ND COURT OF THE CAYMAN ISLANDS

ERVICES DIVISION

FSD CAUSE NO. 269 OF 2024 (DDJ)

IN THE MATTER OF THE A TRUSTS

BETWEEN

AA

PLAINTIFF

AND

(1) BB

(2) CC

(3) DD

(4) EE

(5) FF (as guardian *ad litem* for GG)

(6) HH

DEFENDANTS

Before:	The Hon. Justice David Doyle
Heard:	On the papers
Draft judgment circulated:	10 December 2024
Judgment delivered:	12 December 2024

Determination of an issue in respect of the filing of evidence and connected issues – undesirability of litigating by email – overriding duty of attorneys to assist the court – importance of the overriding objective and constructive cooperation between the parties and their attorneys

JUDGMENT

Introduction

1. In high level and broad brush terms and based on the evidence filed to date, this case concerns the capacity of an individual and trusts with assets said to be in the region of US$1.3 billion. Unsurprisingly it has attracted a lot of lawyers in London and the Cayman Islands and has already generated many thousands of pages of correspondence and documentation. The Plaintiff (the father, whose capacity appears to have been put in issue by the Fourth Defendant, his son) is represented by Bedell Cristin in Cayman, Macfarlanes and Alexander Learmonth KC in London. The First Defendant is represented by Appleby in Cayman, Farrer & Co and Tracey Angus KC in London. The Second Defendant is not represented in these proceedings and has played no active role. I do not think the Second Defendant has been served with these proceedings. The Third Defendant is represented by Collas Crill in Cayman, Stewarts Law and Penelope Reed KC in London. The Fourth Defendant (the son) is represented by Ogier in Cayman, Baker & McKenzie and Constance McDonnell KC in London. The Fifth Defendant (the Plaintiff's daughter by her guardian ad litem, her mother and the Plaintiff's ex-wife) is represented by Mourant Ozannes in Cayman and Clifford Chance in London. The Sixth Defendant, (the Fourth Defendant's wife) is represented by the same lawyers as the Fourth Defendant but has indicated that she does not intend to participate in these proceedings.

2. The Fourth Defendant says that he once had an extremely close relationship with the Plaintiff. He adds that he is worried about the decisions his father has been making in respect of the trusts. The son says that since the breakdown in their relationship the father no longer pays him £110,000 per month and other accommodation, travel and ad hoc expenses the father used to cover. The son is currently paid £125,000 per month by way of distributions from the trusts. He says he has cash savings of approximately £500,000 - £600,000 and "illiquid private market holdings currently valued at approximately $1.3m". I should add that in evidence filed on behalf of the Plaintiff on 22 November 2024 it is stated that the First and Second Defendants as trustees have made at least 2 significant loans to the Fourth Defendant (his son). The first loan was in the sum of £900,000 in the course of 2023 and the Plaintiff says that this was while the Plaintiff was continuing to provide the Fourth Defendant with an allowance of £100,000 per month out of his own resources. It is said

that the Plaintiff has learned that the First and Second Defendants have transferred to the Fourth Defendant £125,000 each month since August 2024. The Plaintiff is concerned that the trustees are advancing very significant sums of money to his son especially as that runs counter to the letter of wishes (which expresses the wish that the Fourth Defendant should only receive £1 million per annum) by which the trustees should be guided. The son expresses concerns about his father's "memory and cognition" and he feels it necessary "to participate in these proceedings" as he is "deeply concerned for his father's welfare." The son says he is concerned that his father has lost capacity and is unfit to act as protector of the trusts.

3. The father has not provided an affidavit himself but relies on affidavits sworn by an English solicitor and partner in Macfarlanes. It is stated that the father is the settlor and protector of various family trusts and a beneficiary of most of them. The Fourth Defendant and the Fifth Defendant are stated to be beneficiaries of all of the trusts and the Sixth Defendant is stated to be a beneficiary of some of the trusts. The trusts have been administered by the First and Second Defendants. On 18 April 2017 and 21 November 2017 the Plaintiff executed deeds appointing the Fourth Defendant as his successor protector pursuant to which he would replace his father should his father die or otherwise cease to be protector, for example by reason of loss of mental capacity.

4. It is stated that over the course of 2022 and the first half of 2023 the Plaintiff became dissatisfied with the performance and conduct of the First and Second Defendants as trustees. The Plaintiff asked them to retire in May 2023. The trustees agreed subject to the Fourth Defendant's approval and the Plaintiff undergoing a capacity assessment. On 4 August 2023 a capacity report from Assessor A was provided to the trustees. It confirmed that the Plaintiff had the necessary capacity. The Fourth Defendant did not confirm his position in respect of the retirement of the trustees. As a result the Plaintiff on 4 December 2023 (having obtained a supplementary report dated 1 December 2023 again confirming his capacity) exercised his powers as protector to remove the trustees and appointed the Third Defendant in their place.

5. The father says that the son alleged that the father lacked capacity to execute the removal deeds and the First and Second Defendants refused to transfer the trusts' assets to the new trustee.

6. On 28 February 2024 the Plaintiff executed deeds revoking the appointment of the Fourth Defendant as his successor protector of the trusts and appointed his ex-wife (and the mother of the Fourth and Fifth Defendants) as his successor as protector. Further reports have been prepared in respect of the capacity of the Plaintiff.

7. The Fourth Defendant says that on 8 May 2024 the trustees proposed a capacity assessment protocol as a sensible method of resolving what he described as the capacity issue. The Fourth Defendant says that if the protocol could not be agreed the trustees would issue applications in the Cayman Islands, the Bahamas and Jersey with one jurisdiction as the lead jurisdiction. The Fourth Defendant says that instead of engaging with the protocol the Plaintiff unilaterally obtained an additional medical report from Assessor B dated 14 June 2024 and then unilaterally issued proceedings in the Cayman Islands.

8. The Plaintiff's Originating Summons before the Grand Court is dated 27 September 2024 and seeks declarations and/or an order that the Plaintiff had capacity to execute the various deeds on the dates on which they were executed. The Plaintiff also seeks an order that the First and Second Defendants shall take all necessary steps forthwith to vest the trust assets in the Third Defendant pursuant to the removal deeds. The Plaintiff says that the simple function of these proceedings is to give the trustees the reassurance they say they need to safely comply with the deeds which he executed, over a year ago now.

9. On 5 September 2024 I made a confidentiality and anonymity order. Apart from unnecessary and inappropriate email communications with court administration things, from the court's perspective, remained relatively quiet on this matter in September, October and for most of November.

10. More recently over the last few weeks there has been a flurry of activity culminating in the parties agreeing (1) to a two day directions hearing commencing on 10 February 2025 (two days being the Fourth Defendant's estimate with the Plaintiff suggesting half a day) and (2) that an issue which had arisen as to the time for service of the Defendants' evidence could be determined on the papers. With that generalised high level introduction I now turn to those two issues.

Documentation considered

11. I have considered:

    (1) The Plaintiff's Summons for directions dated 27 November 2024 (the "Plaintiff's Summons") seeking orders in respect of a stay of the claim concerning certain trusts, parties and representation, variation of the confidentiality order, confirmations in respect of

medical evidence disclosed insofar as relevant to the Plaintiff's cognition, expert evidence, listing of the final hearing, skeleton arguments and costs;

(2) The First Defendant's application made by Summons (supported by evidence) and by a covering letter dated 29 November 2024 (the "First Defendant's Application") for an extension of time for service of the evidence of the First and Third Defendants;

(3) The Fourth Defendant's Summons for directions dated 2 December 2024 (the "Fourth Defendant's Summons") (together with supporting evidence) seeking orders (1) for a directions hearing to include a determination on the provision and timing of disclosure and expert evidence (2) that leading counsel may appear at the directions hearing by videolink (3) that the Defendants are not required to serve evidence pending the directions hearing (4) that the parties' costs of the proceedings be paid out of certain trusts and (5) that the parties' costs of the summons be paid out of certain trusts;

(4) The email from my PA dated 27 November 2024 1:19pm requesting joint non-availability and time estimate from all relevant parties before 3pm on 4 December 2024;

(5) The email from my PA dated 2 December 2024 9:15am indicating that if any party objected to an order being granted as requested by the First Defendant's Application such party should file and serve concise (no more than 5 pages) written submissions before 10am on Monday 9 December 2024;

(6) The email from my PA dated 3 December 2024 9:22am (noting reference to a filing date of 20 December 2024) requiring concise (no more than 5 pages) written submissions limited to the relief claimed at paragraph 3 of the Fourth Defendant's Summons (the time for service of Defendants' evidence) (the "paragraph 3 relief") by 3pm on Friday 6 December 2024 in order that I may read into the matter over the weekend;

(7) The email dated 5 December 2024 at 1:16pm from the attorneys acting for the Fourth and Sixth Defendants stated to be approved by all represented parties indicating that all parties agreed that the paragraph 3 relief should be determined on the papers and adding:

> "We confirm that all of the parties are available on 10 and 11 February 2025 for the substantive directions hearing. This is the only window for all parties' availability in January and February. If this is not workable from the court's perspective, we shall take the parties' joint availability in March.
>
> There is a separate issue between some of the parties as to whether there is a need for an urgent hearing on the question of the Fourth Defendant's costs prior to that."

(8) The Plaintiff's written submissions dated 6 December 2024 and accompanying 141 pages of additional material;

(9) The First Defendant's written submissions dated 6 December 2024;

(10) The Third Defendant's written submissions dated 6 December 2024;

(11) The Fourth Defendant's written submissions dated 6 December 2024 and accompanying 2129 pages of additional material.

The position of the parties

12. The issue before the court for determination is the paragraph 3 relief, namely the timing of service of the evidence of the Defendants.

The position of the Plaintiff

13. The Plaintiff is willing to give the Fourth Defendant until 3 January 2025 to serve his evidence with the evidence from the Trustees being served on 31 January 2025 and that would enable all parties to have their evidence before the court for the directions hearing on 10 February 2025.

14. The Plaintiff invites the court:

(1) to direct the Fourth Defendant's evidence to be served by 3 January 2025 and the trustees by 31 January 2025;

(2) to extend the time for Plaintiff's reply evidence "accordingly" and

(3) to adjourn the balance of the Fourth Defendant's Summons to that hearing.

15. The Plaintiff opposes the Fourth Defendant's application for permission to postpone the date his evidence is due until after the substantive directions hearing for the following reasons:

(1) the Fourth Defendant has already compiled substantive factual evidence and it is already before the court. He also claimed to have more such evidence ready to share as long ago as 21 May 2024;

(2) the Fourth Defendant's position that he should not be required to produce his evidence before disclosure has taken place is flawed. It is contrary to the procedure set out in Order 28 of the Grand Court Rules and he has identified no special circumstances that take this case outside the usual procedural regime. There has been no direction for disclosure and no further disclosure is required. Without seeing what the parties' factual evidence is, the court's ability to determine what further directions are required, including what if any order for disclosure is needed, would be seriously impaired. The appropriate exercise of the court's case management powers can only be improved by seeing all sides' positions clearly laid out in affidavit form in the usual way. Even if (contrary to the Plaintiff's position) further substantive disclosure was ordered, there would be no difficulty or material expense in permitting a short further round of evidence limited to commenting on that. It is common ground that if any further expert evidence is ordered, it will come after affidavit evidence, so it has no bearing on whether the Fourth Defendant should provide his evidence now. The Fourth Defendant is seeking to obtain an unjustifiable litigation advantage by securing an extension of time for responding to the Plaintiff's evidence unnecessarily delaying progress of this case.

The position of the First Defendant

16. The First Defendant is neutral in respect of the paragraph 3 relief.

17. Upon determination of the paragraph 3 relief the First Defendant asks the court to direct that time for service of the First and Third Defendant's evidence be extended to such date as is 28 days after the date the Fourth and Fifth Defendants are directed to serve evidence.

The position of the Third Defendant

18. The Third Defendant neither consents to nor opposes the paragraph 3 relief.

The position of the Fourth Defendant

19. The Fourth Defendant says that the trustees wish to serve their evidence 14 days after that of the beneficiaries and the Fourth Defendant adds that the parties have agreed to this variation. I am not sure that is a correct description of the latest position. The Fourth Defendant says that the remaining question for the court is whether:

    (1) as proposed by the Fourth Defendant the time for serving the Defendants' evidence is suspended until directions are given, including whether disclosure is appropriate or

    (2) the Defendants should serve their evidence in advance of the directions hearing (the Fourth Defendant and Fifth Defendants until 3 January 2025 and the trustees' evidence 14 days thereafter).

20. The Fourth Defendant says there are four reasons why his option is the only sensible one in the circumstances:

    (1) There is no prejudice to the Plaintiff if the Defendants' evidence is suspended until the directions hearing. In fact there is considerable benefit to all parties in having the clarity of directions before further evidence is served. There is significant prejudice to the Fourth Defendant in filing his evidence by 3 January 2025 as his evidence will be broad and detailed and it is unrealistic to expect significant work to be done before a deadline of 3 January 2025 which includes the Christmas period;

(2) It is not clear what the issues are and the Plaintiff's position on the issues has been inconsistent. Unless and until a list of issues is settled upon the Fourth Defendant cannot know what issues his evidence will need to address;

(3) It is premature for the Defendants to file affidavit evidence before the court has determined whether discovery and expert evidence are appropriate. Preparing evidence before disclosure, if ordered, would increase the cost overall. The Defendants' evidence should follow discovery rather than the parties producing multiple affidavits before and after discovery; and

(4) The Fourth Defendant does not have the personal resources to assist the court without his costs being funded out of the trusts and this is highly relevant to the Fourth Defendant's ability to prepare responsive evidence. There should be an urgent hearing to determine the costs point.

21. The Fourth Defendant says that the timing of the Defendants' affidavit evidence should be dealt with at the directions hearing as that is the more logical and just approach.

Determination

22. I have to say that I have found the Fourth Defendant's submissions on the paragraph 3 relief issue unpersuasive. His attempts to delay the provision of his evidence until after the directions hearing were unattractive. I deal with his four stated reasons, as follows.

23. Firstly, the Fourth Defendant complains about prejudice. In my judgment there would be prejudice to the Plaintiff if the provision of the Defendants' evidence is suspended until after the directions hearing. The Plaintiff needs to be aware of the Defendants' evidence prior to the directions hearing. Furthermore, the court would also benefit from consideration of such evidence prior to the directions hearing. I am not persuaded that there is any significant prejudice to the Fourth Defendant in granting him an extension beyond 20 December 2024 to serve his evidence in January 2025 prior to the directions hearing in February 2025.

24. Secondly, the Fourth Defendant complains about lack of clarity in respect of the issues. The Fourth Defendant can consider the issues as raised in the originating summons dated 27 September 2024

and the Plaintiff's evidence and respond accordingly. The issues raised should come as no surprise to him.

25. Thirdly, the Fourth Defendant complains that it would be premature to serve the Defendants' evidence at this stage. It is not premature for the Defendants to file affidavit evidence before the court has determined whether any further discovery and further expert evidence are necessary. Moreover it is yet to be determined whether there should be further discovery and further expert evidence ordered. The position for the filing of evidence is set out in Order 28 of the Grand Court Rules and there is no good reason to delay the service of the Fourth Defendant's evidence until after the directions hearing. If there needs to be further limited factual evidence served by the parties after the directions hearing then so be it.

26. Fourthly, the Fourth Defendant complains about lack of personal resources. Taking into account the evidence presently before the court, and although I appreciate that wealth is relative, I find the Fourth Defendant's plea of poverty to ring a little hollow. Moreover, I am not presently persuaded that it would be in accordance with the overriding objective to in effect hive off the issue of whether the costs of the parties should be met out of the trust assets to an urgent hearing prior to the directions hearing in early February 2025. The Fourth Defendant's apparent concern over costs does not persuade me that the service of his evidence should wait until after the directions hearing when the costs issue will be determined.

27. The order I make therefore is that the Fourth, Fifth and Sixth Defendants' evidence is to be served by 3pm 10 January 2025. I think the suggested extension from 20 December 2024 to 3 January 2025 is too close to the New Year period. The First and Third Defendants are to serve their evidence by 3pm on 31 January 2025. That gives them a little less time than the 28 days they are requesting, but it should be sufficient time for them.

28. At paragraph 18 (ii) of the Plaintiff's skeleton argument the Plaintiff rather vaguely invites the court "to extend time for P's reply evidence accordingly". Unhelpfully no time scale is indicated. I am conscious that in early February the parties and their attorneys will be heavily engaged in preparation for the directions hearing so maybe a period of 21 days would be appropriate for the Plaintiff's reply evidence (rather than the 14 days provided for in Order 28 rule 1A(5) of the Grand Court Rules).

29. I should also add that I am not presently persuaded that I should dispense with the usual requirement that the attorneys (whether generally admitted or benefiting from limited admission) who will be responsible for the oral advocacy attend court in person and not remotely by way of videolink. Their personal attendance should be of great assistance to the court and I am grateful to them for making themselves available accordingly.

30. The Plaintiff's Summons and the remainder of the Fourth Defendant's Summons shall be heard at 10am on 10 February 2025 (with a maximum of 2 days allocated). I hope with sensible cooperation between the parties and counsel that the full 2 days will not be required.

31. Before 11am on Thursday 12 December 2024 the attorneys should email my PA with a draft order, agreed as to form and content, reflecting the determinations in this judgment for my approval.

Additional comments

32. At the risk of being perceived as delivering another judicial rant I feel compelled to add the following comments.

Undesirable "litigation by email"

33. I wish to take this opportunity to reiterate to parties and their attorneys that they must desist from attempting to "litigate by email". This point has been covered in numerous previous judgments and should not come as a surprise to parties and their attorneys. I set out below a few of the most frequently cited examples. It is unfortunate that it is necessary to reiterate these important messages but some attorneys appear to be ignoring them and such imperils the fair and efficient administration of justice in this jurisdiction.

34. Over four years ago, Parker J at paragraph 8 of his judgment in *Global-IP Cayman* (FSD unreported judgment 21 July 2020) stated:

> "… There has also been a lot of correspondence between the parties involving the court, or at least copied to the court both before and after the hearing. I would remind the attorneys to all parties that this is not appropriate. The court does not sit as a running arbiter between parties preparing for hearings, or indeed after hearings have been concluded. I would

> remind the attorneys to also follow the principles behind the Overriding Objective to conduct litigation efficiently and economically and on a reasonable basis. At times in this litigation this has manifestly not been evident."

35. In my judgment in *Arnage Holdings Limited v Walkers* (FSD unreported judgment 25 January 2022) at paragraph 2 I referred to:

> "… the importance of strict compliance with court orders, the overriding duty of attorneys to the court and the importance of the overriding objective" and highlighted "the undesirability of parties attempting to litigate matters informally via emails with the court …"

36. At paragraph 21 I stated:

> "The court has been bombarded with various email communications from the attorneys acting for the parties, some necessary but some quite unnecessary and inappropriate."

37. At paragraph 45 I referred to the "unhelpful barrage of emails received by the court" and added:

> "The parties and their attorneys should not attempt to litigate matters informally by emails to the court. The function of the court is to decide issues properly placed before it having considered the relevant law, evidence and arguments."

38. I made reference to the need for the court to be provided with proper applications, evidence and skeleton arguments.

39. At paragraph 48 I stated that if parties and attorneys continued to "email the court inappropriately they should not be surprised if judicial criticism, adverse/wasted costs orders and other sanctions follow."

40. At paragraph 50 I stated:

> "I deprecate the seemingly increasing tendency of attorneys to attempt to litigate through emails to the court. Such inappropriate practice must stop …"

41. I also added:

> "53. Moreover I wish to emphasise that the court should not normally be bothered or burdened with voluminous inter-partes correspondence leading to nowhere (see Grand Court Practice Direction No 2 of 2014). Concise position statements will normally suffice. The task of a busy court is to focus on formal pleadings and applications, relevant and focused evidence properly presented (see Williams J in *F v M*; unreported Grand Court judgment 20 August 2021), the law, relevant written and oral submissions and come to judicial determinations of the relevant issues. This core judicial task will rarely be assisted by way of sight of voluminous inter-partes correspondence. Valuable and scarce court time should not be wasted on having to plough through voluminous inter-partes communications much of which, as it frequently transpires, is unhelpful in determining the legal issues in the case. To dump into the lap of the court voluminous inter-partes correspondence is a lazy and inefficient way of bringing matters to the attention of the court. Furthermore, dealing with such correspondence frequently and unnecessarily takes up the valuable and limited time of court administration whose primary task is to assist and support the judiciary. Members of court administration should be left to focus on their core duties including processing documents properly filed, listing hearings for determination by members of the judiciary and ensuring that court judgments and orders are duly issued. They should not have to spend their time acting as a mailbox for inappropriate emails from attorneys.
>
> 54. Whilst on the subject of communications with the court administration I have also detected, albeit in rare cases and not in this one, a tendency of some attorneys when emailing court administration not to copy in all other parties. Except in genuine ex parte/without notice or public interest immunity matters and perhaps some other entirely exceptional cases, when parties seek to communicate with court administration they should copy in all other parties. Lord Hoffmann in *Dr Anneliese Diedrichs-Shurland v Talanga-Stiftung* [2006] UKPC 58 at paragraph 32 described letter communications by one party to the court with no copy to the other parties as "grossly improper." See also my judgments in *R v Parton* 2009 MLR 370 and *Lime Petroleum plc (in liquidation)* 2017 MLR 89."

42. On the point raised at paragraph 54 of *Arnage* see also paragraph 8 of Floyd LJ's judgment in *Zuma's Choice Pet Products Limited v Azumi Limited* [2017] EWCA Civ 2133 which reinforces the point at English appellate level.

43. Williams J at paragraph 36 of his judgment in the Family Division child case of *JW v SC* (unreported judgment 9 August 2024) once again reminded parties and attorneys of the "inappropriateness of copying the Court into inter partes correspondence" and the "inappropriateness of trying to litigate a matter by emails to the Court with an expectation that the Judge will case manage or resolve issues by email" and helpfully shared an email sent to the attorneys in which it was stated:

> "This approach by Counsel inappropriately occupies a great deal of judicial time and must stop. It would not happen or be acceptable in any other jurisdiction."

44. These important points appear to have been ignored by some attorneys. If parties and their attorneys continue to ignore such clear and repeated judicial warnings to take on board these important points then in addition to adverse costs orders the court may be forced to have to resort to its contempt jurisdiction.

45. Some mornings (these days with increasing frequency) my PA comes to work to be greeted by over 40 emails in her inbox received overnight. Some of those emails are in response to chasers to comply with court orders and directions. We should not have to be chasing in respect of compliance with court orders and directions. Some of those emails are not copied by the sender to all parties. Some of those emails are brought to my attention. Some of the emails sent by the attorneys to my PA are necessary and appropriate. Some are not. This constant barrage of emails must stop.

46. Having set out again those important messages for the benefit of all parties and attorneys appearing in proceedings before the Grand Court I now return to the case presently before the court. I have been concerned on a number of occasions by the tendency of some of the parties in this case to attempt to "litigate by email", not always copied in to all other parties, and to burden court administration with inappropriate communications.

47. I take just a couple of examples:

(1) Appleby by 3 page letter dated 11 September 2024 sent via email at 11:25am and addressed to "Grand Court – Financial Services Division Judicial Department" (copied to Bedell Cristin, Collas Crill, Ogier, Mourant Ozannes and Baker & McKenzie) referred to "a handful of comments" they wished to draw to the court's attention. The Appleby letter attached 7 pages of correspondence from Farrer & Co to Macfarlanes. The covering email requested that the correspondence be presented to "his Honorable Justice Doyle for his review". My PA, at my direction, responded on 11 September 2024 at 11:55am:

> "Justice Doyle has no intention of reviewing the correspondence. If you have any applications to make you should do so in proper format. You should know from his comments in previous judgments that Justice Doyle regards "litigation by email or letter" as inappropriate.";

(2) Appleby by email dated 25 November 2024 6:43pm to my PA (and not copied to the attorneys acting for the other parties) indicated that they were "corresponding with all parties involved in the above matter seeking to finalise a timetable" and enquiring as to whether I had availability in the weeks commencing 10 February, 17 February or 24-25 February 2025 for a directions hearing with a time estimate of one to two days. My PA responded on 27 November 2024 with a request that the email be copied to all relevant parties if it had not already been so copied (as that was not clear from the face of the email) and directing Appleby to forward her response also. My PA asked for a copy of the summons which Appleby wished to have listed and ended her email with the words: "We await joint non-availability and time estimate from all relevant parties before 3pm on 4 December 2024." Appleby by email dated 28 November 2024 apologised for their failure to copy in the attorneys acting for the other parties, adding "we do not need to trouble the court further." If a party has an appropriate communication to send to the court it should ensure that all other parties are copied into that communication. To do otherwise is quite wrong. When I deliver my advocacy lectures to students at the Truman Bodden Law School I stress this point. I should not have to reiterate this point to qualified attorneys. Parties should not seek to obtain an underhand advantage by communicating with the court and not copying in all other relevant parties;

(3) A two page email from Ogier dated 2 December 2024 raising various plainly contentious issues. I was also concerned to see in that email a suggestion in effect that if the matter could not be determined before 20 December 2024 and being mindful that "the court's availability over festive period is limited" the "matter might need to be allocated to a separate judge in the event Justice Doyle does not have availability." Any reassignments are for the Chief Justice and it is the Grand Court that decides hearing dates, not the parties; and

(4) By email dated 3 December 2024 9:22am my PA made it crystal clear to the parties that if all parties were available and agreed to the paragraph 3 relief being determined at short notice I could fit in a short hearing on that issue at 2.30pm on Monday 9 December 2024 or alternatively I could consider that issue on the papers on 9 December 2024. Despite the crystal clear clarity on this issue in my PA's communication, Ogier by a 2 page email dated 3 December 2024 3:57pm sought "the court's clarification" in effect as to whether it was only the paragraph 3 relief that would be considered by the court on 9 December 2024. Ogier referred to the costs issue relief being claimed and again sought to plead their client's poverty and argue in favour of attendance by videolink of the attorneys undertaking the oral advocacy at the proposed "2 day substantive directions hearing". Bedell Cristin responded at 6:03pm properly stating that they were "mindful of Justice Doyle's repeated reminders that parties must not litigate matters informally via emails to the court" and adding that their client "does not intend to ask the court to sit as a running arbiter."

48. Having made these points and supported them with a couple of unfortunate examples, I trust that the attorneys will refrain from inappropriate email communications to the court in this case in the future and if an email communication is appropriate that it is copied to all relevant parties.

49. I can only hope that leading counsel did not approve the past inappropriate communications with the court and that in the future the attorneys will exercise more discipline and caution in what communications they place before the court and how they do that, if absolutely necessary. I appreciate that the local attorneys may be under great pressure from their instructing London solicitors but the attorneys (whether generally admitted or benefitting from limited admission) are officers of this court and owe their overriding duty to this court and not to their clients or English solicitors. When the stakes are high in big money cases lawyers must be especially careful to comply with their duties to the court or their professional reputations and the reputations of the

firms and chambers they work with can be seriously damaged. Some lawyers will no doubt have their billing targets but unnecessary correspondence should not be generated and valuable scarce judicial time should not be wasted.

Non-availability issues

50. In an email dated 19 November 2024 3:31pm Ogier gave "apologies for troubling the court" and indicated that they were still taking instructions on "our dates to avoid". Finally, on 5 December 2024 at 1:16pm Ogier in effect indicated availability for 10 and 11 February 2025. I note with concern the delay in the Fourth Defendant filing non-availability details of counsel. I do not know what the Fourth Defendant intended to achieve by not promptly providing non-availability. I note, and invite the parties and their attorneys to note, paragraph B4.3 on page 40 of the Financial Services Division Guide which provides as follows:

> "The overriding objective places considerable emphasis on the need for the Court to ensure, inter alia, that a cause or matter proceeds and is determined on its merits in the most expeditious way, that it is not delayed and that a trial proceeds quickly and efficiently. The parties' legal representatives are expected to co-operate with each other and with the Court in achieving these objectives. The FSD will give these obligations particular regard in giving directions concerning timetables and setting hearing and trial dates. It will not allow hearing or trial dates to be unduly delayed, for example merely to suit the availability of individual overseas lawyers. It is ultimately for the Court to set a hearing or trial date having regard to all the circumstances and the requirements of the overriding objective."

51. When required to provide their non-availability the attorneys in this case simply and belatedly provided just 2 available days in February 2025. On this occasion I can and will accommodate the convenience of leading counsel but that may not always be possible in the future.

The need for more positive and constructive cooperation between the parties and their attorneys

52. I also wish to stress the need for more positive and constructive cooperation between the parties and their attorneys in this case.

53. I remind the parties that they are obliged to help the court to further the overriding objective to deal with the matter in a just, expeditious and economical way. Moreover, attorneys, as officers of the court, have an overriding duty to ensure in the public interest that the proper and efficient administration of justice is served. There should be proper and constructive co-operation between the experienced attorneys acting for the parties in this case. Any further attempts at "litigation by email" should cease.

54. The issue of capacity raised in these proceedings should, with sensible co-operation amongst the parties and experienced attorneys, be a relatively straightforward issue to determine within a reasonable time and the parties (especially the Plaintiff and the Fourth Defendant) should focus on assisting the court in that respect.

55. Furthermore, with sensible discussions between leading counsel I would hope that a number of the issues on the agenda for the directions hearing in February 2025 can be agreed or at least the areas of dispute significantly narrowed. I can perhaps understand how the costs out of the trust assets issue might be contentious but a lot of the other issues should be capable of sensible resolution.

56. It would be useful prior to the directions hearing and indeed prior to the exchange of skeleton arguments if leading counsel could agree a case summary and clearly specify the unresolved issues that remain in dispute for determination at the directions hearing. In that way the skeleton arguments can be more focused on the disputed issues that remain for determination at the directions hearing and the court will be duly assisted and some scarce judicial time saved.

57. I am grateful to counsel for their continuing assistance.

THE HONOURABLE JUSTICE DAVID DOYLE
JUDGE OF THE GRAND COURT