

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 VERWAL TUNGSANSTALT

(4) GAL GREENSPOON

(5) YAEL PERRY

(6) DAN GREENSPOON

(7) RON GREENSPOON

(8) MIA GREENSPOON

Defendants/Counterclaim Plaintiffs (in the case of the First Defendant)



## IN CHAMBERS

**Appearances:** Mr David Brownbill QC instructed by Nicholas Dunne of Walkers on behalf of the Plaintiffs

Mr Graeme McPherson QC instructed by Mark Goodman and Shaun Tracey and Natasha Partos of Campbells on behalf of the First Defendant and Applicant

Mr Ardil Salem of Carey Olsen on behalf of the Fifth Defendant

**Before:** The Hon. Justice Segal

**Heard:** 29 November 2018

**Draft prepared:** 30 November 2018

**Draft Circulated:** 3 December 2018

**Judgment Delivered:** 10 December 2018

## JUDGMENT

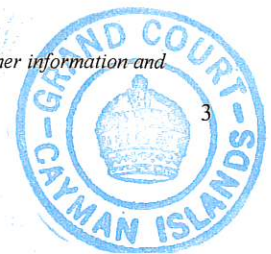
### Introduction

1. This is a note of the reasons for my decision on the First Defendant's summons seeking further information and documentation concerning the use of the proceeds of a loan (the *Loan*) made by a Curacao company, Solid Holding NV (*Solid*), to the Second Plaintiff (*TP*).
2. The summons was heard on 29 November 2018. Mr McPherson QC appeared for the First Defendant and Mr Brownbill QC appeared for the Plaintiffs. At the conclusion of the hearing I informed the parties of my decision. I refused to make the order in the wide terms sought but decided that it was appropriate to order further but narrower disclosure. I ordered that the Plaintiffs pay 25% of the First Defendant's costs of the summons on the standard basis to be taxed if not agreed.



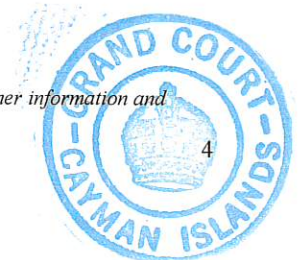
### The First Defendant's application

3. These proceedings arise out of claims made by the Plaintiffs to set aside the transfer of and assert proprietary claims to the share (the *Share*) in Britannia Holdings (2006) Ltd (*BH06*). On 17 October 2017 I granted the Plaintiffs' application for a proprietary injunction (the *Injunction*) to prevent (inter alia) dealings with the Share and dividends paid by BH06 pending the outcome of the proceedings. Subsequently various further ancillary orders (the *further orders*) were made with a view to ensuring that the value of the Share was preserved while the proceedings were pending. One of the further orders made was for the appointment of receivers over the Share.
4. Since BH06 is a holding company, the value of the Share is determined by the value of the assets of its subsidiaries, in particular Solid. In the months before the granting of the Injunction various transactions and a capital reconstruction were entered into by Solid. These resulted in various payments being made by Solid to TP or entities controlled by or related to the Plaintiffs.
5. The largest payment (€99 million) was a dividend paid by Solid to a Curacao foundation called the Solid Private Fund Foundation (*SFPF*) controlled by the Plaintiffs and their associates. The Defendants argue that the capital reconstruction which resulted in shares being issued by Solid to SFPF (which took place on 25 May 2017) and the dividend paid to SFPF (on 20 July 2017) were approved by the directors of Solid (and by the directors of Britannia Guarantee National Insurance Company (*BGNIC*), the company which owned all the shares in Solid before the capital reconstruction and is a wholly owned subsidiary of BH06) in breach of duty. Proceedings have been commenced, with permission of the Court, in Curacao by BGNIC to set aside the capital reconstruction and recover the payments made by Solid (which proceedings are stayed pending the outcome of these proceedings).
6. Further payments were made pursuant to the Loan. In TP's fifth affidavit (sworn on 18 December 2017 in compliance with an order made by me on 12 December 2017) she disclosed that the Loan was entered into on 22 June 2017 and that she "*drew down*" various sums on 22 June, 20 July and 18 August 2018. The First Defendant has challenged whether it was proper for Solid to make the Loan. The First Defendant asserts in its counterclaim against the Plaintiffs that there was no proper reason for Solid to make the Loan and that the Plaintiffs procured (with others) the entry by Solid into the Loan. The First Defendant also relies on the granting of the Loan as one of the unlawful



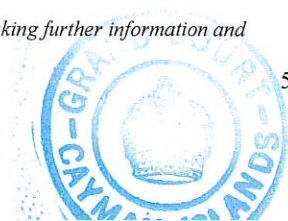
acts which gave rise to an unlawful means conspiracy to which the Plaintiffs were parties. However, no proceedings have been commenced to set aside or recover the payments made under the Loan.

7. One of the objectives of the further orders was to identify to whom these payments were made and to preserve (to the extent practicable) the payments in the hands of the recipients pending the conclusion of these proceedings. This was to ensure that the First Defendant (and its co-trustee, Admintrust) would not be unfairly prejudiced (or more accurately to minimise the potential prejudice to the trustees) by the granting of the Injunction. If they are successful and able to establish that they are the true owner of the Share, they will be able to procure that BH06 and its subsidiaries take appropriate action to recover the payments if it can be shown that they were wrongfully made and there is a right of recovery. To the extent that litigation needs to be commenced before the conclusion of these proceedings in order to preserve rights of action, it is also open to the receivers to procure that such litigation be commenced.
8. The further orders achieved the preservation of the payments by requiring disclosure of the parties to whom the payments had been made by Solid and then requiring undertakings to be given by the Plaintiffs that they would not, and to the extent they were able to do so, they would procure that the recipients would not, make further transfers out of the payments they had received.
9. As a condition to the continuation of the Injunction the Plaintiffs initially agreed (on 18 December 2017) and were subsequently ordered to give various undertakings. The order requiring these undertakings to be given (the *Undertakings*) was dated 11 April 2018 (the *April Order*). In the Undertakings the Plaintiffs agreed:
  - (a). not to deal with, dispose of, make payments out of or take any other steps (whether directly or indirectly) in respect (inter alia) of the assets of BH06, BGNIC, Solid or SFPF.
  - (b). not to dispose of, encumber, pay away, use or otherwise deal with the payments made by Solid or any substitute assets or funds. The proceeds of the Loan were explicitly covered.
  - (c). to exercise all rights and powers (held directly or indirectly) in relation to Solid and SFPF (save to the extent that the exercise of such powers would result in criminal liability or



liabilities to unconnected third parties) to ensure that no further payments would be made by Solid and SFPP.

- (d). to exercise all rights and powers, held directly or indirectly and save to the extent that the exercise of such powers would result in criminal liability or liabilities to unconnected third parties, so that the consent of the receivers would be required to any withdrawals from and the receivers were entitled to full information concerning the account in the name of SFPP into which payments had been made.
10. The April Order ordered the Plaintiffs to provide copies of bank statements from all accounts held in the name of or controlled by Solid showing transactions from 1 May 2017 to the date on which the statements were provided. The Plaintiffs gave discovery of the bank statements for Solid, in particular the statements relating to a bank account in Switzerland with a Swiss bank called Pictet et Cie. The statements disclosed a number of payments but were redacted so that the identity of a number of the payees was removed. The statements did, however, identify substantial payments to Appollolaan in Amsterdam and to Van Campen & Partners (the Plaintiffs' Dutch counsel). All the payments were made on 22 and 23 June, 19 July, 7 and 18 August and 25 September 2017.
11. The First Defendant (in correspondence from its attorneys Campbells to the Plaintiffs' attorneys Walkers) complained that the Plaintiffs had failed to comply with the April Order by making the redactions. The Plaintiffs (in correspondence from Walkers) sought to justify the redactions. They argued that since I had refused to make the April Order in the terms originally sought by the First Defendant and, in particular, had refused to include a paragraph requiring disclosure of details of the payments made by TP out of the account held by her into which the Loan proceeds had been paid, the First Defendant was not entitled to the redacted information. The identity of the recipients of the payments was disclosure covered by the paragraph in the draft of the April Order which the First Defendant wished to have included but which I had removed (I had settled the form of the April Order following a contested hearing and further post-hearing written submissions and had set out my reasons in my Note of Decision dated 8 March 2018 and an email circulated by my assistant dated 28 March 2018).
12. As matters turned out, the redactions ceased to be of any practical significance when on 1 May 2018 the Swiss prosecutor provided the First Defendant with unredacted copies of the statements.



The First Defendant had previously (on 6 March 2018) filed a criminal complaint in Switzerland alleging that the Plaintiffs had committed crimes under Swiss law because of their procurement of the payments made out of Solid's Swiss bank accounts. The Plaintiffs strongly objected to the filing of the Swiss criminal complaint (and a related complaint in Lichtenstein) which was said to be an improper attempt to obtain information relating to and to sequester the Swiss bank accounts in a manner that was inconsistent with and would undermine the further orders made by this Court.

13. The unredacted bank statements revealed that the previously unidentified recipients of the transfers were parties connected with the Plaintiffs. The redacted bank statements as disclosed by the Plaintiffs had already shown, as I have noted, that substantial sums had been paid by Solid both to the Plaintiffs' Dutch legal adviser and an unidentified Dutch entity. The unredacted statements identified a number of other recipients including Mr Duggan and the Plaintiffs' Israeli counsel. The First Defendant has concluded that the payments (which were made on the same dates as the dates on which TP had said that she made drawdowns under the Loan) represented the proceeds of the Loan. The Loan must therefore have involved payments to the third parties at TP's direction. The First Defendant considered that TP had therefore misrepresented the position when she had said in her fifth affidavit that she "*drew down*" various sums on 22 June, 20 July and 18 August 2018 since that statement implied that the sums had been paid directly to her. If the proceeds of the Loan had been paid to third parties rather than TP there was a risk that they were not protected by the regime established by the further orders. They might not be subject to the Undertakings given by TP and it was possible that they might have been dealt with inconsistently with the Undertakings. It was important to know who held the proceeds and what had happened to them.
  
14. The First Defendant therefore now sought an order requiring the Plaintiffs (or either of them) to swear a further affidavit setting out further details relating to nine payments made out of the Solid account between 22 June and 18 August 2017 including details of what services or consideration was provided in return for the payments; to what extent the sums paid were in respect of accrued liabilities incurred by the recipient or on account of future liabilities or for some other reason; how much remained and if sums had been dissipated since the relevant date to whom the funds had been paid and why, and how much was retained by the payees of such sums. The First Defendant proposed as the relevant date either 22 June 2017 or 18 December 2017. The latter date was the date on which the Plaintiffs first (voluntarily) gave undertakings not to dispose of the payments made by Solid.



### **The First Defendant's submissions**

15. Mr McPherson argued that this further information was required to enable the Court to monitor and police the further orders including compliance with the Undertakings. The Court had jurisdiction to grant the relief sought since the Court had, and would be exercising its, inherent jurisdiction to ensure the integrity of its proceedings and the effectiveness of its orders. There had been a material change of circumstances since the Court had first ordered the Plaintiffs to disclose the Solid bank statements. The picture before the Court as regards the Loan was now very different from the position as it was understood as a result of TP's fifth affidavit (sworn on 18 December 2017) and TP's sixth affidavit (sworn on 12 January 2018). The unredacted bank statements showed that TP's explanation had been misleading and that substantial amounts of the proceeds of the Loan were likely to be held by the third parties and outside the protective regime established by the further orders. Furthermore, evidence recently given in the probate proceedings in London had provided further information regarding the Loan proceeds.

### **The Plaintiffs' submissions and the First Defendant's response to the misconduct allegations**

16. The Plaintiffs opposed the First Defendant's application. Mr Brownbill argued that the First Defendant was not entitled as a matter of law to the further relief sought and that even if it was, the First Defendant's conduct (misconduct) in these proceedings and related litigation in other jurisdictions meant that the Court should refuse to grant the relief:

- (a) as regards entitlement, Mr Brownbill argued that the First Defendant's summons was an abuse of process. The First Defendant had previously sought an order requiring disclosure of bank statements in respect of TP's accounts into which the proceeds of the Loan had been transferred and evidencing the use to which TP had put the funds received. This was one of the orders I had declined to make and the wording sought by the First Defendant had not been included in the April Order. I had explained in the 28 March email that:

*"I agree that since Tamar Perry's undertaking dated 2 January 2018 already contains an undertaking not to deal with or dispose of the proceeds of the loan from Solid NV it is appropriate that the refreshed undertakings contain the same confirmation (and therefore that a reference to the Solid loan be included in paragraph 3.1 of the Order). However, I do not consider it appropriate to require disclosure at this stage of the terms and details of the loan (and therefore have deleted paragraph 10.4 of the Campbells draft)."*



Mr Brownbill submitted that I had then decided that the provision of the information of the kind now sought by the First Defendant was not required to police the Undertakings and since there had been no material change of circumstances the First Defendant was not entitled to a second bite of the cherry. The First Defendant was or should have been aware of how the Loan proceeds were being dealt with by TP and that they would have been paid to and held by the Plaintiffs' legal advisers. The information revealed by the unredacted bank statements was in reality not new and should have come as no surprise. Mr Duggan's first affidavit had made it clear what the purpose of the Loan was and what the proceeds were to be used for; in particular that they would be used to pay legal and other expenses (reference was also made to Mr Van Campen's email of September 2017 to HMS Cayman in which he refers to the substantial sums he is holding on account).

It was well established that it was an abuse of process for a party to apply for the same relief more than once unless it could demonstrate that there had been a significant change of circumstances. Mr Brownbill relied on a number of authorities including *Chanel Ltd v FW Woolworth* [1981] WLR 485 (applied in this jurisdiction in *I Ltd v A* [1994-95 CILR Note 7a]; *Gantenbrink v BBC* [1995] FSR 162 and *Leadmill v Karl O'Mare* [2002] EWHC 1226 (Ch).

He also argued that the First Defendant was not challenging and could not challenge the validity of the Loan and so had no claim against TP which gave it the right to the information sought, in particular as to what TP had spent her own money on (or to write letters, as Campbells had done, to the recipients of the payments out of Solid's bank account asserting that the Loan payments were improper and putting the recipients on notice of the risk of a challenge to the payments).

- (b). as regards the reason why it would be wrong to grant the relief sought even if the First Defendant was otherwise entitled to it, Mr Brownbill relied on the First Defendant's alleged misconduct in misusing information disclosed under compulsion in these proceedings by improperly deploying TP's fifth and sixth affidavits in probate proceedings in England; by breaching the Injunction by improperly dealing with the proceeds of dividends from BH06 held by it as trustee of the Ypresto trust; by defying orders of the



court in Panama; by making the criminal complaint in Switzerland and by attempting to circumvent the receivership regime established by orders of this Court by pursuing a double derivative counterclaim (in these proceedings) on behalf of a subsidiary of BH06 (which double derivative counterclaim I have recently struck out on the ground that it disclosed no reasonable cause of action). The alleged misconduct was dealt with extensively in the evidence and had been dealt with on previous applications.

17. Mr McPherson argued that the allegations of misconduct were unjustified and misconceived. He pointed out that the alleged misuse of TP's fifth and sixth affidavits had been dealt with on an earlier application by the First Defendant when the First Defendant had filed evidence explaining what had happened, had asked the Court to declare that there had been no breach of the implied undertaking or to give permission for the disclosure of the affidavits in the probate proceedings and a clear apology had been offered to the Court for any misunderstanding or error made by the First Defendant's legal advisers. Furthermore, Mr McPherson pointed out that the Plaintiffs had consented to an order giving such permission (albeit on terms that ensured that the affidavits could not be used in any other proceedings). He also pointed out that the First Defendant had previously sought to explain to the Court its approach with respect to, and its understanding of the scope of, the Injunction as it applied to the funds held by the First Defendant as trustee of the Ypresto trust. It had filed evidence (in the second affidavit of Mr Naeff) to set out the details of what had occurred, apologise and to confirm that steps had been taken to reverse the position where possible once the Court had set out its understanding of the proper scope of the Injunction. Mr McPherson also argued that it was not possible to conclude that the First Defendant had been guilty of misconduct in relation to the other matters complained of since the proceedings in Panama were continuing and a breach of court orders had not been established and the First Defendant did not accept that the filing of the criminal complaint in Switzerland was in any way wrong or inconsistent with the relief granted by this Court. The sequestration sought in Switzerland was to sit alongside and compliment the Injunction and the preservation of the assets of Solid pending the outcome of these proceedings.. Mr Brownbill had said that the action taken by the Swiss prosecutor was preventing with the receivers from taking action with respect to Solid's accounts and had resulted in a process controlled by the Swiss authorities which undermined or limited the further orders made by this Court. Mr McPherson also argued that Mr Brownbill's submissions were manifestly one-sided: the Plaintiffs were themselves accused of acting improperly and in breach of the orders of the Court but when the Plaintiffs had acted in error they presented their conduct as a reasonable mistake but

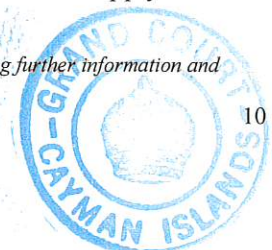


characterised the First Defendant's behavior as deliberate and blatant misconduct (an example had been raised on this application where the Plaintiffs redaction of the Solid bank statements had clearly been inconsistent with the Court's orders).

## Discussion and decision

18. I do not accept Mr Brownbill's submissions that the First Defendant is not entitled to further relief or that the alleged misconduct justifies the Court refusing to grant further relief. However, I consider that the draft order sought by the First Defendant is too wide and goes beyond what is needed and should properly be ordered so as to police and ensure compliance with the orders I have made to hold the ring and preserve the payments made by Solid:

- (a). The Plaintiffs had been wrong to redact the Solid bank statements. Details of the payees were required to be disclosed. But this information has now been obtained via the Swiss prosecutor.
- (b). The April Order properly covered the Loan proceeds with a view to identifying to whom the proceeds had been paid and ensuring that they were preserved from further dissipation. The inference to be drawn from TP's fifth affidavit was that she had received the Loan proceeds although disclosure of Solid's bank account statements would confirm the position. TP undertook not to dispose of the Loan proceeds but the April Order did not deal with whether this undertaking applied to the proceeds originally received or the sums remaining at the date of the April Order (or the earlier date on which TP had voluntarily given an undertaking in similar terms).
- (c). Once details of the recipients of payments by Solid were disclosed the first objective was achieved subject to TP confirming that the payments were made at her direction out of sums advanced to her under the Loan. This has not yet been done (and is not covered by TP's eleventh affidavit).
- (d). As regards the second objective, it seems to me that the Undertakings can only be treated as having effect in relation to funds held at the time they were first given. This was 18 December 2017 (the **Relevant Date**). If the Undertakings were taken to apply to sums



received before they were given – and in particular to cover the Loan proceeds from the time of the original receipt in June-August 2017 – then TP would be required to reinstate the fund either by obtaining repayments from third parties or from her own funds (if she has any). Before being prepared to make an order with that effect I would need to be persuaded that there was a proper basis and justification for it. The First Defendant has not made such an application. Accordingly, I am not satisfied that there is at present a proper basis for requiring TP to disclose how the sums advanced by way of the Loan in the period after initial receipt up to the Relevant Date were spent.

- (e). It is important to ascertain how much of the Loan proceeds were held by TP or for her at the Relevant Date and how much is held at the date of the order to be made on the First Defendant's summons (the *Order Date*).
- (f). The balance of the Loan proceeds held at the Relevant Date must be subject to the Undertakings and preserved. The proceeds covered should be those held by TP or third parties who hold the proceeds for her (to her order or otherwise to be dealt with as she instructs or for her benefit) and should cover not only the original proceeds but any funds or assets which were substitutes for or derived from the original proceeds. Confirmation from the third parties (which TP must procure) who held the Loan proceeds or their substitutes for TP at the Relevant Date should be obtained to confirm (to TP) the balance they held at the Relevant Date and the Order Date and that they will make no further payments or dispositions without TP's further consent in writing.
- (g). There should also be disclosure by TP (and she should procure disclosure by the third party recipients who were holding proceeds for her) of any payments or use of the proceeds or their substitutes after the Relevant Date to the Order Date including details of the persons to whom payments have been made and a description of the reasons for the payment.

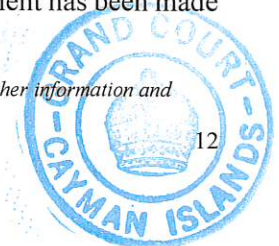
19. I would elaborate on my reasoning as follows:

- (a). I do not accept Mr Brownbill's submissions that the April Order did not require full disclosure of the details of payments out of Solid's accounts. There was no provision or permission for any redaction. My amendment to the draft order simply removed the need



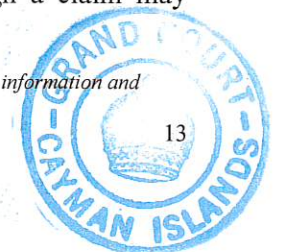
for disclosure of withdrawals from TP's accounts as recipient and *transferee* of the Loan proceeds (the need for disclosure by the *transferor* was retained). There was at the time no need for disclosure of the use of the Loan proceeds by TP because there could be no such use. TP had undertaken in paragraph 3.2 of the April Order not to dispose of, encumber, pay away, use or otherwise deal with the Loan proceeds. The undertaking was designed to preserve the remaining Loan proceeds intact and in full.

- (b). Nor had I decided that details of how the Loan proceeds were used were as a matter of principle not, and would never be, needed in order to police the orders I had made and the Undertakings. I held that information concerning withdrawals from TP's account was not *at that stage* needed because on the facts as presented, as I have said, TP was prohibited from making any withdrawals out of Loan proceeds.
- (c). On 18 December 2017 TP had, in paragraphs 8-11 of TP's fifth affidavit, stated that she had *drawn down* (between 22 June and 18 August 2017) substantial sums under the Loan. The clear implication, in the absence of any qualification as to the manner in which the drawdown had been made, was that the Loan proceeds were paid to and retained by TP. While the term "draw-down" can cover loan advances made by the lender to the borrower by way of payments by the lender to third parties on the borrower's instructions, the term as used by TP in TP5 has to be understood in context. There was, in my view, an inference that the Loan proceeds had been advanced direct to TP.
- (d). It is now clear that substantial Loan proceeds were paid directly to third parties connected to TP. Some were legal advisers and service providers. The role of JL Securities Apollolaan and Mercury Securities remains to be established. It is possible that they held proceeds for or to the order of TP and that they retained at least some of the proceeds at the Relevant Date. TP has accepted (by voluntarily giving her undertaking) and I have already decided that the preservation of the proceeds of the Loan is part of the package of protections to be put in place to preserve funds removed shortly before the application for the Injunction from BH06's subsidiaries (to hold the ring). Therefore it is entirely appropriate to order the provision of further information where there is evidence that it is needed to check what has happened to Loan proceeds (to identify who held them at the Relevant Date and what remains, and to the extent that sums have been paid away to whom payment has been made



and for what reason) and to ensure that the Loan proceeds are protected within the regime for holding the ring (if the funds are held to the order of TP, the terms on which they are held should be disclosed and it should be clear that the Undertakings will be observed because the third party recipients have undertaken to TP not to pay away any funds without her consent and therefore that TP has control of, so that her Undertaking applies to, the funds). Mr Brownbill during the hearing stated that TP has always regarded any sums held to her order or on her account by her advisers and other third parties at the time that her undertakings became effective as subject to those undertakings.

- (e). In the circumstances even assuming that a material change in circumstances is required before further orders requiring disclosure of the use of the Loan proceeds can be made, there has been such a change. I accept Mr McPherson's submissions on this point. Mr McPherson submitted during the hearing that a number of recent English decisions had established a lower threshold test to be applied in the context of interlocutory applications (citing the judgment of Nugee J in *Holyoake v Candy* [2016] EWHC 3065 (Ch)) and that these approach should be followed in this jurisdiction. However, Mr McPherson also submitted that even if the test to be applied was that set out in *Chanel* and the other authorities relied on by Mr Brownbill, that test was satisfied in the present case. I agree. However, since I made it clear when settling the form of the April Order that my decision was subject to further developments and it was clear that I had not refused the application for information concerning the use of Loan proceeds in principle, I do not consider that it is strictly necessary for the *Chanel* test to be satisfied.
- (f). I do not accept Mr Brownbill's submission that there has been no challenge to the making of the Loan. Even after the striking out of the double derivative claim made by the First Defendant (and Admintrust) the counterclaim includes, as I have explained, an assertion that the Loan was not properly made (although the claim has not been asserted by or on behalf of Solid). But the absence of a claim by Solid does not prevent the First Defendant being entitled to an order requiring disclosure of information concerning the use of Loan proceeds. The April Order was made on the basis that the Loan proceeds are to be included in the payments made by Solid which are challenged by the First Defendant and to be preserved pending the outcome of the proceedings. The First Defendant's application is not based on a currently asserted cause of action against TP (although a claim may

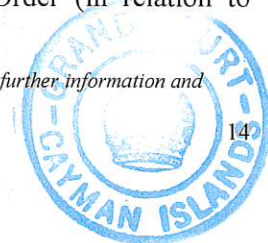


subsequently be made) but the need to police the Undertakings and the orders made by the Court.

(g). Nor do I accept Mr Brownbill's submissions that the Court should decline the relief sought on the basis of the First Defendant's conduct:

(i). Mr Brownbill submitted that the First Defendant had shown by its conduct in these and related proceedings that it was prepared deliberately to breach, and could not be trusted to comply with, the orders of this Court and other courts. As a result there was a serious risk that it would use the further information sought in other proceedings and improperly. Furthermore, the First Defendant's application was made for a collateral and improper purpose, namely to put improper pressure on TP by threatening action against her legal and other advisers. The letters written by Campbells to the recipients of payments from the Solid account, (which were in evidence, and stated that the First Defendant was putting the recipients on notice that the payments were being contested and reserved the First Defendant's rights in respect of the payments) demonstrated that the First Defendant's primary purpose was to do this.

(ii). I do have some concerns about the First Defendant's conduct in relation to the construction of the orders of this Court. In particular, the construction of the April Order and the Injunction which purportedly justified the use of TP's fifth and sixth affidavit in the English probate proceedings and to give security over the assets of the Ypresto trust seemed strained and difficult to justify. It must have been clear that the First Defendant's construction was contentious and that the prudent and proper course was to seek clarification and confirmation from the Court. I also have some concerns in relation to the Swiss criminal complaint since, at least on the basis of the position as I currently understand it, there was bound to be a risk that the action taken by the Swiss prosecutor could be inconsistent with and at least cut across the exercise by the receivers of their powers in relation to Solid and its Swiss accounts. I would have expected there to be a prior discussion with the receivers or an application to this Court. Nor do I consider that the Plaintiffs' adoption of an unsustainable construction of the April Order (in relation to



redactions) can count as an excuse. But I accept that the First Defendant has, as regards the breaches of Court orders, made full disclosure and apologised to the Court and sought to rectify its errors and actions. I also accept that the other allegations of misconduct made in relation to the Panamanian proceedings are as yet unconfirmed and yet to be proved and that the complaint about the bringing of the double derivative claim is without substance. In any event I am not satisfied that the Plaintiffs have established that the First Defendant cannot be trusted to observe and may deliberately breach the Court's orders (or its implied undertaking) or is seeking relief for a collateral and improper purpose. It is advised by respected and responsible counsel and legal advisers and will I anticipate act carefully and conscientiously in future to ensure that there is no breach of any orders of the Court (and that if necessary prior clarification will be sought from the Court).

- (h). I would further add one further point, which I alluded to at the end of the hearing. The dispute between the parties has now involved not only litigation in many countries but acrimonious and highly charged personal criticisms and challenges. I understand that the allegations made are very serious and that parties are genuinely concerned that there has been serious wrongdoing. And that hard fought litigation is bound to occur in this kind of case. But I wonder and would urge the parties to reflect on whether the proliferation of multi-jurisdictional litigation at enormous expense, with allegations of criminal misconduct, is really in their respective best interests. It ultimately remains a matter for the parties to decide how to deal with their disputes but I would expect their legal advisers to encourage proportionate and considered action. For my part, I will expect to see that Court orders are properly and fully observed and that uncertainties are promptly raised with the Court. I will certainly not look favourably on any further conduct which involves breaches of orders of this Court.

20. Therefore the Plaintiffs (or one of them) must file and serve on the First Defendant (and the other Defendants) an affidavit which:

- (a). states the amounts (if any) of the proceeds (or funds or assets representing the proceeds) of the Loan held (in any account or in any other manner) by TP at the Relevant Date and at the Order Date.



- (b). states the names and addresses of any third party (the *Recipients*) who at the Relevant Date held funds or assets for TP or the Plaintiffs (funds and assets were held for TP or the Plaintiffs where they were being held to TP's or the Plaintiffs' order, they were held on account of sums to become payable by TP or the Plaintiffs or persons connected with the Plaintiffs, they were to be dealt with in accordance with the directions or instructions of TP or the Plaintiffs or they were otherwise held on trust for or for the benefit of TP or the Plaintiffs) .
- (c). states the amounts so held by the Recipients at the Relevant Date and the Order Date.
- (d). states the terms on which the Recipients hold the funds or assets (save that any information that is privileged may be redacted) and whether the Recipients have agreed not to deal with, dispose of or make payments out of the funds and assets held by them without the prior written consent of TP (or the Plaintiffs).
- (e). if and to the extent that payments or dispositions have been made by TP or the Recipients out of or in relation to the Loan proceeds (or other assets) since the Relevant Date, the amount, date, reason for and payee in respect of each payment (or the date, nature of, reason for and parties to any disposition).

21. I will ask Mr McPherson and Mr Brownbill to prepare and seek to agree a draft order which reflects this approach and to submit the draft to me for my approval as soon as possible and in any event no later than 4pm Cayman time on 7 December (and if the draft order is not agreed, together with details of the disagreement and the orders sought by each party with brief submissions explaining each party's position).



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**Mr. Justice Segal**  
**Grand Court of the Cayman Islands**

