Neutral Citation Number: [2024] EWHC 636 (Ch)

Case No: PT-2023-000945

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY, TRUSTS AND PROBATE LIST (ChD)

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 21/03/2024

Before :

MR JUSTICE ADAM JOHNSON

- -

Between :

(1) DARREN SCOTT
(2) TIM DENNIS
(3) JOHN HUNTER
(4) ROY KERR
(5) DAVID OFELTD
(6) HEATHER YOUNG
(7) SIMON MATTHEWS
(8) JAMES LYE **Claimants**

- and -

(1) ANTHONY WALKER
(2) ANDREW CLARK
(3) CLIFFORD HENDERSON
(4) JAMES SMITH
(5) ERICA JOHNSON
(6) JOHN ROBERTSON **Defendants**

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Darren Scott and **Tim Dennis** appeared in person
Adam Riley (instructed by **Burnetts Solicitors LLP**) for the **4th Defendant**

Hearing date: 4th March 2024
Further written submissions: 5th and 7th March 2024

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Approved Judgment

This judgment was handed down remotely at 2pm on Thursday 21 March 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Mr Justice Adam Johnson:

Introduction & Background

1. This case raises an interesting question about jurisdiction.

2. At its heart is an unusual body referred to as the "*Body of Trustees for the Urr Navigation in the Stewartry of Kirkcudbright*." Kirkcudbright is in Dumfries and Galloway in Scotland. As I will explain further below, the "*Urr Navigation*" comprises a harbour area on the River Urr and part of the estuary thereof, including any piers quays or wharves.

3. A "*Body of Trustees*" for the Urr Navigation was created by means of the Urr Navigation Order 1901. I will refer to this as the "*1901 Order*". I will explain the background to the 1901 Order further below. It is obviously an historic instrument, but research by the parties indicates it has never been expressly repealed or varied since it came into force.

4. The 1901 Order described itself as an Order:

> "*For incorporating a Body of Trustees for the URR NAVIGATION in the Stewartry of KIRKCUDBRIGHT and for the improvement maintenance and regulation of the Navigation*."

5. Paragraph 4 of the 1901 Order, immediately under the heading "*INCORPORATION AND CONSTITUTION OF TRUSTEES*", reads as follows:

> "*4. For the purpose of carrying this Order into execution there shall be a body of Trustees not exceeding twelve in number constituted as provided in this Order and those Trustees are hereby incorporated by the name of the Urr Navigation Trustees and by that name shall be a body corporate with perpetual succession and a common seal and with power to sue and be sued and to purchase take lease hold and dispose of land and other property for the purposes of but subject to the restrictions of this Order*."

6. In what follows, I will refer to the "*Urr Navigation Trustees*" by the abbreviation "*UNT*". As the parties have explained it to me, the Urr Navigation is an example of a "*trust port*". Again, I shall explain the concept a little further below.

7. From the limited documents I have available, it seems that the River Urr was a busy shipping lane for about 50 years after the 1901 Order came into effect. Over time, however, maritime trade declined. It appears the UNT may also have been neglected, at least during some periods. There is some correspondence suggesting it may have been regarded as defunct by about 2012. What is then said to have happened is that in about 2021, a group of individuals claiming to represent the UNT unlawfully transferred mooring income to an organisation known as the Kippford and Rockliffe Moorings Association ("*KARMA*"). At about the same time, steps were also taken to transfer certain of the UNT's property – an area known as Barlochan Port at Palnackie

Harbour - to a Scottish entity known as the Buittle Quest Scottish Charitable Incorporated Organisation ("*Buittle Quest*").

8. These events are at the heart of the present claim. In about 2022 yet a further body of individuals claiming to represent the UNT came to be constituted. As I understand it, they are among the present Claimants, although the key protagonist is Mr Scott, who described himself as a beneficiary of the UNT. In his Witness Statement Mr Scott said that he had added the other Claimants to the Claim as a formality since they agreed with the claim and (in effect) needed to be bound by the outcome, but they were not themselves making "*a formal claim to the Court*". Be that as it may, for now I will refer simply to "*the Claimants*". The intended claim is essentially that the individuals who earlier acted to transfer mooring income and property away from the UNT, were acting unlawfully and in breach of duty when they did so. Those individuals are the intended Defendants. Amongst other relief, the Claimants seek an account of the mooring income which they say is rightfully the property of the UNT, not KARMA, and a declaration that the transfer to Buittle Quest was undertaken without authority, and without proper consultation, and is thus void and/or liable to be rescinded. There is also a discrete allegation that one of the individuals who approved the transfer to Buittle Quest, a Ms Erica Johnson, was misled into doing so.

9. A Part 8 Claim Form was issued in this Court by Mr Scott on 31 October 2023. There are six Defendants. Only one, Mr James Smith (Defendant 4) has filed an Acknowledgment of Service, but he has also issued an application seeking to challenge the English Court's jurisdiction and/or for a stay of proceedings on *forum non conveniens* grounds (i.e., on the basis that even if the English Courts do have jurisdiction, they should not exercise it, because the Scottish Courts are also an available forum and are clearly the more appropriate forum given the nature of the dispute).

10. None of the other Defendants (i.e., Defendants 1-3 and 5-6) has filed an Acknowledgement of Service or otherwise entered an appearance in the proceedings.

Intra-United Kingdom Jurisdiction

11. The rules for allocation of jurisdiction between the constituent parts of the United Kingdom are set out in the Civil Jurisdiction & Judgments Act 1982, Schedule 4. I will refer to the Act as the "*CJJA*", and to the Schedule as "*Sch. 4*".

12. In very brief summary, an individual who is domiciled in Scotland must generally be sued in Scotland (Sch. 4, paras 1-2). There are some exceptions, however, which give the English Court jurisdiction even where the Defendant is a Scottish domiciliary (Sch. 4, paras 3-6). One such exception is where proceedings are brought against a trustee of a trust which is domiciled in England (para. 3(f)). Another is when a claim is brought which has as its object the decisions of an organ of a company or other legal person or association, if the company or other legal person or association has its seat in England (para. 4).

13. In some instances, the Courts of certain parts of the United Kingdom are accorded *exclusive* jurisdiction, regardless of any question of the domicile of the parties – for example, in cases involving title to land, the Courts of the place where the land is situated have exclusive jurisdiction (Sch. 4, para. 11(a)(i)), and in cases having as their

object the nullity or dissolution of companies or other legal persons or associations, the Courts of the place of the seat of the company or legal person or association have exclusive jurisdiction (Sch. 4, para. 11(b)).

14. I mentioned above that in this case, only one of the six Defendants has entered an appearance and challenged jurisdiction. The law though is clear. Under Sch. 4, para. 15(1), the Court has to examine the position of all Defendants, whether they have entered an appearance or not, and determine whether it has jurisdiction. Para. 15(1) provides:

> "*Where a defendant domiciled in one part of the United Kingdom is sued in a court of another part of the United Kingdom and does not enter an appearance, the court shall declare of its own motion that it has no jurisdiction unless its jurisdiction is derived from the provisions of this Schedule*."

15. Moreover, even if there *is* jurisdiction, s.49 of the CJJA, as amended, preserves the power of the Court to stay its proceedings on *forum non conveniens* grounds in appropriate cases, and the fact that a Defendant has himself failed to contest jurisdiction under CPR, r. 11 does not prevent the court from acting on its own initiative and exercising its case management powers to stay, strike out or dismiss the proceedings on *forum non conveniens* grounds.

The Claimants' Arguments

16. Mr Darren Scott made submissions before me from the Claimants' perspective, with some assistance from Mr Tim Dennis.

17. It was effectively accepted in argument that all the Defendants should be treated as domiciled in Scotland. That is the view I take anyway, since the Claimants themselves gave the Defendants Scottish addresses for service in the Claim. The evidence of Ms Sally Johnson, solicitor for Mr Smith the Fourth Defendant, also said that all of the parties shown on the face of the Claim Form are domiciled in Scotland.

18. The starting point, in light of this, is that the English Courts have no jurisdiction over the Defendants. Mr Scott's argument however was that one of the relevant exceptions applies, thus giving the English Court jurisdiction.

19. The argument, as developed in submissions, is that the present case falls within the exception in Sch. 4, para. 3(f), which provides as follows:

> "*3. A person domiciled in a part of the United Kingdom may, in another part of the United Kingdom, be sued:*
>
> *…*
>
> *(f) as settlor, trustee or beneficiary of a trust created by the operation of a statute, or by a written instrument, or created orally and evidenced in writing, in the Courts of the part of the United Kingdom in which the trust is domiciled …".*

20. The argument made by Mr Scott was that in this case the UNT was a trust domiciled in England, because it was a statutory trust created under or by virtue of an English Order (the 1901 Order), made in Westminster pursuant to an English statute. The statutory trust, he argued, must in such circumstances be governed by English law, and therefore must be regarded as domiciled in England, even though it concerns the Urr Navigation in Scotland.

Discussion and Conclusions

21. I appreciate the creativity of the argument, and there is no doubting the conviction of Mr. Scott and Mr Dennis in their position. They feel very strongly that an injustice has occurred which needs to be remedied. All the same, I have come to the clear view that the point must be tested in Scotland, not in England, because the English Courts have no jurisdiction, or alternatively should decline jurisdiction since the Scottish Courts are clearly the more appropriate forum for trial of the action.

Background to the 1901 Order

22. The very able researches of Mr Riley, counsel to Mr Smith, have revealed that the 1901 Order was introduced under a now virtually redundant Parliamentary procedure known as the "*provisional order system"*.

23. The immediately relevant background as far as the 1901 Order is concerned was the General Pier and Harbour Act 1861 (as amended). This was an Act designed to " ... *facilitate the Formation, Management, and Maintenance of Piers and Harbours in Great Britain and Ireland*." It introduced machinery which enabled interested groups of individuals – referred to as "*promoters*" – to apply for authorisation from the Board of Trade to take over the maintenance of harbour areas in individual localities, and to have power to levy rates for that purpose. If satisfied, the Board of Trade would make a *provisional order*. That would then be deposited in the relevant locality and advertised, and after a period of 14 days could then be *confirmed* by means of the Board of Trade causing a Bill to be introduced into Parliament under the following procedure described in s.16 of the 1861 Act:

> *"… the order to be confirmed shall be specified in a schedule to the Bill introduced for conforming to the same, and shall be set out at length therein; and until such confirmation no provisional order shall be of any validity or force whatever; and every Act of Parliament confirming such order shall be deemed a Public General Act."*

24. In this case, the 1901 Order was confirmed by means of the Pier and Harbour Orders Confirmation (No.3) Act, 1901, which also confirmed similar orders relating to harbours at Bexhill, Burghead, Carradale, Elgin and Lossiemouth.

25. According to Halsbury's Laws of England, Vol. 96, para. 224 (fn. 1), Acts confirming provisional orders were described in the annual volume of local and personal acts as "*Public Acts of a Local Character*" until 1963. Bennion, Bailey and Norbury on Statutory Interpretation (8th Edn) have the following to say about *local* Acts (at Section 2.14):

> "*An Act is local if it applies in a particular locality but is of general interest to the community in that locality. An example would be an Act to promoted by a particular local authority that wishes to acquire powers not enjoyed by local authorities generally (for example, port and harbour authorities). An act that affects London will nonetheless often be classified as a public general Act on the basis that it is of interest to the whole community*."

26. It seems to me clear that the process of confirmation, involving as it did the advertisement of the provisional order in the relevant locality, was designed to ensure that the concerns and interests of local groups likely to be affected would properly be considered, and any objections made known, so as to ensure that no one locally was unfairly affected by the order before it was confirmed.

Provisions of the 1901 Order

27. Viewed at a general level, the idea behind the 1901 Order seems to have been to establish a self-financing body whose responsibility it would be to ensure the maintenance of an area defined as "*the Harbour*" (a specified part of the River Urr and its estuary), to include dredging and other activities to ensure it was navigable for relevant categories of marine traffic, as well as the maintenance of piers, quays and wharves.

28. I have already set out above para. 4 of the 1901 Order. As noted, this refers to the UNT being incorporated as a "*body corporate with perpetual succession and a common seal and with power to sue and be sued*." This indicates that the structure was intended to involve establishment of a corporate body having independent legal personality – akin to a company.

29. Consistent with that, the provisions concerning the appointment of Trustees and voting at meetings (paras 6-12) are like those one might see in a company's articles of association, but with amendments appropriate to the circumstances (e.g. the body of 12 Trustees was to be drawn from different constituencies associated with the Harbour – four from the owners of wharves and wharehouses, two from the Burgh of Dalbeattie and six from Kirkcudbright).

30. Paras 17-29 of the 1901 Order are headed, "*Management of the Harbour*". These make clear that the UNT's authority was limited geographically to the Harbour (para. 17). Any property previously vested in a body known as the "*Harbour Committee*" was to vest in the UNT (para. 18). By para. 19, the UNT was empowered to "*repair and maintain and improve the Harbour*", which was to include the power to carry out dredging work (para. 19), and to do such things as purchase or hire machinery (para. 23).

31. Paras 30-41 deal with the levying of charges by the UNT, referred to as "*rates*", for use of the Harbour.

32. Para. 35(1) makes clear that the UNT was to be self-financing, but was not intended to operate at a profit. It provides:

> "*The Trustees shall revise the rates receivable by them under this order so that the income of the Trustees under this Order may always be so far as practicable sufficient and not more than sufficient for the purposes of this Order*."

33. Paras 42-49 of the 1901 Order, under the heading "*Finance*", contain provisions reflecting this same idea. Under para. 45 ("*Application of revenue*"), all income was required to be deployed in maintenance of the Harbour or in managing its operations, with any surplus to go towards a reserve fund for possible future works. By para. 47, the UNT was required to submit an annual account to the Board of Trade, and to be liable for a penalty for failing to do so. The Board of Trade was to appoint an auditor with powers to request all books and records, and again the UNT was to be liable to penalties if it failed to provide access accordingly (para. 49).

Is the UNT a trust or a body corporate, or both?

34. The proceedings before me have provoked debate about whether the UNT is a trust or a body corporate – or to be more accurate, and to quote the words of Sch 4, para. 4 and Sch 4, para. 11(b), a "*company or other legal person or … an association of natural or legal persons.*" The debate included some discussion about the status of *trust ports* generally. Although many modern ports operate in other forms (for example, via private companies or local authorities), there remain a large number of so-called *trust ports* throughout the United Kingdom. There is some uncertainty about their status. A set of Guidelines published by the Department of the Environment, Transport and the Regions in 2000 referred to trust ports as having a "*unique status as trusts*" (para. 6). However, a later set of Guidelines published in 2009 by the Department for Transport (the successor to the Department of the Environment, Transport and the Regions) had the following to say:

> *"The use of the term 'trust' in this document needs to be clear. Trust ports are not trusts in the legal sense, nor are trust port boards trustees in that sense. But we have not found a sensible replacement for the term 'trust port', the concept of which is well understood in the sector."*

35. This Judgment is concerned only with a preliminary question of jurisdiction. In my opinion, the precise classification of the UNT does not matter too much for present purposes, because I think that however it is classified, one comes to the same conclusion, which is that the English Court has no jurisdiction or at any rate should not exercise it. In any event, I do not see why the categories have to be treated as mutually exclusive, and if that is correct, then the UNT can be classified for jurisdictional purposes both as a trust and as a "*company or other legal person or … an association of natural or legal persons".*

36. As to the UNT being a trust, it is clear from the context that the concepts used in Sch. 4 are based on those originally used in the 1968 Brussels Convention on Jurisdiction in Civil and Commercial Matters. When the provisions concerning trusts were first introduced into the Brussels Convention regime, a Report was prepared by Professor Schlosser of the University of Munich, to act as an official guide to interpretation. This explained the core concept in play as follows (at para. 109):

> "*The basic structure of a trust may be described as the relationship which arises when a person or persons (the trustees) hold rights of any kind for the benefit of one or more persons (the beneficiaries) or for some other object permitted by law, in such a way that the real benefit of the property accrues, not to the trustees, but to the beneficiaries … or other objects of the trust*".

37. Here, it seems to me that the UNT does qualify as a trust, because it holds (or was designed to hold) property for a particular object. That property included the interests formerly owned by the Harbour Committee which vested in it under para. 18 of the 1901 Order, which it acquired subject to its overarching obligation to maintain and repair the Harbour; and it also included the rates or charges it collected, which it was obliged to spend only in repairing and maintaining the Harbour. It is true that this structure does not allow a class of beneficiaries to be clearly and precisely identified, which one would expect in connection with many trusts; but the guidance given by Professor Schlosser indicates that the concept is wider than that, and covers the situation where property is held for defined *objects*. That seems to me apt to cover the present case.

38. Equally, I am persuaded that the UNT may fairly be characterised for jurisdictional purposes as a "*company or other legal person or … an association of natural or legal persons*" (I will use the phrase, "*body corporate*" as a shorthand). The UNT is clearly an unusual animal, but I think determinative of this question is the language of para. 4 of the 1901 Order, which I have set out above at [5], and which refers expressly to the UNT being "*incorporated … [as] a body corporate with perpetual succession and a common seal and with power to sue and be sued*." Although use of the term "*Urr Navigation Trustees*" seems to suggest a group of individuals rather than a body corporate, it is not unusual for older Acts of Parliament including delegated legislation to be drafted in a manner that modern draftsmen would consider imprecise or inelegant (see Bennion at para. 10.7), and in my opinion the language of para. 4 puts the matter beyond any doubt.

The Trust Analysis: Is the UNT domiciled in England?

39. By Sch. 4., para. 3(f), Scottish domiciliaries may be sued in England if they are trustees of a trust domiciled in England. Assuming UNT is a trust for these purposes (which I think it is), and leaving aside other possible complications (such as the precise standing of the present Claimants to sue, and the capacity in which they seek to do so), is the UNT domiciled in England? I think not.

40. The test is stated as follows by Dicey at para. 11-335:

> " *… a trust is domiciled in a part of the United Kingdom if and only if the system of law of that part is the system of law with which the trust has it closest and most real connection*."

41. In this case, the question to ask is therefore: is the law of England, or the law of Scotland, the system of law with which the UNT (looked at as a trust) has its closest and most real connection? In my opinion, the answer is the law of Scotland.

42. The contrary argument, advanced by Mr Scott, is that the 1901 Order was enacted at Westminster under enabling legislation – in effect, the General Pier and Harbour Act 1861 (as amended) – which was not limited to Scotland and which was intended to facilitate the introduction of trust ports on a uniform basis across the United Kingdom, all subject to the principles of English trust law.

43. After careful reflection, I have decided that I cannot accept this argument, because it seems to me to ignore the entirely local nature of the 1901 Order. I have referred above to the (now largely historic) practice of Acts of Parliament confirming provisional orders, and to the long-accepted description of such Acts as "*Public Acts of a Local Character*." That seems to me an entirely apt description here of the Pier and Harbour Orders Confirmation (No.3) Act, 1901 (see above at [24]), and certainly I find it inescapable that the 1901 Order was intended to be a local Order having obviously limited effect in the geographical area of the Harbour (see para. 17 of the 1901 Order), and being designed to affect the legal rights and interests of those in the area of the Harbour. I think the connection with the law of Scotland obvious and overwhelming, given that the subject matter of the trust was an area of land (the Harbour) situate in Scotland, and its terms solely concerned with the upkeep of that land including via the collection of rates from users, which were to be used only in connection with that upkeep.

44. Mr Scott argued that Acts of the United Kingdom Parliament are intended to apply uniformly across the United Kingdom. That is true generally speaking (see Bennion at para. 6.2), but the general presumption must give way if a contrary intention is clear. The instrument we are concerned with is the 1901 Order, and although that was implemented under enabling legislation of wider territorial scope (ultimately, the General Pier and Harbour Act 1861), it was clearly intended to be local only in its operation. That is why only local interests had to be consulted before the relevant provisional order was confirmed (see above at [23]). Only local interests were affected.

45. The approach of the Court of Appeal in Gomez v. Gomez-Monche Vives [2008] EWHC 259 (Ch) 245 was to equate the issue of the system of law with which a trust has its closest and most real connection with the issue of the governing law of the trust. In that case, the trusts in question were expressly governed by English law as a result of the settlor's choice, and were thus taken to have their closest and most real connection with England, although all the assets were abroad and there was no other link to this jurisdiction.

46. In the present case, there is no express choice of law to govern the trust arrangements arising out of the 1901 Order, but I agree with Mr Riley that, applying the relevant choice of law rules for trusts contained in the Recognition of Trusts Act 1987, one quickly comes to the conclusion that they are governed by the law of Scotland. The relevant rule is that in Article 7 of the 1985 Hague Convention on the Law Applicable to Trusts and their Recognition, which is given effect in England by means of the 1987 Act. Where no applicable law has been chosen, Article 7 requires application of the law with which the trust is most closely connected. In applying that test, one must have regard to four factors: (1) the place of administration of the trust designated by the settlor, (2) the situs of the assets of the trust, (3) the place of residence or business of the trustee, and (4) the objects of the trust and the places where they are to be fulfilled.

47. Here, all four factors, so far as applicable point in the direction of Scotland. As to factor (1) Mr Scott has pointed to the fact that there is no settlor in the traditional sense – which is true, but the place of administration is without question in Scotland. As to factor (2), Mr Scott also suggested that at least at one stage, the UNT may have had an account with an English bank. Even if that is correct, however, it would not in my opinion be a sufficiently strong factor to tilt the balance against Scotland.

48. In summary, I have come to the view that the terms of the trust under which the *Trustees of the Urr Navigation* were to act were governed by the law of Scotland. It is the law of Scotland which was to define the duties owed by them under and by reference to the 1901 Order, and which therefore should define in this case whether the Defendants have any liability.

49. On that basis, I conclude that the relevant trust is domiciled in Scotland, not England, for jurisdictional purposes, and thus that the Court cannot assert jurisdiction over any of the Defendants on the basis of Sch. 4, para. 3(f).

The Body Corporate Analysis – Does the UNT have its seat in England?

50. I can deal with this more briefly, because the Claimants did not press the argument that the UNT was a body corporate. Mr Riley very fairly raised the point. I do not think it matters to the analysis, however, because a body corporate has its seat in England for the purposes of Sch. 4, para. 4 only if (a) it has its registered office or some other official address in England, or (b) its central management or control is exercised in England, or (c) it has a place of business in England (see CJJA 1982, s. 42(4)). No part of this test is satisfied in the case of the UNT, and indeed all elements point in the direction of Scotland as the place of the relevant seat.

Defendants 1-3 and 5-6

51. As mentioned above, only the Fourth Defendant, Mr Smith, has entered an appearance and sought to contest the jurisdiction. In his written submissions Mr Scott said that must mean that the other Defendants had raised no objection and therefore must be taken to have conceded the jurisdiction issue. That is not correct, however, given the requirement imposed on the Court by Sch. 4, para. 15(1) (see above at [14]): whether a Scottish domiciled Defendant enters an appearance or not, the Court must declare of its own motion that it has no jurisdiction, unless satisfied that it has jurisdiction under the terms of Schedule 4.

52. It follows from what I have already said above that I am not so satisfied, because the position of Defendants 1-3 and 5-6 is indistinguishable from that of Mr Smith. If there is no jurisdiction over him under Sch. 4, it must follow that there is no jurisdiction over the other Defendants either.

Forum Non Conveniens

53. That is enough to dispose of the proceedings, but in case I am wrong I will go on and consider whether, even if there was jurisdiction, the proceedings should nonetheless be stayed on *forum non conveniens* grounds. Again as noted already above, I should consider the position as against all Defendants, notwithstanding that only Mr Smith has actually contested jurisdiction and asked for a stay.

54. The power to stay proceedings on *forum non conveniens* grounds, originally an import from Scots law, is now very well established in England. The relevant principles are well known and are set out in the speech of Lord Goff of Chieveley in Spiliada Maritime Corp v. Cansulex [1987] 460. The idea is that even if the English Court does have jurisdiction in the strict sense, it can in appropriate cases choose not to exercise it. Appropriate cases, in short, are cases where there is another available forum, and where the proposed Defendant can show that the other forum is clearly or distinctly more appropriate for the trial of the action. The focus is on the management of the proceedings and of the trial process, and the question is ultimately a practical one: where may the case most suitably be tried for the interests of all the parties and the ends of justice (see per Lord Goff in Spiliada at p. 476C).

55. Had it been relevant to do so, I would unhesitatingly have concluded that Scotland was the *forum conveniens* for the trial of the action in this case. That is because Scotland is the obvious centre of gravity, both in terms of the legal principles in play, and practical matters such as the location of witnesses and documents:

    i) I have already expressed the view that the relevant duties owed by the Trustees of the Urr Navigation are (or were) duties owed under the law of Scotland (see above at [49]). It is Scottish law which should determine whether there were defaults by the then Trustees in effecting the disposal of the disputed parcel of land around Palnackie harbour in 2021, and in alienating income (if that is what they did) from mooring rights. I think the same analysis must apply if the Trustees are regarded as akin to company directors, owing duties to the corporate entity (the UNT) whose assets and income (on this hypothesis at any rate) were disposed of.

    ii) I also think the nature of the intended action has a uniquely local flavour, in at least two respects. One is that one of the principal forms of relief concerns an allegedly wrongful disposition of land *in Scotland*. That is a very powerful factor tilting the jurisdictional balance in favour of Scotland, because the validity of the disposition will undoubtedly raise questions of Scots law, since it is a universally accepted principle of law that issues of title to real property have to be resolved according to the law of the place where the property is situated – the *lex situs*. It is this principle which underlies the rule of exclusive jurisdiction in relation to certain disputes about land in Sch. 4, para. 11(a)(i), which I have already referred to (see above at [13]). The present case has not been argued on the basis of any rule of exclusive jurisdiction, and so I do not say that we are within para. 11(a)(i), but what I do say is that the fact that an important part of the claim involves a question of title to Scottish land would be a very strong factor indeed in favour of staying English proceedings, even if in principle there was jurisdiction.

    iii) I think there is a related point as well, which concerns the status of the UNT at the time when the acts complained of by the Claimants took place, which seem to have been in about 2021. By then, the originally contemplated functions of the UNT had long ceased to be relevant. I have noted references in the papers to the UNT having come to be regarded as defunct. At present of course I do not have properly articulated defences from the Defendants, but it seems to me a very fair assumption that one line of defence will be that the UNT had ceased to have any discernible, practical existence before about 2021, and thus that

there were no breaches of duty by them in acting as they did. Obviously, I can express no view one way or the other about the merits of such an argument on the present application; but what is relevant is the practical point that any proceedings will very likely have to involve some examination of the history of the UNT, and consideration of it status, in practical and legal terms, at the times when the alleged breaches of duty by the Defendants took place. Again, there is a rule of exclusive jurisdiction which touches on such matters. I have referred to it above (see again at [13]): it is the rule in Sch. 4, para. 11(b) that proceedings which have as their object the "*nullity or dissolution*" of bodies corporate, must be resolved in the Courts for the place where the relevant body has its seat. Once more, I do not say here that we are within that rule of exclusive jurisdiction. But the rule reflects an obvious and important policy in favour of matters concerning the internal workings and constitutional status of a body corporate being resolved in the Courts for the place where it has its seat. In this case, it seems to me that the clear likelihood of issues arising in the proceedings about the constitutional status of the UNT - in my view a body corporate with its seat in Scotland (see above at [50]) - is a plainly a matter justifying the conclusion that Scotland, not England, would be the *forum conveniens*, even if the English Court did have jurisdiction. Other, similar points may also arise, for example as to the identity of the proper claimant or claimants (should it be the UNT or the individual trustees?), and as to the role and authority of Mr Scott. Such matters again will need to be addressed by reference to the law of the seat, i.e., the law of Scotland.

iv) I think it follows from the points made above that likely all relevant witnesses (or at least the majority of them) will be physically located in Scotland. These will include Ms Erica Johnson, the individual who it is said may have been misled (see [8] above). It also seems very likely that all (or the majority) of the relevant documents will be in Scotland, especially if, as it seems to me, the proceedings will need to look into the operations of the UNT over time, so its precise status by about 2021 can be properly classified. This exercise is very likely to require an examination of books and records held locally, and these may very well (given the time periods concerned) be in hard copy.

56. Finally, one of the points made by Mr Scott was that the Scots Courts have limited powers when it comes to the supervision of trustees. Even if that is true, however, the fact that a different legal system may stipulate different rules and provide different and more limited remedies, is not a good reason for preferring this jurisdiction over another which is otherwise the *forum conveniens*: the only question is whether "*substantial justice will be done in the available appropriate forum*" (see per Lord Goff in Spiliada, at p. 482F). Something extreme is usually required to satisfy that test. It is not enough to say that the foreign system of law is different, and may provide a different outcome; or that the applicable procedure will be different, and may provide (for example) for more limited or more expansive rules on discovery, as the case may be. Here, there is no case for saying that substantial justice cannot be done in Scotland. So Mr Scott's point does not alter my conclusion on the *forum non conveniens* question.

Other Matters

57. For completeness, I should add that the Claimants also raised some arguments based on the jurisdictional gateways in CPR 6.36 and Practice Direction 6B, para. 3.1. Those

gateways are not relevant, however, since the claims we are concerned with are civil and commercial claims against potential Defendants domiciled in Scotland, and so the relevant procedure is that in CPR 6.32 ("*Service of the claim form where the permission of the court is not required – Scotland and Northern Ireland*"), which leads one in turn to the jurisdictional rules in Sch. 4. I also note that, contrary to CPR, rule 6.34(1), no form N510 was filed with the Claim Form, containing a statement of the grounds said to justify service out of the jurisdiction. I prefer though not to justify my overall conclusion on the basis of a procedural error, and to the extent necessary would grant the Claimants relief from sanction, since even if the deficiency is properly to be regarded as a serious one (see the Notes to the White Book at para. 6.34.2), the overall justice of the case required the points on jurisdiction, which were developed in Mr Scott's witness statement and fully argued at the hearing before me, to be resolved on their merits.

Conclusion & Disposition

58. My conclusion is that the English Court has no jurisdiction. I think the appropriate course, subject to any submissions the parties may wish to make, is for the proceedings therefore to be dismissed. I would ask the parties to consult together with a view to agreeing any consequential matters, including in particular what (if any) Order should be made in respect of costs.