

**Judgment 49/2006**

**HW Trust Company Limited (as Trustees of the Fortis Aviation Group Employment Benefit Trust) v Cunningham – Royal Court (Civil Action File 1009) – 19<sup>th</sup> October 2006**

---

**Trusts (Guernsey) Law, 1989 – respondent’s application for disclosure – statutory duty of trustee to give information – factors to be taken into account in exercise of judicial discretion**

**IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY**

The 19<sup>th</sup> day of October, 2006 before Richard John Collas Esquire, Deputy Bailiff, sitting alone.

**H W TRUST COMPANY LIMITED** (Applicant)  
**(As Trustees of The Fortis Aviation Group Employment Benefit Trust)**

v

**ANDREW CUNNINGHAM** (Respondent)

**IN THE MATTER OF  
THE FORTIS AVIATION GROUP EMPLOYEE  
BENEFIT TRUST**

Where as on 19<sup>th</sup> October 2006 the Deputy Bailiff considered an application by the applicant for declaratory relief in respect of the disclosure duties of the trustees of THE FORTIS AVIATION GROUP EMPLOYEE BENEFIT TRUST and a cross application by the Respondent for disclosure and having heard thereon Advocates C. H. K. Friedlaender and N. J. Barnes counsel for the Applicant and Respondent respectively, the Deputy Bailiff this day handed down Judgement in the terms attached hereto

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

Final Judgment  
19<sup>th</sup> October 2006

**IN THE ROYAL COURT OF GUERNSEY  
ORDINARY DIVISION**

**Between**

**H W TRUST COMPANY LIMITED  
(As Trustees of The Fortis Aviation Group  
Employee Benefit Trust)**

**Applicant**

-v-

**ANDREW CUNNINGHAM**

**Respondent**

**In The Matter Of**

**THE FORTIS AVIATION GROUP EMPLOYEE  
BENEFIT TRUST**

**Judgment handed down: 19 October 2006**

**Before: Richard John COLLAS Esq., Deputy-Bailiff**

Advocate for Applicant: Advocate C H K Friedlaender  
Advocate for Defendant: Advocate N J Barnes

**Cases, texts & statute referred to:**

- 1) The Trusts (Guernsey) Law 1989, Sections 22 and 33
- 2) Alan Stuart-Hutcheson v Spread Trustee Company Limited, Guernsey Court of Appeal 15 July 2002
- 3) O'Rourke v Darbyshire (1920) A.C. 581
- 4) Hartigan Nominees Pty Ltd v Rydge (1992) 29 NSWLR 405
- 5) Schmidt v Rosewood Trust Ltd [2003] 2 AC 709
- 6) Re the M & L Trusts Nearco Trustee Company (Jersey) Ltd v AM and Others [2003]JRC002A
- 7) Re Lemos Trust Settlement [1992-93]CILR 26
- 8) Foreman and Others v Kingstone and Others 6ITELR 841

1. On 29 December 1998, an Employee Benefit Trust known as The Fortis Aviation Group Employee Benefit Trust (“the FAG EBT”) was established by The Fortis Aviation Group Limited. That company later changed its name to Prop Jet Limited and has throughout these proceedings been referred to as “Prop Jet” and I shall so refer to it in this judgment.
2. Prop Jet was owned by two brothers, Andrew Cunningham (“the Respondent”) who owned 45% and Jack Cunningham who owned the remaining 55%. Both were directors of Prop Jet. Jack was responsible for the day to day management and conduct of the affairs of Prop Jet whilst his brother played a less active role. Sadly, the brothers fell out and these proceedings are the third set of litigation instituted by the Respondent.
3. The principal asset of the FAG EBT is, or was, a company, Springforth Investments Limited (“Springforth”) which owns a property in California known as 41 Blue Lagoon, Laguna Beach, California (“the California property”).
4. A brief chronology and summary of some of the key events is as follows:-
  - (a) The FAG EBT was established on 29 December 1998.
  - (b) On 24 May 1999, Springforth purchased the California property.
  - (c) In April 2002 Prop Jet sold its entire business to a company know as Focus Limited (“Focus”). Twelve of the thirteen employees and directors of Prop Jet at that time became employees of Focus. The Respondent was the only person who did not become an employee of Focus.
  - (d) In May 2002 the Respondent and another issued proceedings in California against Prop Jet, Springforth and another company (“the California proceedings”). The fifth cause of action in those proceedings was an application by the Respondent for a declaratory order against Springforth and Prop Jet that the California property was held by Springforth for the benefit of the Respondent and an order that it be transferred to him as part of the distribution of the assets of Prop Jet. In the sixth cause of action, the Respondent alleged that the Californian property was held on resulting trust for him pursuant to an agreement that it would be considered part of his retirement scheme.
  - (e) In February 2003, the Respondent issued a petition in the High Court of Justice Chancery Division Companies Court under provisions of the Companies Act (“the UK proceedings”). He sought orders against Jack Cunningham and Prop Jet that, inter alia, Prop Jet and Jack Cunningham disclose financial and other information to him; that Jack Cunningham be ordered to purchase his shares in Prop Jet at a fair value, to be determined by the Court or, alternatively, that Prop Jet be wound up, it being just and equitable so to do.

- (f) On 9 October 2003 the trust deed constituting the FAG EBT was varied so as to include in the class of beneficiaries dependent cohabitantes of directors and employees.
- (g) Also on 9 October 2003 the shares in Springforth were transferred to a sub-trust of the FAG EBT (according to a letter dated 20 September 2004 from Carey Olsen to Advocate Harris of Babbe Le Pelley Tostevin who was then acting for the Respondent). This is apparently recorded in the balance sheet of the FAG EBT for the year ended 31 December 2003 which records a distribution in the sum of £495,403.
- (h) The Respondent withdrew the Californian proceedings in about January 2004 or shortly thereafter.
- (i) On 5 May 2004, Prop Jet was placed in compulsory liquidation.
- (j) On 14 May 2004 the Respondent, through his then Advocates, wrote to the Applicant requesting, inter alia, full and accurate information as to the state and amount of the property of the FAG EBT.
- (k) On 28 May 2004, the Applicant replied with a copy of the accounts covering the period from 29 December 1998 to 31 December 2001, together with the trial balance showing the assets then held in the trust fund and stating that accounts for the period 1 January 2002 to 31 December 2003 would soon be prepared. Since that date further correspondence has been exchanged which I do not need to review in detail. The outcome is that the Respondent has not been satisfied with the information disclosed to him and, as a result, the Applicant has considered it necessary to bring this application to the Court for directions.
- (l) The Respondent has brought a cross-application in similar terms.

## The Law

5. The statutory duty of a trustee to give information is to be found in Section 22 (1) of The Trusts (Guernsey) Law 1989 as amended (“the 1989 Law”):-

22. *“(1) Subject to the terms of the trust, a trustee shall, at all reasonable times, at the written request of any beneficiary (including any charity named in the trust) or of the settlor, provide full and accurate information as to the state and amount of the trust property.”*

6. We are not concerned with Section 22(2) as the FAG EBT was created after commencement of the law.

7. Section 33 provides that a trustee is not obliged to disclose details of its deliberations:-

33. *“A trustee is not (subject to the terms of the trust and to any order of the court) obliged to disclose documents which reveal –*

- (a) *his deliberations as to how he should exercise his functions as trustee;*
- (b) *the reasons for any decision made in the exercise of those functions;*
- (c) *any material upon which such a decision was or might have been based”.*

8. The right under Guernsey Law of a member of a discretionary class of beneficiaries to receive information concerning the trust property was considered by the Guernsey Court of Appeal in Alan Stuart-Hutcheson v Spread Trustee Company Limited 15 July 2002. The Court of Appeal reviewed the position under English law and said, in paragraph 14:-

*“14 Under English law beneficiaries, including discretionary beneficiaries, have a right, within limits, to receive information from the trustee in relation to the affairs of the trust. The basis of that right has been said to arise either because the beneficiary has some form of proprietary right in respect of trust documents or because the trustee has a duty to account to the beneficiaries in respect of his stewardship of the assets of the trust”.*

9. Having reviewed O’Rourke v Darbyshire (1920) A.C. 581, and the Australian case of Hartigan Nominees Pty Ltd v Rydge (1992) 29 NSWLR 405, Judge of Appeal Christopher Clarke QC said at paragraph 16:-

*“16 There is, to my mind, no antithesis between these two approaches. In essence the duty of the trustee to provide information about the trust and its assets arises from the obligations of a trustee towards the beneficiaries of the trust that are inherent in the concept of trusteeship. These include an obligation to hold and dispose of assets for the benefit of the beneficiaries in accordance with the terms of the trust and to account to the beneficiaries for his stewardship of them. Even the so called proprietary right in respect of trust documents arises, as Lord Wrenbury said “because they are trust documents and because he is a beneficiary”. They are only “in a sense” his own. In the case of discretionary beneficiaries without any vested interest in the trust property it is difficult to see how documents or information belonging to the trust are in any sense his own. Any entitlement on their part to information arises because of the duty of a trustee to account to the beneficiaries, including discretionary beneficiaries, for what he has done in relation to the trust assets”.*

10. At paragraph 18 he said:-

*“18 I have no doubt that, as a matter of principle, a beneficiary of a trust has a right to information from the trustees as to the assets of the trust and their manner of dealing with them. ....*

*A discretionary beneficiary, at any rate if he belongs to a limited class, as in most family trusts, has an interest in having the trust observed by virtue of being a permissible object of the Trustee's discretion. This gives him a similar interest in receiving an account of the unappointed assets as any other kind of beneficiary. It may be highly material for a discretionary beneficiary to know what has happened to the trust fund, not least because the size and nature of the assets of the trust may be relevant to whether any share in them should be appointed to him”.*

11. He concluded that:-

*“25 Accordingly, in my judgement, prior to the enactment of the Trusts Law, non-vested discretionary beneficiaries of a Guernsey trust had, under Guernsey customary law, a right to see documents of the trust and to receive information about the trust and its assets commensurate with that enjoyed by such beneficiaries under English law”.*

12. Clarke J A then went on to consider what is the effect of the 1989 Law and stated in paragraph 32:-

*“32....To the extent that the Trusts Law modifies the principles of English trust law, those principles must, of course take effect as modified. But there is nothing in the Trusts Law that purports to take away any existing rights of non-vested discretionary beneficiaries to information. On ordinary principles it should be presumed not to do so in the absence of clear provision to that effect. There is no such provision”.*

13. In paragraph 35 of the Judgment, Clarke J A considered the ambit of section 22(1) and held the section does not distinguish existing documents from other information, saying:-

*“Compliance with the duty to provide full and accurate information on the state and amount of the trust property may require the production of existing documents, or fresh information, or both. Nor is information as to the state and amount of the trust property to be limited to the state and amount of the trust property at the time of the request”.*

14. In paragraph 37 of the Judgment Clarke J A considered the Appellant's request for documents appointing or regarding the appointment of the trust property to beneficiaries and held that the Appellant was entitled to see such material.

15. The right of a beneficiary of a discretionary trust to seek disclosure of trust documents was considered by the Privy Council on appeal from the Staff of the Government Division of the Isle of Man in *Schmidt v Rosewood Trust Ltd [2003] 2AC 709*. Their Lordships reviewed a number of English and Commonwealth decisions, but were not referred to the Guernsey case of *Stuart-Hutcheson*.

16. The conclusion in *Schmidt* is (at p. 734E):-

*“[66] Their Lordships have already indicated their view that a beneficiary's right to seek disclosure of trust documents, although*

*sometimes not inappropriately described as a proprietary right, is best approached as one aspect of the court's inherent jurisdiction to supervise, and where appropriate intervene in, the administration of trusts. There is therefore in their Lordships' view no reason to draw any bright dividing line either between transmissible and non-transmissible (that is, discretionary) interests, or between the rights of an object of a discretionary trust and those of the object of a mere power (of a fiduciary character). The differences in this context between trusts and powers are (as Lord Wilberforce demonstrated in *In re Baden* [1971] AC 424,448-449) a good deal less significant than the similarities. The tide of Commonwealth authority, although not entirely uniform, appears to be flowing in that direction.*

*[67] However the recent cases also confirm (as had been stated as long ago as *In Re Cowin* 33 Ch D 179 in 1886) that no beneficiary (and least of all a discretionary object) has any entitlement as of right to disclosure of anything which can plausibly be described as a trust document. Especially when there are issues as to personal or commercial confidentiality, the court may have to balance the competing interests of different beneficiaries, the trustees themselves and third parties. Disclosure may have to be limited and safeguards may have to be put in place. Evaluation of the claims of a beneficiary (and especially of a discretionary object) may be an important part of the balancing exercise which the court has to perform on the materials placed before it. In many cases the court may have no difficulty in concluding that an applicant with no more than a theoretical possibility of benefit ought not to be granted any relief".*

17. In *Stuart-Hutcheson*, the Guernsey Court of Appeal held that the principles of English trust law would not be applicable in Guernsey where they are inconsistent with some provision of Guernsey customary or statute law. I therefore conclude that the principles established by the Privy Council in *Schmidt* are applicable in Guernsey, subject to the provisions of Section 22 of the 1989 Law. In other words, a beneficiary has the right to ask the Court, in the exercise of its inherent jurisdiction to supervise trusts, to order the disclosure of trust information or documents and also an entitlement as of right to receive information as to the state and amount of the trust property under Section 22. The Section 22 right is expressed to be subject to the terms of the trust. In practice, Section 22 is commonly excluded under the express terms of the trust deed and, where it is excluded, the beneficiary's only entitlement to trust documents will be at the discretion of the Court pursuant to the principles in *Schmidt*. Disclosure is also subject, of course, to the provisions of Section 33 of the 1989 Law.
18. Advocate Friedlaender, appearing for the Applicant trustee, argued that disclosure may be refused on the grounds of confidentiality, hostility or commercial sensitivity. He placed great emphasis on the second of those grounds and argued that the Respondent is seeking disclosure in order to attack the validity of the FAG EBT.

19. The original definition of the beneficiaries of the FAG EBT in paragraph 1 of the Trust Deed was *“the directors, former directors, other employees and former employees from time to time of [Prop Jet] and the wives, husbands and widows, widowers, children, step-children, adopted children and the spouses and former spouses (whether or not re-married) of such children and remoter issue of all such”*. (The definition was later amended to include dependent co-habitees). The FAG EBT was set up to benefit employees and their families in order to reward and motivate the employees and to provide incentives for better performance on their part. Advocate Freidlander submits that the Respondent was well aware of the purposes for which the FAG EBT was established as he was present by telephone at the meeting of the board of directors of Prop Jet when the purpose of the FAG EBT was explained to them and the directors resolved to proceed with the establishment of it.

20. In his first affidavit sworn in these proceedings (paragraphs 4 and 5) the Respondent said:-

*“4. The FAG EBT was set up with the advice of the company’s accountant as a tax efficient means of providing benefit for myself and my brother, Jack Cunningham, out of the profits of Prop Jet...”*

*5. As far as I am aware, the only benefits that other employees of Prop Jet have received from the FAG EBT were the use of the properties owned by it and the use of vehicles purchased by it”.*

What he described is consistent with the express terms of the FAG EBT.

21. However, in the California proceedings issued by the Respondent he pleaded (in para 11) that:-

*“the property on Blue Lagoon would be held by Defendant Springforth as a resulting trustee for the benefit of Plaintiff Cunningham as a further part of his retirement scheme”.*

22. In the UK proceedings, it was pleaded on behalf of the Respondent that Jack Cunningham represented to him that the acquisition of the California property was for the purpose of providing a further source of funds for the provision of a pension for the Respondent.

23. Furthermore, in paragraph 3 of the Skeleton Argument lodged by him in these proceedings, the Respondent stated that the dispute is not solely or even mainly about the FAG EBT, but about the division of the assets of Prop Jet.

24. Mr Friedlaender argues that this demonstrates the Respondent’s hostile intent and points out that in correspondence between the legal advisers, the Respondent has refused to disclose the purpose for which the information is required.

25. Advocate Friedlaender submitted that because the Respondent is seeking to attack the validity of the FAG EBT he should not be entitled to the information. He relied upon the Jersey case of *Re the M & L Trusts Nearco Trustee Company (Jersey) Ltd v AM and Others [2003]JRC002A* reported at 5 ITELR 656. The

Jersey Royal Court said it was sitting as an administrative court to give directions to a trustee as to whether or not it should be directed to take part in proceedings in Illinois. Essentially, the Illinois proceedings had started as a dispute over child maintenance but had developed into a challenge to the validity of two trusts established in Jersey, governed by Jersey law and administered in Jersey by a Jersey based trustee. The Jersey Royal Court directed itself that its duty was to act in the best interests of the beneficial class as a whole (para 16).

26. A similar approach appears to have been adopted by the Grand Court of the Cayman Islands in *Re Lemos Trust Settlement [1992-93]CILR 26* where certain beneficiaries had instituted proceedings in the Greek courts seeking to set aside a Cayman Island settlement. The beneficiaries sought an Order from the Cayman Island Court that trustees should be ordered to disclose trust documents to them. The Court refused to grant such an order on the basis that it was not in the interests of the trust as a whole for documents to be provided in order for them to be used in proceedings elsewhere attacking the validity of the trust. (I only have a brief report available and I am grateful to Deputy Bailiff Birt for his analysis of the case in *Re the M and L Trusts*).
27. In the present case, I accept that where I have a discretion to exercise, I should take account of the interests of the beneficial class as a whole. I so direct myself without needing to reach any conclusion as to whether the Respondent is acting against the FAGEBT in bad faith and without having to decide whether his motives in seeking disclosure are to use that information for the purpose of attacking the validity of the FAG EBT.
28. Advocate Friedlaender argues that information regarding the FAG EBT is confidential as it arises out of the employment relationship between Prop Jet and its directors and employees. I do not accept that as a valid reason to deny the Respondent access to the information. The business of Prop Jet has been sold and all the employees, other than the Respondent have transferred their employment to the purchaser. The definition of the class of beneficiaries of the FAG EBT includes former directors and employees of Prop Jet, but not directors or employees of its successor company who were not formerly employed by Prop Jet. Prop Jet is now in liquidation and has no current employees. The Respondent was a director of Prop Jet until it went into liquidation and in that capacity would have been entitled to have access to confidential information regarding the terms of employment of its employees.
29. Advocate Barnes, appearing for the Respondent, relied upon a recent decision of the High Court of Auckland in *Foreman and Others v Kingstone and Others 6ITELR 841*, which, in following the decision of the Privy Council in *Schmidt*, placed great emphasis on the trustee's duty of accountability. Walter J said (at para 93):-

*“when a trust is established, obligations and correlative rights are created. Otherwise there is no trust. The fundamental duty of the trustees is to be accountable to all beneficiaries. That cannot be compromised by a settlor's desire for confidentiality in relation to his and the trust's personal and financial affairs unless there exist exceptional*

*circumstances that outweigh the right of the beneficiaries to be informed”.*

30. At para 89 he cautioned that:-

*“Approached as a matter of principle, the entitlement of beneficiaries to disclosure of trust documents pursuant to the trustees’ fundamental obligation to be accountable to beneficiaries, must be measured against another fundamental principle that the autonomy of trustees in the exercise of their discretions under the trust instrument must be ensured. Hence, trustees are not obliged to disclose to beneficiaries their reasons for exercising their discretionary power (Re Londonderry’s Settlement)”.*

31. In his Skeleton Argument Advocate Barnes stated (para 7):-

*“One reason for pursuing disclosure is a general wish to check that the assets of the EBT have been properly administered i.e. that they have been looked after and have been applied in the way permitted by the deed of trust”.*

32. The Respondent is seeking to hold the Applicant accountable for the manner in which it has dealt with the assets of the FAG EBT. I am satisfied that is a proper reason for seeking disclosure.

33. I have to ask myself whether the Respondent has sufficient connection with the FAG EBT. I am satisfied that he has. At the time the assets were settled into the FAG EBT he was a 45% shareholder in the company, as well as a director who consented to the establishment of the FAG EBT. He remained a director until Prop Jet went into liquidation. He remains a member of the class of beneficiaries because it includes former directors. Advocate Friedlaender informed me that while Prop Jet was still operating, the Applicant would account to the board of directors of Prop Jet, through its Company Secretary, and provide information, inter alia, as to what benefits or distributions had been made and to whom. The Applicant did so without question, but, apparently, was under no obligation to do so. It is perhaps surprising that neither in the trust deed nor elsewhere is there any requirement to account to Prop Jet which is therefore only entitled to receive information pursuant to Section 22 of the 1989 Law or at the discretion of the Court. If there was a contractual obligation to provide information to Prop Jet, the liquidator of Prop Jet would be able to require it be disclosed to him and so the Respondent might be able to obtain what he seeks through the liquidator. (He has asked the liquidator but his file contains very little, presumably because the assets of the FAG EBT do not form part of the assets or liabilities of Prop Jet and therefore fall outside his area of responsibility.)

34. The Trustee has been providing some information to the Company Secretary of Focus (the purchaser of the business of Prop Jet). It is not clear to me why it should do so. The employees of Focus are not, as such, within the class of beneficiaries. Only those employees who were formerly employed by Prop Jet may benefit and that is by virtue of their former employment by that company.

35. It would be absurd if the Applicant was responsible to nobody for its administration of the FAG EBT but if I were to hold that it is not accountable to the Respondent, the only other person who would be in a better position to seek information might be his brother Jack Cunningham. The only basis on which he could seek to argue a better claim would be that he is the 55% shareholder. In my opinion it would not be right to say that the Applicant is accountable to Jack merely because he formerly held 55% of the shares of Prop Jet, whereas his brother only had 45%.

36. I therefore conclude that the Respondent should be entitled to sufficient information concerning the distribution of the assets of the FAG EBT to enable him to ascertain whether it has been properly administered. I do not consider that would be prejudicial to the interests of the beneficial classes as a whole, especially as the purpose for which the FAG EBT was established namely to provide incentives to the workforce of Prop Jet, is now obsolete as the company is no longer operating.

37. Having reviewed the relevant factual information and the legal principles, I turn to the details of the applications before me. The applicant is applying:-

*“Pursuant to Section 62 of the Trusts (Guernsey) Law 1989 (as amended) by the Trusts (Amendment) (Guernsey) Law 1990 (“the Trust Law”) and all other power it enabling for:*

(A) *A declaration that the Trustees of the FAG EBT may treat as confidential and are not obliged to disclose to Andrew Cunningham and/or any beneficiary any of the following:*

(i) *any requests received from Prop Jet or any material upon which the Trustees relied or based their decision regarding distributions to beneficiaries whether by way of payments, use of property or appointments to sub-trusts;*

(ii) *the identity of beneficiaries who received distributions or benefits, the amount of such distributions or benefits made to such beneficiaries or any documents or instruments evidencing such distributions or benefits;*

(iii) *[Withdrawn];*

(iv) *Any details of any sub-Trust of the FAG EBT;*

(B) *A Declaration that the information provided to date to the beneficiary, Andrew Cunningham, including the copies of the trust accounts, constitutes compliance with the Trustees’ obligations under Section 22(1) of the Trust Law and otherwise in providing full and accurate information as to the state and amount of the trust property of the FAG EBT.*

- (C) *Such consequential relief as this Court deems fit.*
- (D) *That all the costs of this Application be paid from the Trust Fund.*

38. The Respondent is applying:-

*“To the Court for orders that the Applicant do disclose to the Respondent the following documents and/or information:*

1. *The destination of the main assets of the FAG EBT including the shares in Springforth and any release of the loan formerly due to the FAG EBT.*
2. *The terms of the sub-trust referred to in Carey Olsen’s letter of 20<sup>th</sup> September 2004.*
3. *Details of any requests received by the Applicant for distributions including any oral request and discussions”.*

39. Considering then each paragraph of the two applications, my decision is as follows:-

### **The Respondent’s application**

#### Paragraph 1

40. Information as to the destination of the main assets of the FAG EBT falls outside the ambit of Section 22(1) of the 1989 Law and so the Respondent is not entitled to receive it as of right. In my view, it is information that is required to ensure that the assets of the FAG EBT have been properly administered in accordance with its terms. For reasons I have already explained I consider that the Respondent is entitled to hold the Applicant to account and, having considered the interests of the beneficial class as a whole, I grant an order in the terms requested.

#### Paragraph 2

41. I order that the terms of the sub trust referred to in Carey Olsen’s letter of 20 September 2004 shall also be disclosed. I understand that the sub-trust is a separate trust constituted by its own deed and with its own class of beneficiaries which does not include the Respondent. Under the terms of the FAG EBT the Trustee has power to appoint trust assets to one or more of the beneficiaries subject to such trusts as it shall in its absolute discretion decide. In my judgment, having decided that the Applicant is accountable to the Respondent for its administration of the FAG EBT, I consider the Respondent should be permitted to know the terms of the sub trust in order to be satisfied that any appointment made by the Trustee was within the scope of its powers.

#### Paragraph 3

42. Section 33 of the 1989 Law provides that a trustee is not obliged to disclose details of its deliberations but the section is expressed to be subject to

any order of the court which, in my view, implies that the court has the power in its discretion to order disclosure of documents in certain circumstances. The reason I have ordered disclosure of the documents referred to in the preceding two paragraphs is to enable the Respondent to be satisfied the FAG EBT has been properly administered. The Respondent does not need the documents requested in paragraph 3 to establish whether assets have been distributed other than in accordance with the terms of the FAG EBT. So, I am not persuaded that there are grounds for ordering disclosure of those documents.

### **The Applicant's application**

#### Paragraph A(i)

43. I regard this as being of the same nature as paragraph 3 of the Respondent's application and I therefore agree that the requests for the material referred to may be treated as confidential at this stage. Whilst the Trustee **may** regard these documents as confidential, it is not obliged to do so and would be at liberty, in my view, to disclose the documents to the Respondent if it wished to do so. I am not required to decide whether they would be discoverable in an action for breach of trust if the Respondent later pursues such an action although it is possible that they would then have to be disclosed.

#### Paragraph A(ii)

44. I believe this is covered by the terms of the Order I have made in respect of paragraph 1 of the Respondent's application.

#### Paragraph A(iii)

45. This has been withdrawn as the Respondent is not pursuing his request for the disclosure of directors' minutes of Springforth.

#### Paragraph A(iv)

46. I have dealt with this under paragraph 2 of the Respondent's application.

#### Paragraph B

47. In my view the Applicant has complied with its requirement to disclose information under Section 22(1) of the 1989 Law. It has disclosed trust accounts and has informed the Respondent that only a relatively small sum remains within the FAG EBT which, I suspect, may well be absorbed in expenses and fees.

#### Paragraph C

48. If the parties consider any consequential relief is required to give effect to the terms of this Order, they must make application through the Greffe.

#### Paragraph D

49. I have not heard argument in relation to costs and will reserve this question for further argument when counsel have had the opportunity to consider the terms of this judgment.