IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 205 OF 2017 (NSJ)

IN THE MATTER OF THE ESTATE OF ISRAEL IGO PERRY DECEASED

BETWEEN:

(1) LEA LILLY PERRY
(2) TAMAR PERRY

Plaintiffs/Counterclaim Defendants

AND

(1) LOPAG TRUST REG.
(2) PRIVATE EQUITY SERVICES (CURACAO) N.V.
(3) FIDUCIANA VERWALTUNGSANSTALT
(4) GAL GREENSPOON
(5) YAEL PERRY
(6) DAN GREENSPOON
(7) RON GREENSPOON
8) MIA GREENSPOON
(9) ADMINTRUST VERWALTUNGSANSTALT

Defendants/Counterclaim Plaintiffs (First and Ninth Defendants)

AND

(1) ANDREW CHILDE
(2) CHRISTOPHER ROWLAND

Third Parties

CONSEQUENTIALS HEARING – JUDGMENT

Introduction

1. I refer to the consequentials hearing on 1-2 June 2023. I indicated at the conclusion of the hearing that, in view of the nature and urgency of the matters raised, I would as soon as possible provide the parties with a note of the decisions I had reached on each of the applications considered at the hearing. This I now do, with brief reasons for my conclusions. If the parties wish me to do so, I shall prepare and distribute in due course a judgment setting out my reasons in greater detail.

2. I deal below with the applications and issues for decision following the order in which they appear in the Trustees' draft order (the ***Draft Order***).

Declarations

3. The declaration in [1] of the Draft Order shall be made with 15 October 2013 being substituted for May 2013 (as was agreed by all parties).

4. [2] of the Draft Order is deleted and no order requiring the amendment of the register shall be made.

The Injunction

5. The Injunction shall be discharged with effect from the date of the order to be made to give effect to this judgment, but the discharge shall not affect and shall be without prejudice to any prior breach of the Injunction and any party's or any person's liability (or exposure to sanction) flowing or resulting from any such breach.

6. I do not consider that it is appropriate for the Injunction to remain in force in relation to the relevant assets of the Ypresto Trust. As I understood her case, the Fifth Defendant (***D5***) sought an order that the Injunction continue in force in relation to the assets of the Ypresto Trust which are subject to it until the Court has delivered its judgment on D5's Amended Notice of Motion (***ANOM***). The purpose of such an order would be to prevent the Trustees from dealing with (and in particular making payments to the Funder under the LFA out of) those assets before the

Court's decision on the ANOM was made and announced and to allow D5, in the event that the Court determines that the Trustees have acted in breach of the Injunction, immediately to apply to the Liechtenstein court for a further injunction against the Trustees to prohibit such dealings (and payments). In my view, however, it would not be appropriate to continue an injunction granted on the application of the Plaintiffs and on the basis of their cross-undertaking in damages (and other undertakings) in circumstances where the Plaintiffs are no longer entitled to injunctive relief (having had their claims finally dismissed) and where they seek to have that injunction discharged and are not prepared to extend their cross-undertaking in damages so as to cover any additional loss flowing from its continuation with respect to the Ypresto Trust assets. I anticipate being able to deliver my judgment on the ANOM next week (I have had and have hearings on other matters this week) and D5 will need to consider whether she is able to obtain any relief from the Liechtenstein Court in the meantime based on ANOM and the relief orders that she has sought and may be granted. I accept the Trustees' submission that it would not be appropriate for this Court to give them directions, as trustees of the Ypresto Trust, as to how they should deal with the assets of that trust after the discharge of the Injunction.

The Plaintiffs' undertakings

7. The Plaintiffs' Undertakings and Further Undertakings (as defined in the Draft Order), as properly interpreted, continue in effect until the Plaintiffs' liability under and arising out of their cross-undertaking in damages (given in relation to and as a condition of the grant and continuation of the Injunction) is determined and discharged.

8. The Plaintiffs' Undertakings and Further Undertakings were given as a condition for the grant and continuation of the Injunction (as explained in my judgment dated 1 December 2020). Their purpose was to ensure that the assets of the BH06 group which were extracted as a result of the Solid Dilution were preserved *in situ* until the Trustees' rights to the BH06 share had been established. They were also issued to protect the Trustees in connection with the consequences of the granting of the Injunction and to ensure that those assets remained undiminished until those consequences and any losses suffered by the Trustees flowing from the grant of the Injunction were determined.

9. The references to the Undertakings, with the exception of the undertaking in [3.3], in the order dated 10 April 2018, did not set out a date on which the Undertakings were to terminate. The

Undertaking in [3.3], which contained the important undertaking that the Plaintiffs would exercise all of their rights and powers (held directly or indirectly) to ensure that no distributions were made from Solid or SFPF and that no further payments were made out of the assets and funds of Solid and SFPF, was expressed to continue until "*the conclusion of these proceedings or further order of the Court*." The Undertakings as given and executed by the Plaintiffs in April 2018 similarly did not, save for the Undertaking in the form set out in [3.3] of the order, deal with their duration and contained no termination date. The order dated 10 April 2018 did (in [36]) deal with its duration and stipulated that the order would remain in force until "*the conclusion of the trial of the Plaintiffs' claim or it [was] varied or discharged by further Order of the Court*." The order dated 15 January 2021 did continue the Injunction (subject to the Plaintiffs providing and complying with the Further Undertakings) - and the appointment of the Joint Receivers - "*until further order of the Court*" (pending the outcome of the Plaintiffs' appeal to the Court of Appeal and any appeal to the Judicial Committee of the Privy Council). That order also stated that the "*Undertakings shall remain in force*" and that the Plaintiffs must provide the Further Undertakings, which contained an amendment and some additions to the Undertakings, without dealing further with the duration of the Further Undertakings. The Plaintiffs did execute the Further Undertakings on 8 February 2021. [3.3] of the Undertakings became [3] of the Further Undertakings. In my view, the Further Undertakings are to be construed as continuing in force until the Court orders that they be terminated. [3] of the Further Undertakings made explicit what I consider to have been implicit in the other Further Undertakings namely that it and they were understood as continuing until the proceedings before the Court had been determined and that includes the determination of any claim under the Plaintiffs' cross-undertaking in damages. Of course, it will be open to the Plaintiffs to apply, on notice to the Trustees and D5, for a variation or early termination of the Further Undertakings if they wish to deal with and withdraw (as they appear to do) funds from Solid and/or SFPF upon giving details of and adducing evidence as to how the funds will be disbursed and held pending the determination of their liability under the cross-undertaking and showing how the position of the Trustees will be adequately protected.

The Receivers

10. While the Receivers were not originally appointed for the purpose of fortifying and enforcing the Injunction, they were appointed (with the consent of all parties) as part of the regime (which included the Injunction) designed to hold the ring for the protection of the Plaintiffs and the Trustees. Furthermore, the role they were subsequently given in relation to the Pictet accounts

was to fortify and ensure compliance with the Undertakings and Further Undertakings. Since I have held that the Further Undertakings (as properly interpreted) continue in force until a further order of the Court stipulates that they are terminated (and that such an order should not be made until after the Plaintiffs' liability under their cross-undertaking in damages has been determined), the Receivers should remain in office in order to retain their rights in relation to the Pictet accounts (and the funds credited thereto) for the purpose of ensuring that those funds are not dealt with in breach of the Further Undertakings. The Receivers shall be entitled to be paid remuneration and to be reimbursed for their costs and expenses incurred in preserving or exercising such rights and may apply for directions from the Court or for other orders in relation to their continuing role when and as they see fit. Once again, it will be open to the Plaintiffs to apply for a variation of the Receivers' rights to allow for the withdrawal of funds if and to the extent that the Court permits such withdrawals pursuant to an application by the Plaintiffs of the type I have referred to in [9] above.

11. The Receivers' appointment over and in respect of the BH06 share shall terminate on the date of the order to be made to give effect to this judgment provided that (a) the Receivers shall retain a lien and charge over the BH06 share to secure the sums owed to them in respect of their remunerations, costs and expenses (including their remunerations, costs and expenses incurred in relation to their rights in respect of the Pictet accounts) incurred both before and after the date of such order and (b) the approval of the Court for such remunerations, costs and expenses shall continue to be required and the Receivers shall be permitted to apply to the Court for such approval on notice to the Plaintiffs, the Trustees, D5 and BH06.

The Trustees' counterclaim

12. The counterclaim shall be dismissed with no order as to costs.

13. The Trustees have applied for the dismissal of their counterclaim with no order as to costs. This is their primary case. However, they indicated during argument at the hearing that their secondary case is that if it is necessary or helpful to them for the purpose of obtaining the other relief they seek, in particular the continuation of the Further Undertakings and the appointment of the Receivers in relation to the Pictet accounts, they will withdraw their application for an order dismissing the counterclaim and instead seek an order that the counterclaim continue but is stayed pending the final determination of the Trustees' cross-undertaking claim.

14. I noted during the hearing that the subject matter and nature of the counterclaim were discussed at some length in my judgment dated 28 November 2018 (the ***November Judgment***). I noted that at [120[4)] of the amended counterclaim the Trustees plead that they "*claim recovery of their independent losses*" as well as "*recovery of the losses incurred by BGNIC via a derivative action*" in relation to the unlawful means conspiracy which they allege (see also [105]-[106] of the amended counterclaim). I also referred to [54]-58] of the November Judgment, in particular [57] where I said and held that "*The [Trustees] have pleaded claims based on an independent cause of action in tort and seek the recovery of their own losses flowing therefrom*."

15. I have already held that the Further Undertakings and the Receivers' appointment over and in respect of the Pictet accounts continue pending the final determination of the Trustees' claim under the cross-undertaking. It therefore appears as though the Trustees have no need to and would not wish to rely on their secondary case. They appear to be keen to have the counterclaim dismissed. In any event, in my view, even if the counterclaim was not dismissed and was continued that of itself would not justify the continuation of the Further Undertakings and the appointment of the Receivers. The Further Undertakings and the Receivers' rights in relation to the Pictet accounts were given, as I have explained, in connection with the grant and continuation of the Injunction (and for the protection of the Trustees against the consequences of the Injunction including the losses covered by the Plaintiffs' cross-undertaking in damages) but not in connection with the Trustees' counterclaim. The Trustees have not argued or asserted that they were. Of course, if the Trustees were to maintain and continue the counterclaim it would provide a basis for applications by the Trustees for further relief, for example a freezing injunction to preserve and protect the Trustees' ability to enforce a judgment obtained in respect of the counterclaim (and even arguably for the appointment of receivers by way of further relief ancillary to any such freezing order). It is however clearly a matter for the Trustees and not this Court to decide what approach they wish to take in relation to the counterclaim and to make such applications as they consider appropriate.

The Parker Proceedings

16. The stay of the Parker Proceedings shall be lifted so that the parties to those proceedings may apply to Justice Parker for the listing of a case management conference.

Inquiry into damages on the Cross-Undertakings (the Cross-Undertaking Claim)

17. There shall be an inquiry pursuant to the Cross Undertakings (as defined in the Draft Order) into the damages suffered by the Trustees, D5, BH06 and any third parties as a result of the Injunction. The Plaintiffs accepted that the Trustees had a good arguable case that they had suffered some loss and did not argue that there were any grounds for not enforcing the Cross-Undertaking.

18. The directions set out in [12] and [13] of the Draft Order are approved. These directions require the filing and service of pleadings. The Trustees (and any other party claiming damages under the Cross-Undertaking) are required to file and serve Points of Claim and a Schedule of Loss and the Plaintiffs, in reply, are required to file a Defence to all Points of Claim and a response to the (each) Schedule of Loss.

19. There is a dispute as to the scope of the parties' (in particular the Trustees') discovery obligation and whether the inquiry should be subject to the standard discovery rules in GCR O.24. The Trustees proposed an order that they (and any other party claiming damages under the Cross-Undertaking) be required to file and serve all documents and the factual evidence on which they rely in support of its claim for damages and that the Plaintiffs (and each of them) be required to file any factual evidence and documents on which they (or she) wish to rely. The Plaintiffs submit that discovery on this basis would be wholly inadequate and that each party should be required to give discovery on the basis of and in accordance with GCR O.24, which the order should stipulate is to apply. The Plaintiffs argue that the Trustees' claim on the Cross-Undertaking is in effect a claim under a contract and that the usual discovery rules that would apply to such a claim should apply to the inquiry.

20. The parties did not refer me to any authority regarding the proper order as to discovery to be made on an inquiry as to loss under a cross-undertaking in damages (a number of the standard authorities were included in the authorities bundles but not addressed in written or oral submissions) or provide any examples of orders made in other cases. It is clear that the inquiry on the Cross-Undertakings is to be conducted according to the principles applicable to contractual damages and therefore, as a matter of principle, at least the starting point ought to be that the

normal unqualified rules as to discovery under GCR O.24 should apply. Having said that, I am aware that there is some authority to the effect that at least in some types of case the Court should seek to ensure that there is a degree of symmetry between the process by which the party obtains interlocutory relief (the injunction) and that by which he compensates the subject of the injunction for having obtained it, which suggests that some limits on the scope of discovery may be justified (see the judgment of Norris J in *Les Laboratoires Servier v Apotex* [2008] EWHC 2347 at [9]).

21. It seems to me that the best approach in this case is to defer a decision as to the scope of discovery until after the pleadings have been filed and served at which point the Court will have a clearer picture of the issues in dispute and can review the appropriate orders to be made for discovery in light of the pleadings and further submissions by the parties. I shall therefore direct that the directions hearing, that the Draft Order stated would be listed after the filing of evidence, be listed after the pleadings have closed (the indicative date to be included in the order will need to be amended and not be January 2023!).

Freezing injunctions

22. The Trustees' applications for worldwide freezing injunctions against the First Plaintiff and the Second Plaintiff are granted. I am satisfied that the Trustees have made out their case for the granting of freezing orders and that in all the circumstances I should grant freezing orders on suitable terms.

23. I am satisfied that the Trustees have shown (indeed as I have already explained it is not contested that the Trustees have) a good arguable case that they have suffered loss and are entitled to material compensation under the Cross-Undertaking. I am also satisfied that the evidence demonstrates that that there are grounds for believing that both the First Plaintiff and the Second Plaintiff have assets (including rights of value) which will be caught by and subject to the freezing orders (and that they do not have any or sufficient assets in the jurisdiction). I am also satisfied that the evidence shows that there is a real risk that a future judgment on the Cross-Undertaking will not be met because of a risk of an unjustified dissipation of assets by the Plaintiffs. In all the circumstances, I have concluded that it would be just and convenient to grant the freezing orders.

24. As regards the evidence of a real risk that a future judgment on the Cross-Undertaking will not be met because of a risk of an unjustified dissipation of assets by the Plaintiffs, it seems to me that the Plaintiffs' conduct in connection with the settlement agreement dated 21 February 2023 (the ***Settlement Agreement***) and the related application dated 24 March 2023 (the ***Application***) by Solid to the Commercial Division of the Joint Court of Justice of Aruba, Curacao and Saint Maarten (the ***Curacao Court***) for a variation of the injunctive relief granted by the Curacao Court, in combination with their conduct in relation to the Solid Dilution itself and their failure to comply with costs orders made by the Court of Appeal, demonstrates that the Plaintiffs intend to act (and have acted) so as to defeat the effectiveness of orders made by this Court. Their action has been designed (as they admit) to prevent the Trustees (as trustees of the Lake Cauma Trust) from accessing and realising the full value of the BH06 share and to undermine the rights which this Court's judgment in these proceedings has determined that they have. The Plaintiffs seek, in their continuing war with the Trustees, to divert assets so as to circumvent the outcome of these proceedings and to prevent the Trustees from vindicating the rights which the judgment of this Court has declared them to have. The Plaintiffs' conduct and declared intentions indicate a willingness to take action to undermine the effectiveness of judgments of this Court and there is every reason to believe that there is a real risk that they will seek to do so in relation to any judgment in the Trustees' favour on the Cross-Undertaking. As the Application makes clear (at [38]), the Plaintiffs (and it seems to me that the Application can properly be taken to represent and state the position of the Plaintiffs albeit that it was filed by Solid) intend to "*thwart the Trustees' malevolent scheme [involving the exercise of the rights over the BH06 share which this Court has held they have] [by procuring] a payout directly to [themselves and other members of their family] and avoid the assets ever passing through BGNIC, BH06 and [the Trustees]*." It seems to me that the Trustees were right to say that this conduct shows that the Plaintiffs are doing and have made it clear that they will continue to do all they can to undermine and evade the effect and consequences of and to prevent the Trustees from vindicating and enforcing their rights under the judgment of this Court.

25. The Plaintiffs seek pursuant to the Settlement Agreement to obtain the funds held by SFPF (and Solid) and to prevent those funds reaching the Trustees.. It might be said that this conduct only involves the Plaintiffs receiving funds rather than seeking to put their assets out of reach so as to make themselves judgment proof or to prevent a judgment against them in respect of the Cross-Undertaking being enforceable. But it seems to me that such a conclusion cannot be reached. The Plaintiffs, in conducting what I have just described as a war with the Trustees, have behaved with

a view to preventing, and indicated an intention to act so as to prevent, the Trustees from enforcing their rights and so as to defeat their claims. There is clearly a real risk that they will act, even if they are able to swell their own assets by obtaining the funds held by SFPF (and Solid), so as to defeat or evade the enforcement or enforceability of such a judgment.

26. I appreciate that the Plaintiffs vociferously say that they have been and are justified in conducting this war and that the Trustees have acted in flagrant breach of duty, and that their plan to withdraw or procure the withdrawal of substantial funds from SFPF (and Solid) cannot be seen as unjustified (or improper) because it is subject to the approval of the Curacao Court (and the termination of the Receivers' powers with respect to the Pictet accounts). But these points do not address the issues and concerns that give rise to the need for the freezing injunctions. The Plaintiffs' complaints against the Trustees are primarily matters of Liechtenstein law for the Liechtenstein court, which has considered and is still considering applications and conducting proceedings concerning the Trustees' conduct. To date, the Plaintiffs have failed to obtain the orders and relief they seek from the Liechtenstein court. But, in any event, the Plaintiffs' challenge to the Trustees' conduct does not affect or vitiate the Trustees' right to enforce the judgments obtained to date in this Court (in proceedings commenced and vigorously prosecuted in this jurisdiction by the Plaintiffs) or a judgment given to enforce the Plaintiffs' obligations under their Cross-Undertaking. In addition, the issues before the Curacao Court are different from those which arise in these proceedings and on the Trustees' application for freezing injunctions. The Curacao Court is dealing with the proceedings commenced by BGNIC to set aside the Solid Dilution. As I understand it (details of the proceedings before the Curacao Court remain limited since only a limited number of documents have been adduced in evidence and no expert evidence of Curacao law has been filed to explain the relevant Curacao law and procedure) BGNIC has made a claim against Solid and challenges the action taken by Solid and its directors as a matter of Curacao law. The legitimacy and validity of the Solid Dilution and those actions are therefore properly for and are currently before the Curacao Court. The Curacao Court will consider whether BGNIC's claim is made out and whether the injunctive relief it has granted should be varied to permit Solid to give effect to the Settlement Agreement and make payments to the Plaintiffs (and other members of their family). Solid (and the Plaintiffs) rely on their allegations of misconduct by the Trustees in support of the Application. But the Trustees' application for freezing orders relate to the Plaintiffs' obligations to this Court under the Cross-Undertaking given by them as part of the proceedings in this jurisdiction which they commenced and

conducted and require this Court to consider the risk that the Plaintiffs will seek to ensure that a judgment against them in relation to the Cross-Undertaking will not be met.

27. The limit in each injunction shall be US$20m but each of the Plaintiffs shall have liberty to apply to reduce the limit to $20m in aggregate if they can show that they together have assets subject to the freezing injunctions in that amount. The Trustees have identified the maximum sum they claim by way of compensation under the Cross-Undertaking and the basis on which their claims are advanced. They have as yet not pleaded their claim or fully particularised their losses. But they have clearly identified the nature and quantum of their losses and the juridical basis for the claims (see Naeff 11 at [38] – 40]). The Trustees put their case on two alternative grounds. They put their case both on the basis of a claim for the loss of the opportunity to avoid the liabilities and expenses they have incurred and a claim for those liabilities and expenses. The former involves a claim for compensation (or damages) for loss of the opportunity to make applications to the Court for permission to use the assets of BH06 and its subsidiaries or simply to use those assets and thereby the loss of the opportunity to avoid the need to obtain expensive litigation funding. The latter involves a claim for the expenses and liabilities losses themselves. I have sought to assess what amount should at this stage reasonably be attributed to these claims for the purpose of the freezing injunction and have decided that US$20m is a proper sum. I do not consider that it would be appropriate initially to split and allocate that sum as between the First Plaintiff and the Second Plaintiff (so that the freezing injunction relating to the First Plaintiff would impose a limit of US$10m and that relating to the Second Plaintiff would impose a limit of US$10m) since this would be open to abuse. But it seems to me to be fair to give the Plaintiffs liberty to apply to amend and reduce their separate and independent limits of US$20m if they can show that they together have assets subject to the freezing injunctions which have a value of at least US$20m.

28. The Plaintiffs' rights in relation to Solid and SFPF and their respective assets and funds (the ***Solid Rights***) will be subject to the freezing injunctions (as they are the subject of the Undertakings and the Further Undertakings). The freezing injunctions will require them to exercise the Solid Rights in a manner that does not prevent the Solid Rights (or funds or assets derived from the Solid Rights) being available to the Plaintiffs to satisfy a judgment of this Court. At [4] of the draft freezing injunctions included in the Draft Order the Trustees propose that the freezing injunctions state that the "*prohibition*" applies to the funds in the Pictet accounts. I take to be a reference to the directions in the orders in [2] of the draft freezing injunction directing that the Plaintiffs may

not dispose of, deal with or diminish the value of their assets including, as stated at [3], assets which they have the power directly or indirectly to dispose of or deal with. The Plaintiffs object on the basis that it has not been shown, they submit, that these funds are the property of the Plaintiffs or that they have any interest in them or rights to deal with them. They say, I believe, that such an order would involve a freezing injunction being granted against Solid and SFPF, who are the account holders and as matters stand the owners of the funds in the Pictet accounts and that the Trustees have not made out a case for such an order on the basis of the *Chabra* jurisdiction. The issue was not argued at length at the hearing but it seems to me that at least at this stage the freezing injunctions should stipulate that for the purpose of the injunctions the funds in the Pictet accounts are to be treated as assets which the Plaintiffs have power directly or indirectly to dispose of or deal with. The Undertakings and the Further Undertakings were given on this assumption and basis and the Settlement Agreement and the Application strongly support the view that this is so (and that there is at least an arguable case that this is the position). However, I shall give the Plaintiffs liberty to apply if they wish to press and further (and fully) argue their case on this point.

29. The Plaintiffs argued that the legal advice referred to in Naeff 11 should be disclosed before the Court considered and made an order on the Trustees' application for freezing orders. I do not agree. It would be premature to require disclosure of that legal advice at this stage. It is clearly at least arguable that there has been no waiver. In any event, the Court does not need to see the legal advice in order to decide the Trustees' application. The legal advice is referred to in the context of the decision, and the reasonableness of the Trustees' decision, to enter into the LFA and is therefore likely to be relevant primarily to the issue of quantum for the purpose of the Cross-Undertaking Claim. The question of whether the Trustees have waived privilege can be considered in light of and after the filing and service by the Trustees of their Points of Claim and Schedule of Losses (and possibly after discovery).

30. In her written submissions D5 invited the Court to permit the Second Plaintiff to pay out of frozen assets D5's agreed costs payable pursuant to the order dated 15 January 2021. However, the application was not discussed at the hearing and I consider that it would be inappropriate to make such an order without hearing from D5 and giving the Trustees an opportunity to make submissions. I shall therefore give D5 (and the Second Plaintiff) liberty to apply to seek such a variation to the freezing orders.

31. The Plaintiffs also raised an issue, after the hearing, regarding the terms of the freezing orders. Paragraph 8(1) of the orders stipulates that they do "*not prohibit [each of] the [Plaintiffs] from spending US $5,000 per week towards her ordinary living expenses and also a reasonable sum on legal advice and representation. But before spending any money the First Plaintiff must tell the Trustees' attorneys where the money is to come from*." Walkers said that the Plaintiffs assumed that this provision did not require the Plaintiffs to inform the Trustees of the intended source of funds in advance of every item of expenditure and that it would be sufficient for them to identify the source(s) of funding for household and legal expenses at the outset with subsequent updates being given to the Trustees prior to any other source being utilised. In my view, the Plaintiffs and the Trustees should discuss the operation of this provision further and if after those discussions the
Plaintiffs consider that an amendment to the wording of the freezing orders is needed they may apply to the Court for an amendment.

Directions for the Contempt NOM

32. I am satisfied that this is a proper case for dispensing with personal service on D5. She has made her own application for the enforcement and for sanctions in respect of alleged breaches of the Injunction and actively participated in those proceedings and I cannot see that there is any interest which requires protection by ordering, or any need for, or prejudice to D5 by dispensing with, personal service on the facts of this case.

33. The procedural steps set out in [19] – [23] were not in dispute. There was some dispute regarding the date for the filing by D5 of her responsive evidence. She seeks further time and, as I understood it, says that she needs until the end of July. I consider that she should be given the further time she requires. While it will be important to progress the Contempt NOM promptly, there is no pressing urgency that requires the Court to override D5's request for further time. D5 submitted that the Court should direct that the hearings in the Contempt NOM should be heard remotely so as to save expense. I appreciate that the travel expenses of leading counsel are not insignificant and that it is desirable to reduce expense whenever that can properly be done. But as I have previously held, the seriousness and significance of hearings dealing with quasi-criminal contempt motions require in person hearings with the Court and counsel being robed. It seems to me that a departure from that approach could only be justified by exceptional circumstances. I do not consider that D5 has satisfied that requirement on this occasion.

The impact of the orders on the proceedings in Curacao

34. It is important to emphasise that the orders I am making operate *in personam* against the Plaintiffs and result from their submission to the jurisdiction of this Court, their request for relief from this Court, including their successful application for the grant of a proprietary injunction and their active prosecution of their claims in this Court. My orders are not intended to interfere with the proceedings being heard by and the decisions of the learned judge of the Curacao Court. This Court is very mindful of the principle of comity and the need not to interfere with proceedings being heard by another well respected court.

35. If there are concerns that the orders I have made may interfere with the proceedings before the Curacao Court then further applications to this Court may be needed. I would note that if and to the extent that the Curacao Court considers that it would be appropriate and helpful to engage in a suitable form of court-to-court communication to discuss case management or other issues arising out of the continuing proceedings in and orders made by both courts, and if the parties consent, this Court would be happy to do so.

Next steps

36. I shall invite the parties to amend the Draft Order to take account of the terms of this judgment and consequential matters and then to seek to agree an amended form of order for my approval. If the parties are unable to reach agreement, they should file the versions of the order they wish the Court to make with brief submissions and I shall then decide any issues in dispute. The form of agreed order or of the orders sought by the parties should be filed by noon on Friday 9 June.

37. At the hearing I directed that the parties should file written submissions as to the appropriate costs orders after this judgment was delivered and the main order had been settled. I suggest that the parties seek to agree the costs orders to be made and failing that to file their proposed orders with short written submissions on points in dispute within 14 days of the date on which the main order is made.

38. Following the distribution of the draft of this judgment, a draft of the order to give effect to the judgment was prepared by the Trustees and discussed by the parties. It was ultimately settled by me. It included an order that the Plaintiffs must pay the Trustees', Fifth Defendants and BH06/Third Party's costs of and occasioned by the Consequentials Hearing (to be assessed on the standard basis if not agreed). As I understand it, this provision was agreed by the Plaintiffs subject to their noting that the reference to the Trustees' costs was only to be taken to include the Trustees' costs in relation to the directions to be made consequential on the Privy Council's decision on the Plaintiffs' appeal and the final dismissal of the Plaintiffs' claims so that the Trustees' costs of the freezing orders applications would not be included (and would be the subject of the further submissions on costs discussed above). This seems to me to be the right construction. If I have misunderstood what was agreed and the position of the Plaintiffs and the Trustees they may each raise and deal with the issue in their further submissions on costs.

The Hon. Mr Justice Segal
Judge of the Grand Court, Cayman Islands
14 June 2023