no realistic possibility that he will do so.

v) There is an irreconcilable breakdown of relationships and implacable hostility between the Trustees.

52. I did not understand Mr Titmuss substantially to dispute the allegation of breach of the conflict rule. Whilst there might no doubt be cases in which there could be argument as to the extent of that rule where the conflict in question is in relation to a company in which trustees hold an investment, for example if the investment was in listed shares of a company but the trustee owned or had shares in a company with a competing business, I do not consider there could be any such doubt in this case. Whilst the Trustees' interest is only indirectly in IDD, by way of a majority holding in its holding company, there is no doubt that IDD generates the majority of the income flowing to the Trustees, from the rents it pays Manton Interlink and from its profits available to be distributed. Its value also potentially significantly affects the value of Manton Holdings, and so the Trust's holding in that company.

53. It is plain in my judgment that Paul's involvement with IDE puts his own interests in conflict with those of IDD, and so with the interests of the beneficiaries of the Trust, taken as a whole. The two companies are in direct competition for business, and to the extent that IDE wins profitable business that might otherwise have been obtained by IDD, Paul stands to benefit personally, either directly from remuneration or indirectly from profits available for IDE to pay or distribute to his wife, at the expense of the beneficiaries collectively who might have benefited had that business been conducted by IDD.

54. As to whether that conflict has "endangered" the trust property, as it was put in *Letterstedt v Broers*, it is in my judgment equally plain that it has. It is not necessary to show that financial loss has actually occurred, but there is a plain and obvious risk that it would do so arising from the risk of diversion (which largely eventuated) of a high proportion of IDD's customer base. There is damage to IDD, and at the very least risk of loss to it and therefore to the trust property, inevitably arising from the need to make changes to seek to compensate for and mitigate the loss of business

arising from Paul's preference of his personal interests, in the shape of IDE, over those of the company in which the Trust was interested.

55. The second, third and fourth points can be taken together. Mr Titmuss submits that there is little business that is required to be done at the level of the Trust, which simply receives and distributes funds that flow up from Manton Holdings. Paul can participate in such discussions and decisions without requiring any confidential information about the operation of IDD's business or affairs, and if he did seek such information it could be refused. Any discussion about the operation of that business can be and would be conducted at the level of IDD's board, from which he has resigned. It would not be necessary to consider IDD's business even at the level of the board of Manton Holdings, but if it were he could be outvoted, or even removed by vote of its shareholders. In particular if there were any question of action against Paul for "poaching" customers that would be a matter for the board of IDD. Insofar as access to confidential information that might be of benefit to IDE was concerned, he as trustee would have no right to that information, and nor would he as director of Manton Holdings. The other directors could manage the affairs of IDD without requiring any such information to be disclosed to him in any capacity he retained.

56. As to his alleged lack of engagement in the Trust's affairs, there had been no matter requiring to be done, other than the meeting in early 2020 which was contrived to raise matters that did not need to be discussed by the Trustees, solely for the purpose of setting up artificial conflicts.

57. In my judgment, these submissions do not reflect the reality of the relationships between the Trust and the corporate entities. The evidence of Tim, Joanne and Warren was that their affairs were discussed together, without being rigidly divided into different fora. They were referred to as a "group". Mr Titmuss suggested that this "[betrays] the most basic misconceptions of company law", but that criticism is unfair. All the witnesses knew very well that the Trust is not a limited company and is not a member of a group of companies for taxation or company law purposes, but they were referring to the close connection between the entities and the way in which their affairs were managed by their common controlling individuals in a coordinated manner.

58. No doubt it would be theoretically possible for all such discussions to be separated out and managed so as to minimise any risk of information that was potentially commercially sensitive coming to Paul's attention, but it would be a significant inconvenience to have to do so and a substantial change in the way in which the family interests were managed, made necessary by Paul's decision to establish a competing business. In reality, it would be unlikely to be effective in any event as discussions held at, say, the level of the board of Manton Holdings might well give away what was under consideration at the level of IDD.

59. Suppose for instance that there were to be a discussion whether IDD should move premises. The fact that it was doing so could well be of interest to a competitor- it might enable the competitor to tell potential customers that IDD was in financial difficulty, or downsizing its business, or was liable to disruption. It is unreal to suggest that this would not also have to be discussed in relation to Manton Interlink, IDD's landlord, and Manton Holdings, at least. It would probably need to be discussed by the Trustees, if it might affect funds available for distribution.

60. Any attempt to hold any discussion at the level of the Trustees looking forward would in my view be potentially constrained if it were necessary to take care to avoid any subject that could inadvertently give away information as to IDD's commercial intentions.

61. Further, it is not the case that any consideration of potential action against Paul for setting up in competition would be confined to the board of IDD. There could be claims against him based on his obligations as employee and director of that company, no doubt, in which IDD would be the proper claimant. They could in principle be considered and conducted solely by the board of IDD, but in the real commercial world they would also be matters of legitimate concern to, and proper discussion by, the directors of its holding company and the ultimate shareholders, for instance as to the costs of such action and the implications of funding such costs.

62. But there could also be potential claims on behalf of the Trust, which would need to be considered and decided by the Trustees and which Paul would be in a position to veto. The potential causes of action would not be identical, and so for instance the grounds on which Mr Titmuss submitted that a claim by IDD would be "bound to fail" (he denies use of confidential information and was not subject to contractual covenants) would not be relevant to a claim for breach of duty as a trustee.

63. That is made clear by what happened in relation to the meeting on 5 February 2020, at which one of the agenda items was (p 498) that the Trustees should commission advice on the likely merits and quantum of a claim against Paul, Jane and IDE. Paul's solicitors demanded numerous changes to the agenda (p 499) including converting this item into a proposal to lend money to IDD so that IDD, rather than the trustees, could commission the advice. That was no doubt an attempt to divert the consideration (and any resulting advice) away from the level of the Trustees so that Paul could say he was not conflicted, but since there is a real issue whether Paul may be subject to a claim on behalf of the Trust, the attempted diversion itself highlights his conflicted position. When the unamended proposal came to be discussed at the meeting Paul said "I think it's obvious… I'm not going to vote for that am I" (transcript, p 507).

64. I do not doubt that the occasion of this meeting was contrived to raise issues that would be likely to show disagreements between Paul and the other trustees that could not be resolved because of lack of unanimity. But this issue was a real one, and not the less so because the claimants took deliberate steps to force it into the open.

65. As to whether Paul might use his position as trustee to seek confidential information about IDD's business, it is instructive to look at another item on the agenda, which was that the Trust should provide money to IDD to acquire a particular machine tool. At trial, the objection to this item (somewhat ironic in view of Paul's own suggestion in relation to funding IDD to take legal advice) was that it was patently contrived since the trust had no funds that it could have lent for such a purpose, as all the trustees would have known. But that was not the original objection - the amendments to the agenda put forward by Paul's solicitors (p 499) did not take that point but sought to include a requirement that IDD should first provide a business plan to justify the investment. That was also the gist of Paul's response to this item at the meeting itself. Thus Paul sought the very business information that he now says could be withheld from him.

66. Again, I have no doubt this particular occasion was contrived to produce an open disagreement. But it is easy to see how a similar issue could arise in future - for instance if a potential item of capital spending would reduce IDD's ability to distribute funds and so affect distributions from the Trust. It would be reasonable for the trustees to discuss that matter, and reasonable for Paul if he were a trustee to seek information justifying the investment. He might be refused that information, but the fact that it would be known to the other trustees and kept from Paul could only be likely to cause or exacerbate hostility and impair the effective management of the Trust's affairs.

67. That brings me to the last head of the argument, the hostility between the Trustees. It is plain that there is a great deal of hostility between Paul on the one hand and the rest of the trustees on the other. Regrettably, I am satisfied from the evidence I have heard from all of them that it is, for the foreseeable future at least, implacable. Mr Titmuss's submissions were in effect that this is the fault of the other members of the family, and that Paul's position has been right or at least reasonable all along. But as I have said it is not for the court to seek to decide which side of the family is in the right in a disagreement about how the business should be run. Each side no doubt holds its position in good faith, and ultimately such matters of business disagreement must be decided by the majority. I cannot therefore discount the existence of this hostility as a reason why Paul should be removed on the basis that he believes he is right and those hostile to him are wrong.

68. As the authorities show, personal hostility is not sufficient in itself to justify removal; the question is whether it carries a real risk of affecting the administration of the Trust. Paul's position is that it does not, because discussion at the level of the trustees need not include any of the issues that give rise to hostility. That however is in my view unrealistic, for the reasons I have given.

69. Further, the potential for such hostility to result in lack of agreement on issues even if they are not directly relevant to disputes between the family members is made plain by correspondence from Paul's own solicitors. When it was alleged that Paul's actions amounted to breach of fiduciary duty and duty as a director of IDD and he was asked to resign as a trustee, his solicitors wrote (p 836):

> "… That situation [resigning from IDD and establishing IDE] only arose when the working relationship between [Paul] and his siblings became untenable… If the Trust is left in a permanent state of conflict as you allege that is not a result of the actions of our client…
>
> Our client will not be resigning or even consider taking any action in respect of the Trust until such time as any dispute with [IDD] has been resolved. Then and only then will he be willing to explore options with your clients as to how the Trust may be restructured… any willingness to discuss… the options... is …purely [because] he recognises that the Trust will be unworkable if relationships between him and the trustees remain as strained"

and later (p 845, an open letter):

> "Any willingness to mediate on our client's behalf is purely on the basis that he accepts that long term it may be difficult for the trust structure when the relationship between him and the other trustees has broken down…"

70. These letters are, at the very least, a recognition by Paul that the hostility between the parties makes the operation of the trust "difficult" or "unworkable". They are at least a recognition, and could well be interpreted as a threat, that the Trust will be "left in a state of permanent conflict". There is clearly in my view a statement that Paul will ensure that this remains the case until any threat of action against him by IDD has been withdrawn, so using the threat of disruption to the trust as a lever to secure advantage to himself.

71. Paul's concern, as he makes plain, is that if he is removed as a trustee the remaining trustees will have power to revoke the appointment of income in his favour and exclude him and his family from benefit under the Trust. But there is nothing that he can point to that indicates that that is their intention, or that it is the motivation behind this application. If any such action were taken, Mr Titmuss took pains to say on a number of occasions, it would be regarded as improper and met by immediate legal action by Paul. I can obviously say nothing about the merits of such a challenge to a hypothetical decision. For present purposes, while the risk of such an action is a matter that can properly be taken into account in the exercise of discretion, it cannot weigh heavily in Paul's favour. It may or may not happen, and if it does it may or may not be a proper exercise of the trustees' powers, On the other hand, Paul's wish to maintain his position as a trustee to protect himself from that risk is another example of putting his personal interest ahead of consideration of the interests of the beneficiaries as a whole.

72. Taking all these matters into account, in my judgment it would be appropriate to order that Paul be removed as a trustee. Mr Titmuss submitted that if I made that order it should be conditional on an independent person being appointed as an additional trustee, to act as a check on the power to remove Paul and his family from benefit. I do not doubt that such a condition could be imposed, but I do not consider it appropriate to do so in this case. There could be little doubt that any such person, whether or not directly nominated by Paul himself, would be seen as, and potentially come under pressure to act as, being in post solely to represent Paul's personal interest against those of the other beneficiaries.

73. There is one last matter to consider, which is that in the days before the trial Paul filed evidence that he has agreed to sell his house and buy another in Scotland, and that he intends to move there and make a living by letting holiday accommodation. IDE he says is not presently trading because the exhibition industry is at a standstill as a result of the coronavirus pandemic, and he has come to the conclusion that this will remain the case for some time and he does not wish to resume working in that sector even when it becomes possible to do so. He produced letters that he had sent to clients informing them that "ID Events Ltd will cease operating within this sector [ie the exhibition and events industry] from 1st December 2020. We would welcome the opportunity to explain our position in more detail and will try to contact you via telephone in the coming days."

74. I am not however persuaded that this puts an end to the concerns about Paul's position as a trustee or tips the balance against making the order sought. It is no doubt the case that little if any activity is taking place in relation to holding events and exhibitions at

present, but that will presumably change at some point when relaxation of coronavirus restrictions allows and planning and preparation for the future is no doubt continuing in the meantime. The claimants reasonably say that this apparent recent decision by Paul is far from conclusive evidence that he will not resume activity in competition with IDD at that point. They have had no prior notice of that decision and suspect that it is a tactic for the purpose of the proceedings. Paul has not put IDE into liquidation and says he does not intend to do so because it may take on other activity though not, he says, in the exhibition sector. The letter to customers is in guarded terms and far from a definitive statement, let alone proof, that IDE is permanently ceasing its trade. There is no evidence as to what else may have been said to the customers in the telephone conversations referred to, which might therefore be private assurances that IDE would resume activity when it could. The nature of the work is that any planning for a resumption of business, and in due course conduct of the business itself, could be done from a home in Scotland if Paul does move there. Paul has not, in this letter or by any other action, sought to refer any of his customers to IDD for the work that they will require in future, as might be expected if he had truly abandoned any intention of doing it himself. All of these seem to me to be valid points.

75. There will therefore be judgment for the claimants in the form of the order sought for Paul's removal as a trustee. I will arrange a date for this judgment to be deemed handed down without a hearing by distribution of copies of the final version to the parties and to BAILII for publication. I invite the parties to agree the order resulting. If there are any matters arising that cannot be agreed I will if possible deal with them without a hearing on the basis of short written submissions, to be received by email no later than the day before the handing down.