



**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION  
IN THE MATTER OF THE ESTATE OF ISRAEL IGO PERRY DECEASED**

**CAUSE NO. FSD 205 of 2017(NSJ)**

**BETWEEN:**

**(1) LEA LILLY PERRY  
(2) TAMAR PERRY**

**Plaintiffs**

**and**

**(1) LOPAG TRUST REG.  
(2) PRIVATE EQUITY SERVICES (CURACAO) NV  
(3) FIDUCIANA VERWALTUNGSANSTALT  
(4) GAL GREENSPOON  
(5) YAEL PERRY  
(6) DAN GREENSPOON (7) RON GREENSPOON (8) MIA GREENSPOON  
(CHILDREN, by Hagai Greenspoon, THEIR GUARDIAN AD LITUM)  
(9) ADMINTRUST VERWALTUNGSANSTALT**

**Defendants**

**AND**

**(1) ANDREW CHILDE  
(2) CHRISTOPHER ROWLAND**

**Third Parties**

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**RULING ON ISSUES ARISING IN RESPECT OF THE ORDER TO  
BE MADE FOLLOWING JUDGMENT DATED 31 MAY 2022 – DECIDED ON THE PAPERS  
BY REFERENCE TO WRITTEN SUBMISSIONS FILED AFTER THE JUDGMENT**

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**Introduction**

1. On 31 May 2022, I handed down judgment on the Fifth Defendant's Notice of Motion and Summons. I use in this Ruling the same defined terms as were used in the judgment.
2. I ordered that:

- (a). the Trustees make available for inspection a redacted copy of the Litigation Funding Agreement showing the Relevant Terms but redacting the terms and provisions which the Trustees considered to be irrelevant to and unconnected with the Relevant Terms or protected by legal advice privilege or confidentiality of the kind I described.
  - (b). the redacted copy of the Litigation Funding Agreement be supported by evidence that explained why the redactions were justified.
  - (c). if the proposed redactions were challenged by the Fifth Defendant, the parties would need to file written submissions (including submissions as to whether I should see the unredacted Litigation Funding Agreement) and I would then deal with any challenge on the papers.
3. I invited the parties to agree within fourteen days from the date of the handing down of the judgment the timetable and process for giving inspection and for the making of any challenge (and the other parts of the order to be made to give effect to the judgment). I said that if they were unable to do so within that period they should within twenty-one days of that date file short submissions with their competing views as to the timetable and process (and the form of order) and I would then make a suitable order without a further hearing.
4. The parties have been able to agree most but not all of the order. On 15 June 2022, Priestleys, who had recently been appointed as the Fifth Defendant's attorneys, wrote to the Court with a copy of a draft order they had prepared in relation to the timetable and process for giving inspection and sent to Campbells, the Trustees' attorneys. On 16 June 2022, Campbells informed the Court that they were in discussions with Priestleys and hoped that agreement would be reached shortly. On 21 June 2022, Priestleys again wrote to the Court and explained that they had received a revised draft order from Campbells, that dealt not only with the timetable and process for giving inspection but also the other matters to be included in the order so as to give effect to the judgment (which Priestleys referred to as the **Combined Order**). Because the parties had been unable to reach agreement on all aspects of the Combined Order, Priestleys provided the Court with the form of Combined Order which the Fifth Defendant considered to be appropriate; the form of Combined Order which the Trustees considered to be appropriate and the brief written submissions of the Fifth Defendant which set out her position. On 22 June 2022, the Trustees filed their written submissions setting out their position. On 23 June 2022, the Fifth



Defendant filed written submissions in reply and on 24 June 2022 the Trustees filed a written response to those reply submissions.

5. On 1 July 2022, Campbells wrote to the Court to report that the Trustees had been served on 30 June 2022 with the Second Plaintiff's Twenty Fifth Affidavit. Campbells explained that this affidavit had purportedly been made further to the Notice of Motion and the Summons and that in her Twenty Fifth Affidavit the Second Plaintiff had explained why she considered that it was important that the redacted Litigation Funding Agreement and any variation thereto be disclosed to her, as well as to the Fifth Defendant. Campbells said that the Trustees' position was that this further affidavit should not be considered by the Court for the purpose of determining the form of order to be made on the Notice of Motion and the Summons. They submitted that it was irrelevant to the Notice of Motion and the Summons, to whom the only parties were the Fifth Defendant and the Trustees. If the Second Plaintiff wished to have sight of the Relevant Terms, she should make her own application to the Court for an order for production of the Relevant Terms. Campbells requested that, if I was minded to consider the Second Plaintiff's Twenty Fifth Affidavit when adjudicating on the competing positions of the Fifth Defendant and the Trustees as to the terms of the order, the Trustees be given an opportunity to file and serve evidence in response to that affidavit.
  
6. I do not consider that it is appropriate for me to have regard to or to take into account the matters dealt with in the Second Plaintiff's Twenty Fifth Affidavit (much of which contains submissions and a statement of the Second Plaintiff's position as opposed to evidence). This was served and filed late, long after the hearing and without any application being made by the Second Plaintiff for permission to serve and rely on it at this stage. The Second Plaintiff has now, after deciding not to make any submissions at the hearing, and without making any application to the Court, decided to put in evidence. I do not consider that in these circumstances she should be allowed to influence the Court's decision on the form of order to be made following the hearing and the judgment. Having said that, as I explain further below, it seems to me that since the Notice of Motion and the Summons are applications made in and part of the main proceedings, the Second Plaintiff is a party to the Notice of Motion and the Summons (as the heading to both the Notice of Motion and the Summons properly make clear) and may participate in the further hearings of the Notice of Motion and the Summons if she chooses to do so. At that point, she may rely on her Twenty Fifth Affidavit and any other evidence she chooses and is permitted to file.

### The issues for determination

7. The parties' draft orders and submissions showed that there are three main issues in dispute:
- (a). should the Trustees be entitled to make redactions only for legal advice privilege or for any type of privilege (the *privilege issue*)?
  - (b). should the Fifth Defendant be entitled to disclose the Relevant Terms to other parties to the main proceedings (in particular to the Second Plaintiff) and possibly to others who are not parties but have an interest in the outcome of the proceedings (such as the receivers or directors of BH06) (the *disclosure of documents issue*)?
  - (c). which parts of the Notice Motion (and what relief sought therein) should be considered and determined by the Court at the next hearing (the *matters for determination at the next hearing issue*)?

### The relief sought in the Notice of Motion

8. The Notice of Motion sought the following relief:
1. *an order pursuant to GCR Order 52 rule 1(3) dispensing with the need for personal service of this Notice of Motion on the First and Ninth Defendants;*
  2. *an order that the First and Ninth Defendants do within 7 days disclose to the Fifth Defendant copies of the evidence relied upon in Cause no. 98 of 2018 and a transcript of the hearing (if any);*
  3. *directions for the service of evidence in answer and reply in respect of this Notice of Motion;*
  4. *an interim injunction in the form set out in paragraph (8) below pending the hearing of this Notice of Motion for the relief set out in paragraphs (6) to (9) below;*
  5. *an order that the balance of the relief sought by this Notice of Motion be adjourned to a hearing to be fixed with a provisional time estimate of 1 day;*
  6. *a declaration that, by entering into a Financing Agreement made between (1) Admintrust Verwaltungs Anstalt and Lopag Trust reg. as trustees of The Lake Cauma Trust, The Heritage Trust, The Damerino Trust, The Citizen Trust, The Ypresto Trust, The Thalassoma Trust, The Liza Trust, The Mola Trust, The Diodon Trust, The Girella Trust and The Ronquilus Trust, (2) BGO Foundation and (3) Gillham LLC (“the Financing Agreement”) and/or any variation thereto in their capacity as trustees of the Ypresto Trust the First and Ninth Defendants breached*

*the Proprietary Injunction made by this Court on 17 October 2017 (as subsequently amended) ("the Injunction") whereby the First and Ninth Defendants were enjoined, inter alia, from disposing of, encumbering or dealing with any dividend or distributions in respect of any shares or shares in Britannia Holdings (2006) Ltd ("BH06") or any asset or property representing such dividend or distribution;*

7. *an order pursuant to GCR Order 52 that the First and Ninth Defendants herein be fined on the grounds that they are in breach of the Injunction as set out in paragraph (6) above;*
8. *the appointment of receivers over the bank accounts in the names of First and Ninth Defendants in their capacity as trustees of the Ypresto Trust and/or an order prohibiting the First and Ninth Defendants from borrowing further funds in their capacity as trustees of the Ypresto Trust whether pursuant to the Financing Agreement or any existing or future variation thereto;*
9. *an order that the First and Ninth Defendants pay the costs of and incidental to this application, to be taxed on the indemnity basis if not agreed.*

### **The privilege issue**

9. The Trustees submitted that the order should permit them to redact any clauses or provisions which they claimed were protected by any applicable form of privilege and not just legal advice privilege. The Fifth Defendant argued that the judgment specifically referred (at [6(b)]) to legal advice privilege (so that the Trustees' draft order was inconsistent with the judgment) and that since the order referred to "*clauses and provisions*" and not documents, it was extremely difficult to see how any litigation privilege would apply.
10. I accept the Trustees' submissions. The order should permit the Trustees to claim and rely on the protection of any available privilege and not just legal advice privilege. The judgment refers primarily (although not exclusively – see for example [60]) to legal advice privilege because that was the type of privilege to which Mr McPherson QC referred and in relation to which authority was cited during his submissions. However, the Trustees' written submissions (and Mr Boehler's reference to the Trustees' reliance on privilege in his Third Affidavit) were not limited to a claim only of legal advice privilege and there can be no suggestion that they have waived the right to rely on any other type (and all types) of privilege available to them or that the nature of the privilege on which the Trustees were entitled to rely was an issue dealt with and decided by the judgment. To the extent that the Trustees can show that they are entitled to claim privilege in relation to the redacted parts of the Litigation Funding Agreement, they must be able to exercise that right.

## The disclosure of documents issue

11. Paragraph 4 of the draft order as proposed by the Fifth Defendant is in the following terms:

*“For the avoidance of doubt, insofar as the Relevant Terms are disclosed to the Fifth Defendant pursuant to paragraph 2 hereof she may not, without the permission of the court, rely upon them in any other proceedings (in any jurisdiction) nor provide them to any third party save for the purpose of the proper conduct of these proceedings. For the further avoidance of doubt, this paragraph is not intended to prevent the Fifth Defendant from relying upon the Relevant Terms or the LFA in any other proceedings (in any jurisdiction) or from providing the same to any third party if and insofar as they have been or may be disclosed to the Fifth Defendant other than pursuant to paragraph 2 hereof.*”

12. Paragraph 4 of the draft order as proposed by the Trustees was as follows (with the Trustees proposed amendments in red):

*“For the avoidance of doubt, insofar as the Relevant Terms are disclosed to the Fifth Defendant pursuant to paragraph 2 hereof she may not, without the permission of the court, (a) rely upon them in any other proceedings (in any jurisdiction), or (2) provide them to any person or entity, whether a party to these proceedings or otherwise. For the further avoidance of doubt, this paragraph is not intended to prevent the Fifth Defendant from relying upon the Relevant Terms or the LFA in any other proceedings (in any jurisdiction) or from providing the same to any third party if and insofar as they have been or may be disclosed to the Fifth Defendant other than pursuant to paragraph 2 hereof.”*

13. The Trustees said that they were concerned to ensure that the Fifth Defendant did not misuse the Relevant Terms once they had been provided to her. They were content that she should not be prevented from making reference to information relating to the Litigation Funding Agreement (or any variation thereof) which she already possessed, or which legitimately came into her possession in the future, otherwise than pursuant to the Notice of Motion and the Summons. However, the Trustees argued, the Fifth Defendant should not be entitled to disclose the Relevant Terms to the Plaintiffs and other Defendants. They were not parties to the Notice of Motion or the Summons, had not made an application for production of the Litigation Funding Agreement and there was no good reason why the Fifth Defendant might need to provide the Relevant Terms to them. Furthermore, were the Fifth Defendant to do so, there would be no express prohibition preventing the Plaintiffs or the other Defendants from using, relying on, or providing to third parties copies of the Relevant Terms for their own purposes.
14. The Fifth Defendant argued that the order should not be expanded beyond the normal rule which applied by reason of the implied undertaking which is deemed to be given by a party when documents are disclosed under compulsion. The Fifth Defendant referred to *Braga v Equity Trust*

*Company (Cayman) Limited and Four Others* [2011] (1) CILR 402, which she said confirmed that the leading authority was the decision of the House of Lords in *Home Office v Harman* [1983] 1 AC 280. The implied undertaking was not to use the documents disclosed, nor to allow them to be used, for any purpose other than the proper conduct of the relevant action. The Fifth Defendant argued that she should not be prevented from disclosing the Relevant Terms to other parties to the proceedings where that was permitted by the implied undertaking (so that the Fifth Defendant should not be prevented from making use of those documents for the proper conduct of the litigation in which they were disclosed). The Trustees had provided no explanation or justification for the restrictions beyond the implied undertaking that they now sought and the Fifth Defendant did not accept that there was no good reason for providing the Relevant Terms to the Plaintiffs. Indeed, she said, there may well be good reason to do so particularly in circumstances in which, to the Trustees' knowledge, it was clear that the Plaintiffs supported the Fifth Defendant's Notice of Motion and the Summons.

15. I agree with the Fifth Defendant. The Trustees did not make at the hearing (and have not, even assuming that it would have been appropriate to do so, subsequently made) an application for an order restricting the use which the Fifth Defendant can make of the Relevant Terms. In those circumstances the usual position and the restrictions imposed by the implied undertaking must apply. It is inappropriate for the Trustees to seek to add restrictions at this stage by adding wording to the form of order whose purpose is to give effect to the determination of the matters dealt with at the hearing as set out in the judgment. In circumstances where the point was not raised (let alone the subject of argument and the citation of authority) at the hearing, the only proper course is to apply the normal default rule.
16. The Fifth Defendant seeks an order that "*she may not, without the permission of the court, ... provide [the Relevant Terms] to any third party save for the purpose of the proper conduct of these proceedings.*" The implied undertaking, as I have already mentioned, is usually expressed as an undertaking not to *use* the documents disclosed, nor to allow them to be used, for any purpose other than the proper conduct of the relevant action. But use includes showing the document to someone else. As Robin Knowles J (referring to and interpreting CPR 31.22(1) which incorporated the implied undertaking into the English rules of court) held in *Tchenguz and another v Grant Thornton UK LLP and others* [2017] 1 WLR 2809 at [21] "*Use is a wide word. It extends to (a) use of the document itself e.g. by reading it, copying it, showing it to somebody else (such as the judge).*" And as Browne-Wilkinson V-C (as he then was) said in





*Derby & Co Ltd v Weldon (1988) Times, 20 October* (quoted in *SmithKline Beecham v Connaught* [1999] 4 All ER 498 at 505-506) (underlining added):

*“But such invasion of privacy being only for the purpose of enabling a proper trial of the action in which the discovery is given, the court is astute to prevent documents so obtained from being used for any other purpose. As a result the law is well established that the recipient of documents disclosed under compulsion of court proceedings holds those documents subject to an implied undertaking not, without the consent of the court, to disclose such documents to any third party or use the documents for any purpose other than the action in which they were disclosed”.*

17. So the Fifth Defendant’s formulation is in accordance with the implied undertaking. I take “*third party*” in this context, both as used by the Fifth Defendant and *Browne-Wilkinson V-C*, to refer to any other person, as opposed to any person who is not a party to the proceedings. So the undertaking is not without the consent of the court to disclose the documents to any person for any purpose other than the action in which they were disclosed. In the present context, this must be taken to mean for the purpose of enforcing and policing the Injunction, which was made pursuant to an order in the main proceedings. The proceedings for contempt, as constituted by the Notice of Motion and the Summons, are part of the main, underlying, proceedings pursuant to which the Injunction was granted. As Arden LJ (as she then was) said in the Court of Appeal in *Dadourian Group International Inc and others v Simms and others (No 2)* [2007] 1 WLR 2967:

*“In Crest Homes plc v Marks [1987] AC 829, the House of Lords confirmed that the proper policing and enforcement of orders made in an action is an integral part of the action, just like any other step taken by the claimant in the proper prosecution of his claim. Accordingly proceedings for contempt of court are not collateral to the action in which they were launched.”*

18. For this reason, although the point has yet to be the subject of proper argument, I am not persuaded that the Trustees are right to assert that the Notice of Motion and the Summons should be treated as distinct and separate from the main proceedings. I accept that in some circumstances confidential documents disclosed for a limited purpose cannot be used for any other purpose without the Court’s permission (see for example, *Bourne Inc v Raychem Corp* [1999] 3 All ER 154, CA where it was held that documents disclosed for the purpose of taxation could not be used for any other purpose including in underlying proceedings to which the taxation arose). But the Trustees have not, so far as I can see, sought to rely on (and have not cited any authority referring to) this principle. Nor, as it seems to me, could they rely on it in the present circumstances where no application or argument was made to this effect at the hearing.



19. The Trustees argued that the Fifth Defendant's position had always been that the Relevant Terms were needed by her (not by anyone else) to determine her Notice of Motion (and not for any other purpose in the proceedings). But I am unable to accept, and the Trustees have not identified any basis for doing so, that the Fifth Defendant is to be treated as having agreed or accepted that the Notice of Motion (and the Summons) should be treated as separate from the main proceedings or that any documents disclosed pursuant thereto should be treated as not having been disclosed in and as part of those proceedings.
  
20. In the absence of full (or indeed any serious) argument (and the citation of authority) on the question of whether the Fifth Defendant is entitled to disclose to the Second Plaintiff the Relevant Terms as produced by the Trustees and in the absence of an application by the Second Plaintiff herself for such disclosure, it seems to me that the right approach is to include in the order the form of words proposed by the Fifth Defendant (subject to the minor amendments referred to below) which reflect the terms of the usual implied undertaking and then to leave it to the Fifth Defendant and the Second Plaintiff to decide whether one or both of them wish to make an application for an order confirming that the Fifth Defendant may disclose or that the Second Plaintiff is entitled to receive a copy of the Relevant Terms. The form of order will not prohibit the Fifth Defendant from disclosing the Relevant Terms but in my view it would be unwise for the Fifth Defendant to do so without a further order from the Court. Were she to do so, she would be at risk. It will, of course, also be open to the Trustees to apply for an order preventing such disclosure to the Second Plaintiff and restricting access by the parties to the main proceedings to the Relevant Terms. I must say, however, that as a matter of first impression and subject to hearing proper argument on the point, it seems to me that the Plaintiffs are probably entitled to see documents disclosed in the proceedings to which they are a party at least absent an order preventing them from being able to do so (see GCR O.63, r.3 (3) and (4)) and that the Fifth Defendant may well be entitled to provide the Relevant Terms to the Second Plaintiff for the purpose of taking action to enforce the Injunction (the Second Plaintiff can probably be said to have a legitimate interest in the Notice of Motion and Summons and therefore in seeing the Relevant Terms as the party who obtained the Injunction and for whose benefit it was granted). However, I do not intend to decide these points, as they have not been properly raised or argued before me.
  
21. I am therefore content to approve the wording proposed by the Fifth Defendant subject to the following minor drafting changes (in red):

*“For the avoidance of doubt, insofar as the Relevant Terms are disclosed to the Fifth Defendant pursuant to paragraph 2 hereof she may not, without the permission of the court, rely upon them in any other proceedings (in any jurisdiction) nor provide them to any ~~third-party~~ other person save for the purpose of the proper conduct of these proceedings. For the further avoidance of doubt, this paragraph is not intended to prevent the Fifth Defendant from relying upon the Relevant Terms or the LFA in any other proceedings (in any jurisdiction) or from providing the same to any ~~third-party~~ other person, in all cases where and to the extent that ~~if and insofar as~~ they have been or are in future ~~may be~~ disclosed to the Fifth Defendant other than pursuant to paragraph 2 hereof.”*

### **The matters for determination at the next hearing issue**

22. The Fifth Defendant proposes the following wording:

- “11. Subject to paragraph 12 below, the Notice of Motion shall be heard at a hearing to be listed on the first open date convenient to the parties after 1 August 2022, with a time estimate of 1.5 days. The parties’ Leading Counsel shall attend in person and the hearing shall be robed. The Fifth Defendant and the Trustees shall agree a timetable for filing of skeleton arguments and bundles.*
- 12. Any determination of whether Orders are to be made pursuant to GCR Order 52 that the First and/or Ninth Defendants be fined on grounds that they have acted in breach of the Injunction shall be dealt with at a separate hearing after the court has determined whether the Fifth Defendant is entitled to the relief sought in paragraph 6 of the Notice of Motion or whether there has been any breach of the Injunction by virtue of the LFA (or any variation thereof) shall be adjourned until a separate hearing to take place after the hearing listed in accordance with paragraph 11 above.”*

23. The Trustees propose the following alternative wording:

- “11. Whether the Fifth Defendant is entitled to the relief sought in paragraph 6 of the Notice of Motion and/or whether there has been any breach of the Injunction by virtue of the [Litigation Funding Agreement] (or any variation thereof) shall be heard at a hearing to be listed on the first open date convenient to the parties after 1 August 2022, with a time estimate of 1.5 days. The parties’ Leading Counsel shall attend in person and the hearing shall be robed. The Fifth Defendant and the Trustees shall agree a timetable for filing of skeleton arguments and bundles.*
- 12. The remainder of the Notice of Motion shall be adjourned until the determination of the issue set out in paragraph 11 above.”*

24. At [65] of the judgment, I said as follows:

*“But I accept that the Trustees’ understanding and presentation of the impact of the Litigation Funding Agreement on the Injunction as shown by all the evidence relied on at the Champerty Application might be relevant to establishing their state of mind at the*

*time that the Litigation Funding Agreement was entered into and therefore may be admissible and relevant for the purpose of considering, if the Court determines that the Trustees acted in breach of the Injunction, whether the Trustees acted deliberately and what sanction should be imposed. But in my view, having regard to the overriding objective and the need to avoid incurring unnecessary costs, this is an issue which should only be dealt with if, and only after, the Fifth Defendant succeeds in showing that the Trustees have acted in breach of the Injunction. At that point, it will be necessary to consider further whether the evidence filed by the Trustees in the Champerty Application, beyond what has already been disclosed by the Trustees on this application, is admissible and relevant.”*

25. The Fifth Defendant argued that the whole Notice of Motion other than paragraph 7 (which, as is noted above, sought an order pursuant to GCR Order 52 that the Trustees be fined) should be before the Court at the next hearing. She accepted that the judgment envisaged dealing with the appropriate sanction for any breach of the Injunction after a determination had been made as to whether the Trustees were in fact in breach. But, the Fifth Defendant argued, the judgment did not direct that the only issue which should be determined at the next hearing should be the question of breach. She submitted that it was possible that at that hearing the Court would, in the event of and following a determination that the Trustees had been in breach of the Injunction, wish to make directions for disclosure, including of the documents referred to in paragraph 2 of the Notice of Motion. It would be wrong for the Court to be prevented from doing so by unduly limiting the parts of the Notice of Motion which will be effective and before it at the next hearing. There was no justification for restricting the matters before the Court at the next hearing entirely and exclusively to the question of breach. In addition, while the Fifth Defendant’s Leading Counsel had indicated at the hearing (as was confirmed by the drafting of the fifth recital to the draft order to which the Trustees had made no objection that “*AND UPON the Fifth Defendant having indicated through Leading Counsel that no application for the appointment of an interim Receiver was to be pursued at the hearing*”), the Fifth Defendant may wish to pursue that application (made in paragraph 4 of the Notice of Motion) at the next hearing.
26. The Trustees said that they did not seek to limit (at this stage) what issues and matters the Fifth Defendant might permissibly seek to raise in the future once the Court had given judgment after the next hearing (i.e. should the Court find at the conclusion of that hearing that a breach of the Injunction has been committed). All the Trustees were seeking to do was define with precision exactly what issues the Court will be determining at that next hearing.
27. The Trustees argued that following the judgment, the following claims for relief in the Notice of Motion (“*broad issues*”) remained outstanding:

- (a). did the Trustees breach the Injunction by entering into the Litigation Funding Agreement (or any variation thereof) and should the Court grant the declaration sought in paragraph 6 of the Notice of Motion? (*the First Issue*).
- (b). if the answer to the First Issue was yes:
- (i). should an order be made pursuant to GCR Order 52 (as sought in paragraph 7 of the Notice of Motion) that the Trustees be fined on the grounds that they are in breach of the Injunction ?
- (ii). should an order be made in the terms set out in paragraph 8 of the Notice of Motion (an order prohibiting the Trustees from borrowing further funds in their capacity as trustees of the Ypresto Trust, whether pursuant to the Litigation Funding Agreement or any variation thereof) ((i) and (ii) together *the Subsequent Issues*).
28. The Trustees submitted that only the First Issue should be live and determined at the next hearing. This would ensure that the scope of the issues for debate and decision at the next hearing were clear; that if the Trustees were successful on the First Issue, time and costs would not be wasted as the Notice of Motion could then be dismissed; that if the Trustees were unsuccessful on the First Issue, the Court would then have an opportunity to make (and the parties would be able to apply for) suitable directions for the filing of further evidence (and possibly for further disclosure), which could best be formulated and dealt with after judgment on the First Issue, and in the event that a further hearing was required, the parties would have the benefit in advance of the Court's judgment on the First Issue.
29. I agree with the Trustees on this issue. The approach and the form of order proposed by the Trustees seems to me to promote the efficient and cost-effective conduct of the proceedings and to be in accordance with the overriding objective. This is subject to one proviso. Paragraph 8 of the Notice of Motion includes an application for the appointment of receivers by way of final relief in the event that the Fifth Defendant succeeds on the First Issue. The Subsequent Issues must therefore include this application. I note that the Fifth Defendant indicated that she may wish to proceed at the next hearing with her application for the appointment of receivers by way of interim relief (pursuant to paragraph 4 of the Notice of Motion). I do not consider that this is open to her. Interim (or interlocutory) relief was the subject of the previous hearing and the Fifth

Defendant declined to proceed with or press the application for the appointment of receivers at the hearing. I do not see how it could be appropriate for her to proceed with that application at the next hearing (particularly in circumstances where her application for an interlocutory injunctions was dismissed).

30. Paragraphs 11 and 12 of the order shall therefore read as follows:

*“11. A further hearing shall be listed on the first open date convenient to the parties after 1 October 2022 for the purpose of considering and disposing of whether the Fifth Defendants application for a declaration is entitled to the relief sought in paragraph 6 of the Notice of Motion and/or whether there has been any breach of the Injunction by virtue of the [Litigation Funding Agreement] (or any variation thereof) shall be heard at a hearing to be listed on the first open date convenient to the parties after 1 August 2022, The hearing shall have with a time estimate of 1.5 days. The parties’ Leading Counsel shall attend in person and the hearing shall be robed. The Fifth Defendant and the Trustees shall agree a timetable for filing of skeleton arguments and bundles.*

*12. The remainder of the Notice of Motion shall be adjourned until the determination of the issue set out in paragraph 11 above.”*

31. I have referred to 1 October rather than 1 August since, recognising that we are now at the beginning of July and that the Relevant Terms have yet to be disclosed, and taking into account the impact of the forthcoming summer vacation, it seems to me, as the Trustees indicated, that there is no realistic prospect of listing the further hearing before October. The date by which the Trustees are to provide a copy of the redacted Litigation Funding Agreement (and any deed of variation) and their affidavit in support (currently 27 June) will also need to be amended. It seems to me that if the parties cannot agree a different date, 19 July 2022 would be appropriate.

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**The Hon. Mr Justice Segal**  
**Judge of the Grand Court, Cayman Islands**  
**8 July 2022**