

Judgment 21/2006 Wallbrook Trustees (Guernsey) Limited v Baxter (re Mrs Megan Baxter No. 2 Life Interest Settlement) – Royal Court (Civil Action File 564) – 20th April, 2006

Trusts (Guernsey) Law, 1989 – cross applications to permit retirement and replacement of trustees – retiring trustee’s applications for security for outstanding fees claimed – need to strike balance between protecting an applicant and avoiding injustice to a respondent – ruling on the sum to be lodged as security – substantive applications adjourned pending payment of the security

IN THE ROYAL COURT OF GUERNSEY

The 20th day of April, 2006 before Alan Robin Winston Hancox, Esquire, EGH, CBE, Lieutenant Bailiff; sitting alone.

In the matter of:-

WALLBROOK TRUSTEES (GUERNSEY) LTD

Applicant

v

DAVID BAXTER

Respondent

WHEREAS on the 20th day of April, 2006 the Lieutenant Bailiff considered cross applications under the Trusts (Guernsey) Law, 1989 for directions regarding the retirement of Trustees and having heard thereon Advocates M.G. Ferbrache and N.J. Barnes, Counsel for the Applicant and Respondent respectively, the Lieutenant Bailiff this day handed down judgment and gave directions in the terms attached hereto.

S. M. D. ROSS
Her Majesty’s Deputy Greffier.

IN THE ROYAL COURT OF GUERNSEY

ORDINARY DIVISION

Between:

Wallbrook Trustees (Guernsey) Ltd.....Applicant

And

David Baxter.....Respondent

Judgment.

1. These are Cross Applications for directions under the Trusts (Guernsey) Law 1989, for the same relief, namely that Wallbrook Trustees (Guernsey) Ltd (Wallbrook), who are the trustees of the Mrs Megan Baxter No 2 Life Interest Settlement, be permitted to retire and that Dr David Baxter be appointed in their place, upon the trusts and subject to the powers contained in the Settlement.

2. The Settlement was created by an instrument dated 15th January, 1996, the parties to which were the late Mrs. Megan Baxter, the Settlor and Wallbrook who were named therein as the trustees. The Power of Appointment is contained in Clause 15(1) of the Settlement Deed and provides, *inter alia*, that any person or persons named in the 6th Schedule thereto may appoint a new trustee to replace the trustee who wishes to withdraw or be discharged from the trusts thereof. Dr. Baxter and his issue are named as the beneficiaries in the 3rd Schedule. Dr. Baxter has three adult children, neither of which is joined as a party to these proceedings, but who are said to be represented, with Dr. Baxter (for whom he is on the Record), by Advocate Barnes.

3. Each party has annexed to its Application a draft Deed of Retirement and Appointment of a new Trustee. They are largely *ad idem* as regards its provisions save for Clause (4) of the Operative Part. In essence the differences that there are in the Draft Deeds submitted reflect the dispute over Wallbrook's fees for acting as Trustee of *this* Settlement. I emphasise that word because there is also a Megan Baxter No. 1 Settlement, the beneficiary of which is Mrs. Katherine Pusey, the deceased's daughter and sister to Dr. Baxter, over which there appears to be some dispute, as indicated in the correspondence file at folios 282 *et seq.* but as this was not covered in the arguments before me I regard it as *res inter alios acta* so far as this Court is concerned.

4. Although both Applications seek an Order that the Retirement and Appointment Deed is made 'in accordance with' the respective drafts attached to the Applications, I do not propose to address this issue immediately because the essence of the dispute at this stage is the security for their outstanding fees to which Wallbrook claim they are entitled.

5. In his address Mr. Barnes subjected the invoices raised by Wallbrook and the surrounding correspondence forming the Bundles of documents submitted to the Court to close scrutiny and analysis. He did so in order to establish that many of the items which had been ascribed to services carried out in respect of the No. 2 Settlement had in fact been wrongly appropriated thereto and were more properly regarded as rendered to one or more of the other related, but separate, entities, namely the No. 1 Settlement, AGB Investments Ltd, and the Bank Account with Kleinwort Benson—said to have been operated by the Trustees on her behalf during the deceased’s lifetime.

6. In response Advocate Mark Ferbrache, representing Wallbrook, submitted that it would be premature for the Court, at this stage, to enter into a detailed analysis in order to ascertain the rectitude or otherwise of the individual amounts claimed by Wallbrook for their fees, as the only live issue between the parties, as of now, is the amount of security, and therefore the degree of protection to which his clients are entitled. He argued that the payment in carries with it an acknowledgment by the beneficiaries that some security should, in principle, be ordered, and that therefore the only issue for decision is the *quantum* thereof.

7. Dr. Baxter has accepted that £21,340 is legitimately due in respect of Wallbrook’s fees and this amount was lodged in Court as security on 1st November, 2005. Mr. Barnes conceded that the Trustees would be entitled to a fee for administration, for instance by way of a standing charge, but says that since the transfer of the majority of the shares to Dr. Baxter, the work actually done by them, properly attributable to this Settlement, can only have been minimal. Consequently he says that the sum lodged provides ample security.

8. It seems to me that by the tenor of his address Mr. Barnes has effectively put in issue the contents of many of the Invoices and much of the correspondence in his Bundle. While I agree with the main thrust of Mr. Ferbrache’s submissions, and I am mindful of the danger of, in effect, conducting two trials, I consider I have no alternative but to consider the issues raised by Mr. Barnes on the Invoices *seriatim*. In general I will refer to the documents questioned by the pagination in the yellow Bundle, though I am aware that most, if not all, of them are matched in Collas Day’s large Bundle.

9. The sum claimed as security for Walbrook’s fees is now £117,186, having been reduced by Consent on the first day of the hearing from £166,250.50. The difference between the parties as to the *quantum* of fees properly chargeable to the administration of the No. 2 Settlement would thus appear to be £95, 846. The duty to surrender the trust property by an outgoing trustee is contained in Section 39 (1)(a) of the Law. Sub-paragraph (b) then provides:

“he may require that he be provided with reasonable security for liabilities (existing, future, contingent or otherwise) before surrendering the trust property.”

10. I am therefore satisfied that, on retirement, Wallbrook are entitled in law to reasonable security for their fees. It is necessary to bear in mind that from about eighteen months after the Settlor’s death on 6th March 2001, the

parties have not been on good terms. Moreover, the Settlement has no liquid assets other than a nominal sum in its account, and a minority shareholding (49%) in the Company known as AGB Investments Ltd.—the other 51% having been transferred to Dr. Baxter in July, 2002.

11. Consequently Wallbrook entertain certain apprehensions, which are epitomised by paragraph 23 of Mr. Ferbrache’s written submissions of 27th February, 2006, as follows:

“Dr. Baxter now proposes that he should become the trustee. Once appointed he could distribute the trust assets himself and/or one or more of the Children. None of the beneficiaries live in the jurisdiction. Alternatively the assets could be decanted into a new trust. Put simply there are a number of ways in which the enforcement of Wallbrook’s claim could be frustrated if adequate security is not provided in the full amount.”

12. As I have just said, and it is probably common ground, that, on retirement, Wallbrook are entitled in law to reasonable security for their fees. The issue I must now decide is:

‘What is reasonable security’

The Court always has to be careful, adopting one of the main principles in security for costs applications—which I regard as in many respects analogous to the present Application—is that the amount set by the Court must not be oppressive or unfair to the party from whom the security is required.

13. In this connexion I would refer to the case of Sir Lindsay Parkinson & Co Ltd [1973] 2 AER 273, in which, at pages 285-286, Lord Denning M.R stressed the necessity to guard against such an application being used oppressively, for example in order to stifle a claim. There is, of course, no issue here of Dr. Baxter wishing to get access to the Courts—very probably the reverse—but an excessive order could result in him being saddled with a trustee which is not in the fundamental interests of either party.

14. Nevertheless the Sir Lindsay Parkinson case is helpful as to the general attitude of the Courts in security cases, which was admirably stated by Mars-Jones J. on the first appeal from the Master, at page 280, that the Court:

“..is always mindful of the possibility that an order for security can become a weapon of oppression available to the strong to prevent the weak from getting access to the courts or the arbitrator to have their claims properly adjudicated according to law.”

15. The first of the specific documents to which Mr. Barnes invited the Court’s attention is the Fax dated 3rd July, 2002. Although it emanates from the Accountants, Deloitte & Touche, Wallbrook’s name appears in the top left hand corner of this document, the contents relate to administration fees and it is signed by Mr. Tustin on Wallbrook’s behalf. Mr. Barnes submits it is self-evident from this account that of the total of the invoices raised, namely £18,220, £12,550 relates to AGB investments Ltd and only £5,670 to the No 2 Settlement.

16. According to Mr. Barnes, this sum was paid in full by Dr. Baxter, and it would appear from folios 78, 79 and 80 that this was the consideration for the transfer of 51% of the shares in AGB to him, as acknowledged in his letter of the 19th July of that year (folio 82). He was already a Director by then, as shown by the earlier letter at page 79. Dr. Baxter did not raise any objection at that time to paying the £12,550 which related to AGB.

17. I next turn to page 86 of Mr. Barnes' Bundle, an invoice dated 18th December, 2002, for:

“Professional Services rendered in connection with various enquiries regarding the estate of the late Mrs. Baxter.
£14,200”

I agree with Mr. Barnes that as the Deed of Settlement was executed on 15th January, 1996, and Mrs. Baxter died over five years later, and her estate would not have been administered until after the grant of probate or letters of administration, this invoice could have had little relevance to it in the context of the present Application.

18. Before considering the invoices queried by Mr. Barnes in further detail, I have to say that the thread of his submissions has sometimes been difficult to follow, as several of the documents in the yellow bundle are repetitive and not in sequence or datal order. For instance at folio 92 Invoice No. 7711/01011458 of 19th December, 2002, for £750 for preparation of accounts for the year ended 31st December, 2001, appears also at page 97 with an accompanying remittance advice at 98. It forms item 3 in the e-mail from Mr. Bryan Dix to M/ Louise Le Prevost of 8th January, 2003. Similarly Invoice 7711/0101446 of the preceding day for a like amount appears at folios 70, and 74, and No. 010996 (folio 111) is repeated at folio 117.

19. With regard to the unnecessary duplication of documents, I set out this extract from the guidelines stated by Southwell J.A in Tracey & 12 Others v. Seed International Ltd [2003] Court of Appeal (Guernsey) Case 341 at page 28:

“The aim of all parties should be to ensure that each relevant document should appear once, and once only, lodged with the Greffe and delivered to the other parties.”

The emphasis is by Southwell J.A.

20. It is convenient to consider the next two items in tabulated form, as follows:

| <u>Date</u> | <u>Description of Services rendered</u> | <u>Amount raised</u> | <u>Comments</u> |
|------------------|---|------------------------------|--|
| <u>2002</u> | | | |
| (i) 18 December. | Services rendered in connection with queries raised by Br. Baxter | £21,340 [folios 90 & 147] | This equals the sum paid into Court in 2005. |
| <u>2003</u> | | | |

| | | | |
|---------------|--|--------|--|
| (ii) 12 April | Administration services for the quarter ended 31 March 2003. | 14,900 | Rendered to 'Mrs. M. Baxter No 2 Life Int Set' |
|---------------|--|--------|--|

21. I pause here to note that that to which Mr. Barnes referred as the 'running total' of Wallbrook's charges at this stage amounts to £36,240 (reflecting the above items). There is a discrepancy of £700 between this and the invoice mentioned in Mr. Ferbrache's Draft letter of 26th March, 2003 (folio 152), in which the services rendered to Dr. Baxter are stated to be in his capacity as executor of the estate of the late Mrs. Megan Baxter.

21. On the 19th April, 2003, Dr Baxter complained that he had received fee notes totalling £47,700 through Messrs. Collas Day. He pointed out that, according to his understanding, the arrangement at which the parties had arrived the previous summer (which included the transfer of the 51% AGB shareholding to him) there could have been no activity meriting charges from Wallbrook in respect of the minority holding which the trust retained. This provoked a reply from (folio 176-177) which shows a breakdown of the fees charged by Wallbrook and which Mr. Barnes analysed in some detail.

22. Quite clearly the first and last items, for £14,200 and £21,340 respectively, are a restatement of the fees presaged in the e-mail duplicated at folios 89 and 91. Taking this a stage further, the worksheets following Invoice 7711/0101447 (folio 86), which matches the first item in the e-mail, contain a detailed record of the charges for the professional services said to have been rendered in respect of a list of 14 items in folio 87, and of 38 items in folio 88, the period on the former beginning on 4th April, 2002. These lists are not self-explanatory, neither can they be matched easily with one another.

23. Even if all the totals shown at folios 87 and 88 are aggregated, they do not agree with the amount rendered in Invoice 7711/0101447 to which they purport to be appurtenant. On examination I can only discern two items which refer to No. 2 Settlement, one for £60 for 'discussions with Ben re payment of Collas Day fees.....Reviewed Baxter No.2), and the other for £240 for 'meeting with Dr. Baxter re court application & distribution f(r)om No.2 Sett:'. I therefore tend to agree with Mr. Barnes that as the Invoice itself clearly states 'for services rendered in connection with queries regarding Mrs. Baxter's estate' that Wallbrook's fees of £14,200, primarily relate to the Settlor's estate and not to the Settlement in question.

24. The next item to which Mr. Barnes drew attention is at folio 165, the Invoice for £1,150 of 17th July, 2003. This is stated to be in respect of the No. 2 Settlement. Yet on the following page the total of the items charged in the breakdown of Invoice No 7711/10102709, is for £1,144. It includes an item billed for a telephone conversation with Mrs. Pusey, Dr. Baxter's sister, for £170. Mr. Barnes said it is self-evident that that relatively small sum should have been charged to the No.1 Settlement and not to the No.2 settlement.

25. I have considered the following invoices which were also queried by Mr. Barnes. Taking them in date order, they are:

| <u>Date</u> | <u>Description of Services rendered</u> | | | | <u>Amount charged</u> |
|-----------------------|---|---|---|-------------------------------|-----------------------|
| 2003 | | | | | £ |
| 27 October | Administration services for the quarter ended 30 th September 2003 | | | | 3,300 |
| 2004 | | | | | |
| 17 July | " | " | " | " 30 th June 2004 | 4,350 |
| 27 October | " | " | " | " 30 th Sept: 2004 | 1,459.50 |
| 2005 | | | | | |
| 27 April | " | " | " | " 31 st March 2005 | 1,446.50 |
| 26 July | " | " | " | " 30 th June 2005 | 1,200 |
| 24 October | " | " | " | " 30 th Sept: 2005 | 1,182.50 |
| 2006 | | | | | |
| 19 January | " | " | " | " 31 st Dec: 2005 | <u>3,425.50</u> |
| Total: £16,364 | | | | | |

26. The foregoing invoices are clearly headed in the Mrs Baxter No. 2 Settlement, and all except three are, if not similar, for comparable, amounts. With regard to the other sums, the sequence appears to suggest that the Invoices for the 27th October, 2003, and for 19th January, 2006, are each in respect of two quarters. The invoice dated 17th July, 2004, would suggest that it is in respect of three quarters. Therefore the conclusion that springs to mind is that they all reflect a regular charge. For the purposes of this Application only, I propose to regard the invoices listed above as representing standing charges.

27. As I said, Mr. Barnes conceded that even if there existed only minimal administrative work to be done, Wallbrook would still be entitled to a basic fee, in common with many organisations where a portfolio is involved. But, Mr. Barnes asks, 'Are any of these invoices indicative or representative of a standing charge, and if so why was his client not informed in advance that Wallbrook would be raising a standing quarterly charge?'

28. Mr. Barnes' main argument on this aspect, as was Dr. Baxter's in April, 2003, at Folio 175, however, is that once the Trustees remained with only a minority shareholding in AGB, the Settlement's only tangible asset, what administrative services remained for Wallbrook to render? Moreover, if the invoices I have just set out do represent regular quarterly standing charges how does this sit with the 'provision' for Trustees made on the 22nd December, 2003?

29. When I asked Mr. Barnes, during the course of his replying submission on the 4th May, to identify those invoices which he regarded as properly representing a standing (and therefore, from his point of view, for the purposes of this security application, but not necessarily otherwise, legitimate) charge, he replied that he would so regard folio 307 of 30th November, 2005. By the same token therefore, it is a reasonable inference Mr. Barnes would say that the 'Provision of trustees for the year ended 31st December, 2004' (folio 203) can be similarly treated, for both documents are advance charges for the following calendar year.

30. With respect I do not agree with this view. In my opinion there is a clear distinction between a provision *de futuro* for expenses and a fee actually incurred for administration of a trust, even though it may legitimately be said that in practice scant activity was involved for the period in question.

31. It seems to me that the only way the Court can possibly arrive at a reasonable conclusion on this aspect is to treat the invoices occurring regularly and subsequently to Dr. Baxter's protest of the 19th April, 2003, (whatever may eventually transpire as the factual position at a later stage of the case) as representing standing charges for administering the trust, normally rendered quarterly, but occasionally over a longer period.

32. This brings me to the set of documents at folios 220 to 227 referred to by Mr. Barnes in his first address. They begin with another Draft letter from Mr. Ferbrache of which the fair copy is dated 11th May, 2004, and included at 226 and 227. Its tenor is similar to the earlier Draft which was presumably sent on or about 31st March, 2003, save that in the earlier letter the substitution of Richmond as trustee was proposed, and in the second the Settlement No 2 fees have increased from £3,200 to £24,540. Both refer to the possibility of an ADR resolution of the dispute.

33. Although this group of documents, that is to say the letter of 11th May, 2004, and the surrounding correspondence at folios 220 to 225, were all made in relation to a potential resolution of the dispute, which never materialised (one reason being, as Mr. Ferbrache informed the Court, that Richmond Corporate Services Ltd had declined to accept the appointment as trustee) nevertheless there is on record an open letter to Advocate Barnes that Wallbrook's fees for administering the No 2 Settlement, as at 11th May, 2004, and as distinct from the fees then attributable to AGB, amounted to £24,540.

34. While in his reply Mr. Barnes did refer to the continuing dispute over the fees, he did not dissent from the figure stated in Mr. Ferbrache's letter. In effect he confined himself to the interpretation of the draft Clause 4 and to the governing law. As the Advocates were in regular correspondence it is reasonable to assume that if Dr. Baxter objected to that figure at that time, he would have so instructed Mr. Barnes. I therefore propose, for the purposes of this ruling only, to treat it as a starting point for the purpose of calculating the *quantum* of security which should be ordered at this stage of the case.

35. Turning to the issue regarding the Adjudication between Higgins City Ltd, AGB and Wallbrook, which is the subject of the Notice of Adjudication and the Referral Notices of the 6th and 13th May, 2004, respectively, this related to a building contract for the remodelling and refurbishment of a property known as the Queen's Head Public House in London.

36. In his reply Mr. Barnes suggested that because Wallbrook were a party to the contract and to the dispute in their capacity as Trustees of the No. 2 Settlement, and as the final paragraph of Mr. Ferbrache's letter of the 11th May (not included in the earlier Draft at folio 220) introduced the letter from Higgins' solicitors, somehow the work carried out by Wallbrook included that relating to the adjudication. He submitted that this was incorrect and that there should be a further reduction, *pro tanto*, in this respect.

37. I have taken on board all Mr. Barnes' contentions regarding the invoices included in the respective bundles. At the same time I am conscious of the risk, emphasised by Mr. Ferbrache, that to delve too deeply into the validity of the individual documents could lead to, or be interpreted as, findings of fact, in relation thereto, which are properly for the jurats in due course and thus *ultra vires*. Doing the best I can on the figures I have endeavoured to summarise, it seems to me that I should, for the purposes of this Application only, regard the £24,540 referred to in paragraph 33 above as relating to the No. 2 Settlement.

38. I reject Mr. Barnes' contention that the two Invoices at 203 and 307 should be treated as representing standing charges, for they would appear to constitute provision for the following year's expenses. But in view of that which I have said at paragraphs 26 and 31 above, I regard the total of the invoices listed in paragraph 25 as *prima facie* representing standing charges, and therefore, as falling within Mr. Barnes' concession in that respect.

39. As I have indicated above, it may turn out, on later evidence, that this is an incorrect view, but I consider it is legitimate to take them into account in assessing a reasonable figure for security at this stage. These two heads give a total of £40,904. It might be suggested that I should take into account for this purpose the £21,340 already paid in. But I do not think I should do so in view of Mr. Barnes' clear indication that that was specifically in respect of the Invoice at folio 90, and repeated with a different addressee at 147 (which also appears in TAB K of Collas Day's Bundle).

40. I turn, finally, to deal with the contention that the Settlor/Testatrix was possibly of unsound mind either when the Deed of Settlement was executed and/or subsequently. This first appears in the correspondence at Folio 123, when, on 19th November, 1993, Dr. Baxter wrote, *inter alia*, as follows:

“Mother has been failing to pay in rebates from the States Electricity, etc., however, so it is apparent that with her increasing frail(i)ty and confusion she is less and less able to look after her own affairs.”

41. The suggestion surfaced again nearly nine years later when Dr. Baxter communicated with Messrs. Carey Langlois (as they then were) on the subject of the other Settlement, as follows:

“You say M.B. independently took the decision to settle certain of these assets on two new trusts, but, even if she had the right as a simple beneficiary, I know full well, and two witnesses will testify that Mrs. Baxter did not know what day it was at that time and, never had any part in the family finances, was not competent to start making decisions of that nature at the age of 81.”

Further on he says:

“In March ’96 with her mental capacity having finally given out, (and one can see the deterioration of her signature on official documents) I came to live at Les Cherfs to my mother’s apparent joy.”

42. It was accepted by Counsel that Wallbrook did not become aware of this suggestion until the November of 2003. Mr. Barnes raised the matter on 15th October, and Mr. Ferbrache asked in his letter of 7th January, 2004, reasonably as I think, to be informed as to the basis or material facts in support of the allegation of incapacity, and the date thereof. .

43. It can be noted that March of 1996, the time when, according to Dr. Baxter, his mother’s mind had finally given out, was barely two months after the Settlement was signed. It cannot be gainsaid that Dr. Baxter was aware of the legal consequences that might ensue if the late Mrs. Baxter had suffered from incapacity at the material time.

44. In my view, if the issue was to be seriously pursued, the information which Mr. Ferbrache sought, which might have included some medical evidence, should have been forthcoming. Yet there has been no reply to that letter. In my judgment it is too late for this issue to be raised at this stage, and I doubt whether, in any event, it would have much bearing on the issue I now have to decide, namely the *quantum* of security for Wallbrook’s fees.

45. I take the view that I should take into account similar considerations on an application of this nature as on a defendant’s Application for security for costs. In relation to this I cannot do better than cite Lightman J. in Oded Moshe Levvand v. Amnon Barasch and Others [2000] High Court 15th February, which was a decision at first instance. The case concerned a partnership between the claimant and the first defendant in the field of property development, the claim being for a declaration as to which developments were partnership ventures and for a partnership share therein or a *quantum meruit*. He was resident in Israel. At paragraph 6 of the judgment, Lightman J. said:

“.....the practice of the courts has now fundamentally changed.....the simple and single criterion for ordering security is what is just in the circumstances of the particular case.

46. Returning for the moment to the figure I stated in paragraph 39, on an application for security for costs the Court always has to be conscious of

the competing principles of protecting an applicant and avoiding an order which would work injustice to a respondent. As I see it, my duty is to endeavour to strike a balance between them. Although it related to a company matter under section 447 of the Companies Act 1948, and the Court was obliged to bear in mind the language of the section, I nevertheless consider that these competing principles were so well stated by Megarry V-C in Pearson v. Naydler [1977] 1 WLR899 at page 906 F to H that I propose to set them out here:

“It seems plain enough that the inability of the plaintiff company to pay the defendant’s costs is a matter which not only opens the jurisdiction, but also provides a substantial factor in the decision whether to exercise it. It is inherent in the whole concept of the section that the court is to have power to order the company to do what it is likely to find difficulty in doing, namely, to provide security for costs which ex hypothesi it is likely be unable to pay. At the same time the court must not allow the section to be used as an instrument of oppression, as by shutting out a small company from making a genuine claim against a large company.”

In the instant case I would apply those final words as requiring me not to assess the security at a level which would prevent Dr. Baxter from pursuing his just rights, which would include challenging the evidence as regards the Invoices which are included in the Bundles of documents submitted.

47. With all the foregoing in mind I consider the figure I stated in paragraph 39 hereof, £40,904, would be too high in all the circumstances of this case, remembering that Dr. Baxter has already paid £21,340 into Court. Bearing in mind the legitimate fears of the Applicant, as expressed in Mr. Ferbrache’s letter of the 6th July, 2004 (folio 282), namely:

“We are concerned that Dr. Baxter, who is apparently in the process of moving to Spain, may attempt to’ [improperly] ‘remove assets from the jurisdiction, particularly Estate money held in various bank accounts.”

in my view an amount which would be just in all the circumstances of this case to order under paragraph 2 of the Application dated the 26th January, 2006, is a further £37,500 by way of security for Wallbrook’s fees. I should say that in the quotation above I have put the suggestion of impropriety in parenthesis so as to indicate that, at this stage, the Court is not in a position to say whether or not any particular action of either party is, or is not, reprehensible.

48. The form of the security, and the date by which it should be furnished may be agreed between Counsel, and, in default of such agreement there shall be liberty to apply to the Court.

49. I adjourn paragraph 1 of Wallbrook’s Application, and the Application dated 1st November, 2005, until after security has been provided.

50. Orders accordingly.

**A.R.W.Hancox
Lieutenant Bailiff
10th May 2006**

