

**Judgment 33/2012**

**In the matter of  
The Guernsey Sporting Club  
Royal Court  
28<sup>th</sup> September 2012**

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**Application for an order to transfer the title of freehold property.**

**Approved Text  
28.09.2012**

**IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY  
(CIVIL DIVISION)**

**IN THE MATTER OF  
THE GUERNSEY SPORTING CLUB  
("The Club")**

**THE GUERNSEY SPORTING CLUB LBG**

**Applicant**

**Hearing date: 17<sup>th</sup> July 2012**

**Judgment handed down: 28<sup>th</sup> September 2012**

**Before: Richard James McMahon, Esq., Deputy Bailiff**

**Jurats: Stephen Murray Jones, Terry George Snell and David Allan Grut**

**Advocate for the Applicant: Advocate R Clark**

**Statutes referred to:**

The Royal Court (Reform) (Guernsey) Law, 2008

The Trusts (Guernsey) Law, 2007

The Trusts (Guernsey) Law, 1989

**Introduction**

1. This judgment has been prepared in accordance with the provisions of section 16(5) of the Royal Court (Reform) (Guernsey) Law, 2008:

*"(5) A reasoned judgment in civil proceedings in which the Jurats (and not the Bailiff alone) are sitting shall contain –*

- (a) the Jurats' findings and decisions,*
- (b) any dissenting findings or decisions made by different Jurats,*
- (c) the identity of the Jurats making dissenting findings or decisions,*
- (d) the Bailiff's findings, decisions and directions of law and procedure, and*

(e) *the application of his findings, decisions and directions of law and procedure to the facts.*

(6) *In this section “the Bailiff” means the person presiding over the proceedings.”*

2. The Deputy Bailiff did not sum up to the Jurats in open Court but instead retired with them, as he is permitted to do under section 14(2) of the 2008 Law.
3. The Deputy Bailiff reminded the Jurats of their respective roles. The Deputy Bailiff is the sole judge of questions of law and procedure and the Jurats are the sole judges of questions of fact. The Jurats must accept his directions on the law and follow them. He directed the Jurats to have regard to the whole of the evidence presented to the Court, and to form their own judgment about the affidavit evidence and the exhibits thereto, and which evidence is reliable and accepted, and any which is not. The Deputy Bailiff directed that the facts of the case are the Jurats’ responsibility. They may take account of the arguments in the submissions they heard, but are not bound to accept them. Equally, if at any time the Deputy Bailiff appeared to express any views concerning the facts, or emphasise a particular aspect of the evidence, the Jurats were not to adopt those views unless they agreed with them. When it comes to the facts of this case, it is the Jurats’ judgment alone that counts.
4. In this judgment, the findings of fact are the unanimous findings of the Jurats.
5. The Deputy Bailiff directed the Jurats that the burden of proof is on the Applicant throughout. The standard of proof is the civil standard of the balance of probabilities. To establish something on the balance of probabilities means to prove that something is more likely so than not so.

### **Procedural history**

6. By application dated 17 August 2011, The Guernsey Sporting Club LBG applied pursuant to section 69(1)(a)(iv) of the Trusts (Guernsey) Law, 2007 and/or common and/or customary law and/or the inherent jurisdiction of the Court for an order “*That the title to the freehold property known as Warwick House, The Grange, St Peter Port, Guernsey which is the premises of the Club ... be vested in the Applicant in the circumstances set out in the supporting affidavit of Alan Richard Cross dated 10 August 2011*”. This Application was first before the Court on 26 August 2011. The then Bailiff, Sir Geoffrey Rowland, adjourned the matter for one week and directed Advocate Clark, who has appeared on behalf of the Applicant throughout, to file a Skeleton Argument beforehand.
7. Through correspondence, Advocate Clark sought an extension of time in which to prepare and lodge the Skeleton Argument required because “*What at first blush appeared to be relatively straightforward has, on closer analysis, proven to be far more complex.*” There being an indication that there were no great time pressures, the Bailiff acceded to that request, indicating that the matter could be picked up later during September or in early October 2011. Advocate Clark’s Skeleton Argument dated 17 September 2011 was filed three days later, at which time he queried whether a Chambers hearing to discuss how to progress the Application might be useful.
8. Thereafter, progress in relation to the Application stalled with nothing apparently happening before the changes in judicial personnel in March 2012. The matter was then listed before the new Deputy Bailiff on 16 April 2012. Being an application under the Trusts (Guernsey) Law, 2007, the Deputy Bailiff considered whether any other persons should be convened before the Court and concluded that this was not necessary. Although section 79 of the 2007 Law provides that the “*Court may be properly constituted by the Bailiff sitting unaccompanied by the Jurats*”, the Deputy Bailiff decided, especially given the conveyancing aspects raised by the Application, that it would be highly desirable for the Jurats to sit. He also directed the

Applicant to submit such further materials as advised confirming that no other parties have any interest in Warwick House and identifying who the officers of the Club have been throughout the relevant period with which the Application is concerned. Once the Applicant had complied with that direction, Advocate Clark was to liaise with the Greffe to identify a suitable date for the hearing.

9. A Second Affidavit of Mr Cross, sworn on 18 June 2012, was submitted that day and the hearing date of 17 July 2012 was fixed. The Court appreciates the assistance provided by Advocate Clark in his helpful written and oral submissions. At the conclusion of the hearing, the Court reserved its decision, which now follows. The Court apologises for the delay in preparing its judgment, which has been compounded by the intervention of the summer vacation period.

### **Summary of the Facts and Issues**

10. The Guernsey Sporting Club (hereafter referred to as “the Club”) was founded at a meeting held on 13 January 1920, initially solely for the survivors of the Guernsey contingent of soldiers who formed D Company of the 6<sup>th</sup> Royal Irish Regiment and who saw service in the First World War. The rules of the Club were adopted at a meeting held on 23 March 1920. The Club was managed by a General Committee, members of which were regularly elected at Club meetings.
11. The Minutes for 26 September 1921 record that a grant of some £1,070 5s 6d had been received from the United Services Fund to enable the Club to purchase premises. In the Minutes for 24 October 1921, Messrs Arthur Leslie Elliot, Joseph Jubilee Eveson and Wilfred John Bird (hereafter referred to as “the Original Trustees”) were authorised to accept the conveyance of Warwick House (hereafter referred to as “the Premises”) and to hold the Premises for and on behalf of the Club.
12. The Original Trustees, who had appeared before the Court on 21 October 1921, registered the conveyance to them of the Premises on 4 November 1921. Their capacity was recorded as “*Les fidéicommissaires de l’Association dite ‘The Guernsey Sporting Club’ ... ayant été choisi à cet effet par la Comité executif de l’Association établie en cette ile*”. Most significantly, the conveyance recorded them appearing and “*acceptant pour eux et leurs successeurs fidéicommissaires à jamais pour avoir tenir et garder et [sic] dépôt anglicé ‘In trust’ pour les membres actuels et futurs de la dite Association ‘The Guernsey Sporting Club’ et ce conformément aux règles et aux délibérations de la dite Association et aux conditions imposées par les Administrateurs et fidéicommissaires du dits Fonds appelé ‘The United Services Fund’*”. The translation of the opening words in that phrase is “*accepting for themselves and their successors as Trustees for ever to have, to hold and maintain in trust for the current and future members of the [Club]*”.
13. The Premises were then transferred by two of the Original Trustees (Messrs Bird and Eveson) to four successor trustees by a conveyance dated 29 April 1947. The four gentlemen to whom the Premises were transferred were Messrs Septimus Charles Hanson, President, Hilary Williams and Albert Wilfred Senner, Vice-Presidents, and John Bernard Wilson, Financial Secretary. In other words, the Premises were conveyed to the officers for the time being of the Club. This conveyance records them as “*acceptant pour eux et leurs successeurs Président, Vice-Présidents et Secrétaire-financier respectivement à jamais pour avoir, tenir et garder en dépôt pour les membres actuels et futurs de la dite Association*”.
14. During the early 1990s, three Bonds were registered against the Premises. In respect of each, the Bond was given by two of the then officers of the Club. In two of the Bonds they were described as “*the Trustees’ which expression shall where the context so permits include themselves and their successors in title as owners for the time being of the property hereby charged*”. In the other Bond, they were described as the Trustees of the Club and then

defined as “*the Borrowers*” which expression, where the context so permits, shall include them jointly and severally and their respective successors in office as Trustees of the said Guernsey Sporting Club”. As Mr Cross deposed in his Second Affidavit, it was a surprise to him that these Bonds were still registered against the Premises because the indebtedness of the Club to these creditors was discharged many years ago. Arrangements have since been made to vacate these Bonds.

15. As further explained in the Second Affidavit of Mr Cross, the office-holders of the Club periodically changed. John Bernard Wilson continued as an office-holder until 1973, when he was replaced as President. From 1980, the Club operated with a single Vice-President rather than two. Of the four office-holders in post in 1973, following John Bernard Wilson’s replacement as President, none remained as an office-holder by 1975. There was greater continuity across the full range of office-holders until 1987, but then a complete change occurred by 1990. The President remained in office from 1990 to 2003, at which time all the 1990 officers had been changed. In respect of the three office-holders in post in 2003, all had changed by 2011. We have concentrated on the occasions where all the previously appointed office-holders have ceased to hold any office as being indicative of the occasions on which there has been wholesale replacement of the persons who, on one analysis, may have needed to be legal owners of the Premises in order to show that, at the very least, on six occasions since 1947 a similar approach to transferring the Premises as between officers might have arisen.
16. However, the Premises have not been conveyed since the conveyance to the four officers of the Club in 1947. Of those four gentlemen, the last survivor was John Bernard Wilson, who died on 7 January 1990. His will was registered at the Greffe on 17 January 1990. Because Mr Wilson’s wife had pre-deceased him, in accordance with his will of real estate, his estate was left to his son, Michael John Wilson. When Jurat Michael Wilson died intestate as to realty on 2 May 2005, the heirs to his real estate were his widow and their two children. The late Jurat Wilson’s widow and children have all written letters confirming that they do not assert any claim in respect of the Premises.
17. At a meeting of the General Committee of the Club on 27 May 2010, the General Committee resolved to amend the Club’s Rules so as to empower that Committee “*to form a company limited by guarantee which shall acquire the assets and liabilities of the Club of which the members of the Club shall be guarantee members and the General Committee shall be the directors*”. Mr Cross subscribed to the Memorandum of Incorporation of The Guernsey Sporting Club LBG (hereafter referred to as “the LBG”) on 26 January 2011 and the LBG was registered on 28 March 2011. The LBG then made the Application for an order vesting the Premises in it just a few months later.

#### **Directions on the law**

18. The Club’s Application is made primarily under section 69(1)(a)(iv) of the Trusts (Guernsey) Law, 2007, which provides that:

“*On the application of any person mentioned in subsection (2), the Royal Court may –*

(a) *make an order in respect of – ...*

(iv) *any trust property, including an order as to the vesting, preservation, application, distribution, surrender or recovery thereof.”*

The Deputy Bailiff informed the Jurats that, as a matter of procedure, he gave leave to the LBG to bring the application in accordance with paragraph (g) of section 69(2) of the 2007 Law. Accordingly, they were to accept that the Application had been lawfully made, meaning

that the first question for the Jurats to focus on was whether they were satisfied on the evidence that the Premises constitute “*trust property*”. If they were so satisfied, they would then move on to consider whether that trust property could properly be vested in the LBG in accordance with the Application.

19. Despite the erudition demonstrated in Advocate Clark’s Skeleton Argument, the Deputy Bailiff directed the Jurats that, if they acceded to the LBG’s Application for an order vesting the Premises as trust property in the LBG, they did not need to consider further any consequences arising from the death of the last surviving officer of the Club named in the 1947 conveyance. Their decision on the Application under the 2007 Law would suffice to afford the LBG the relief it seeks. In particular, the different positions under the laws of England and Jersey to which Advocate Clark had referred could be treated as irrelevant to the primary issue the Jurats needed to decide.
20. The Deputy Bailiff drew attention to a series of provisions in the 2007 Law that would potentially assist the Jurats to determine whether the Premises constitute “*trust property*”. In section 80(1), “*trust property*” is defined as “*property held on trust*” and the same subsection also defines “*property*” as “*real and personal property of any description, wherever situated, and any share, right or interest therein*”. Section 7(1) confirms that “*Any property may be held on trust*”. Although section 6(3) provides that “*A trust of real property situated in Guernsey may be created only by an instrument in writing*”, section 6(4)(a) disapplies that subsection “*in relation to a trust of real property created before the commencement of [the 2007 Law]*”. As a result, it was reasonable to draw the inference that a trust of Guernsey real property could validly be created before 17 March 2008 without the need to point to an instrument in writing.
21. Because of the timing of certain events the Jurats may need to consider, the Deputy Bailiff also directed them as to the different definition of “*property*” contained in section 73(1) of the Trusts (Guernsey) Law, 1989, which expressly excluded “*real property in the Bailiwick of Guernsey*”, except in relation to those sections dealing with variation, etc. of trusts (sections 52 to 56) and the savings contained in section 74. The 1989 Law came into operation on 18 April 1989. Consequently, until the commencement of the 2007 Law, if the Jurats were satisfied that the Premises constituted trust property, there was no statutory regime applicable to regulate the trust of the Premises. Any steps to be taken in relation thereto would have been under the inherent jurisdiction of the Court and subject to non-statutory legal considerations.
22. In considering the status of the Premises from 1921 onwards, the Deputy Bailiff further directed the Jurats that they could derive assistance from the principle set out in section 1 of the 2007 Law about the existence of a trust:

*“A trust exists if a person (a “trustee”) holds or has vested in him, or is deemed to hold or have vested in him, property which does not form or which has ceased to form part of his own estate –*

*(a) for the benefit of another person (a “beneficiary”), whether or not yet ascertained or in existence, and/or*

*(b) for any purpose, other than a purpose for the benefit only of the trustee.”*

(Section 1 of the 1989 Law was in almost identical terms.)

23. In reviewing the evidence, the Deputy Bailiff directed the Jurats that they could consider whether, when the Premises were acquired in 1921 and subsequently, the Premises formed part of the estate of any of those to whom the Premises were conveyed. If they were satisfied that the Premises had, since 1921, not formed part of the estate of any person, then that was a

factor they could take into account before deciding whether the Premises constituted “*trust property*”.

24. In relation to the question as to what significance, if the Jurats considered it relevant, could be attributed to any failure to appoint new trustees, as opposed to relying on the periodic elections of office-holders of the Club, the Deputy Bailiff drew the Jurats’ attention to the power in section 18 of the 2007 Law to show that any defects in the appointment of the requisite number of trustees could now be remedied, in the last resort, by application to the Court. (Although section 14 of the 1989 Law was to like effect, it would not have applied at the time of John Bernard Wilson’s death because of the exclusion of Bailiwick real property from the definition of “*property*” in that Law.) Further, section 17(2) of the 2007 Law provides that “*A trust shall not fail on the ground that there is no trustee or less than the number required by subsection (1)*”. The Deputy Bailiff directed the Jurats that, in his view, the Court would have had jurisdiction prior to the commencement of the 2007 Law to entertain an application to appoint the necessary number of trustees required to be so appointed and that the principle in section 17(2) of the 2007 Law (and its predecessor section 13(2) of the 1989 Law) could be regarded as a codification of the previous customary law position. Put another way, any failure to have appointed the requisite number of trustees, including where there might be no trustee, would not mean that the trust itself failed and, in consequence, any trust property would continue to be trust property.

## Decision

25. The Jurats were satisfied on the affidavit evidence of Mr Cross and their review of the documentation exhibited that when the Premises were conveyed to Messrs Elliot, Eveson and Bird in 1921 the Premises were not being acquired by them as part of their own estates but rather for and on behalf of the newly-formed Club. They had regard, in particular, to the Minutes of the meeting of the General Committee of the Club on 24 October 1921, which expressly referred to the three officers being empowered to accept the conveyance of the Premises “*for and on behalf of*” the Club and the fact that the Funds being used to acquire the Premises had been granted to the Club by the United Services Fund for that purpose.
26. The Jurats also regarded it as significant that the conveyance of the Premises accurately described the purchasers as trustees and indicated that the Premises were to be held on trust, even going so far as to use the term in English in a document otherwise written in French. In those circumstances, they were satisfied that in 1921 the Premises became “*trust property*”.
27. As regards the conveyance from the two surviving Original Trustees to the then four officers of the Club in 1947, the Jurats concluded that this event did not affect the status of the Premises as “*trust property*”. If anything, they considered that it reinforced the conclusion that the Premises were properly being regarded as “*trust property*” because of the express re-assertion of the transferee office-holders accepting the Premises “*en dépôt pour les membres actuels et futurs de la dite Association*”.
28. The Jurats also concluded that nothing that has occurred since 1947 affected their view that the Premises continued to be “*trust property*”. In particular, they took the view that, when John Bernard Wilson died in 1990, this did not result in the trust on which the Premises are held for the benefit of the members from time to time of the Club failing. The Premises continued to be used as the Club’s premises and were managed accordingly for the benefit of the members of the Club through the General Committee and, more particularly, by the persons from time to time holding office.
29. In the light of the Deputy Bailiff’s directions, the Jurats did not find it necessary to consider any question relating to the person or persons in whom the Premises have been vested at any point in time, but rather considered whether or not the Application of the LBG for the Premises to be vested in it could, in their discretion, be granted.

30. The Jurats took into account the continuity of use by the Club of the Premises from 1921 onwards and the fact that, throughout that period, the membership of the Club must be taken to have regarded the Premises as their Club's premises. They further had regard to the Minutes of the meeting of the General Committee of the Club held on 27 May 2010 at which it was resolved to establish a company limited by guarantee, which would then become the owner of the Club's premises and would thereafter operate the Club on behalf of the members, those members becoming guarantee members of the proposed new company. In those circumstances, the Jurats were satisfied that the membership of the Club, as the beneficiaries of the trust upon which the Premises were held, were supportive of the ultimate acquisition, by whatever means were appropriate, of the Premises by the LBG.
31. Although the Jurats did not regard it as being of direct relevance to their decision, they were comforted that the late Jurat Wilson's widow and children had disclaimed any interest that might have been asserted on their behalves in the Premises.
32. The Jurats, therefore, concluded that the Premises, being "*trust property*" for the benefit of the members of the Club, could quite properly be vested in the corporate vehicle established for the purpose of holding the Club's premises and other assets. This was the most sensible outcome in order to continue to give effect to the purpose for which the Premises were acquired in 1921 and held on behalf of the Club's members since.

### **Conclusion**

33. The Court therefore grants the relief sought by the Applicant LBG and makes an Order that the title to the property known as Warwick House, The Grange, in the parish of St Peter Port, for the avoidance of doubt being those premises conveyed on 29 April 1947 to Messrs Hanson, Williams, Senner and Wilson, be vested in The Guernsey Sporting Club LBG. The question of costs does not arise because no party other than the LBG has been involved.