

**Judgment 04/2013**

**Dervan et al & Concept Fiduciaries  
Limited et al  
Royal Court  
11<sup>th</sup> February 2013**

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**Application to set aside the transfer of shares and payment of the funds on the grounds of mistake.**

**Approved Text  
11.02.2013**

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

**Between:**

**MIRIAM DERVAN**

**First  
Applicant**

**MD EVENTS LIMITED**

**Second  
Applicant**

**-and-**

**CONCEPT FIDUCIARIES LIMITED**

**First  
Respondent**

**(As the trustee of the  
MD Events Limited Remuneration Trust and the  
MD Events Limited Remuneration Trust First Sub-Trust)**

**SILENE LIMITED**

**Second  
Respondent**

**PRET LIMITED**

**Third  
Respondent**

**Hearing date: 7<sup>th</sup> December 2012**

**Judgment handed down: 11<sup>th</sup> February 2013**

**Before: Richard James McMahon, Esq., Deputy Bailiff  
and Jurats C Le Pelley, T G Snell and T J Ferbrache**

**Counsel for Applicants: Advocate J T Le Tissier**

**Counsel for Respondents: Advocate St J A Robilliard**

**Cases, Texts & legislation referred to:**

The Royal Court (Reform) (Guernsey) Law, 2008  
The Trusts (Guernsey) Law, 2007

*Pitt v Holt; Futter v Futter* [2011] EWCA Civ 197  
Inheritance Tax Act 1984  
*Ogilvie v Littleboy* (1897) 13 TLR 399  
*Gibbon v Mitchell* [1990] 1 WLR 1304  
*Wolff v Wolff* [2004] EWHC 2110 (Ch)

## Introduction

1. At the conclusion of the hearing on 7 December 2012, the Court reserved its judgment, which now follows. It contains the facts as found by the Jurats and the reasons for their decision. In this judgment, the findings and conclusions of the Jurats were reached unanimously. Insofar as some of the legal issues dealt with are concerned, they are set out in more detail in the judgment of the Deputy Bailiff handed down on 30 November 2012 and not repeated here.
2. 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.”*

3. 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.
4. 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.
5. The Deputy Bailiff directed the Jurats that the burden of proof is on the Applicant throughout and to apply the civil standard of proof of the balance of probabilities, adding that to establish something on the balance of probabilities means to prove that something is more likely so than not so.

## Background

6. By an application dated 8 March 2012 (hereafter referred to as “the Application”), the Applicants, Miriam Dervan and MD Events Limited (hereafter referred to as “the Company”), which Ms Dervan had established, and in which she held 100% of the Ordinary shares prior to her transferring them to the First Respondent, seek the setting aside on the grounds of mistake of two dispositions. In Ms Dervan’s case, this relates to the transfer to the First Respondent

of 100,000 Ordinary shares in the Company by Deed of Assignment dated 18 May 2010. In the Company's case, it seeks to set aside the payment by it of £500,000 to the First Respondent on or about 18 May 2010. In both cases, the First Respondent received the property as trustee of the MD Events Limited Remuneration Trust.

7. The Application is supported by three Affidavits of Ms Dervan sworn on 8 March, 27 July and 26 November 2012 and by Affidavits sworn by Adam Cole on 25 April 2012 and by Jonathan Blows on 4 September 2012. On behalf of the Respondents, who took a neutral position throughout to provide assistance to the Court, an Affidavit of Jacqueline Eley sworn on 18 May 2012 was provided. Expert evidence on the applicable English law considerations was provided by Paul Yerbury and Richard Wilson in Affidavits sworn respectively on 24 April and 3 December 2012.
8. During earlier hearings, the Deputy Bailiff had noted that the Applicant's Advocates had written to HM Revenue & Customs on 15 March 2012 inviting it to consider whether it wished to intervene. The response dated 12 April 2012 confirmed that HM Revenue & Customs did not wish to intervene but requested a copy of the judgment and any order made by the Court to enable it to consider any tax consequences. Solicitors acting for a former director of the Company, Robert Ismay, also confirmed on 25 April 2012 that their client did "*not intend to personally intervene*". In accordance with the Deputy Bailiff's directions, a standard letter dated 7 August 2012 was sent on behalf of the Company to past and present employees, subsequently identified in Mr Blows' evidence, alerting them to the proceedings and inviting them to consider if they wished to intervene. None appeared at the next hearing. As a result of these events, the Deputy Bailiff concluded that there were no other parties who should be convened in the proceedings and that the beneficiaries' interests were adequately represented by the trustee.
9. At the hearing, Advocate Jeremy Le Tissier appeared on behalf of the Applicants and Advocate Robilliard on behalf of the three Respondents. Mr Wilson accompanied Advocate Le Tissier at the hearing, no doubt to assist the Court on questions of English law, had the need arisen. The Court noted that Mr Wilson is appearing in *Futter v Futter* (which had been joined with *Pitt v Holt*, to which reference will be made), at present a decision of the Court of Appeal ([2011] EWCA Civ 197), but which is progressing to the Supreme Court in March 2013. The Advocates agreed that *Pitt v Holt* is the leading authority on setting aside dispositions for mistake and so the Court was pleased to recognise that Mr Wilson's exposition of the law was inevitably well-informed. The Court is grateful to all Counsel for their assistance.

## Facts

10. Ms Dervan is a successful businesswoman. Her background was in clinical research in the pharmaceutical arena and in 2002 she started a business, MD Events, involving the delivery of clinical meetings within the pharmaceutical industry. This small business began from home and then grew, necessitating a move into offices in Bracknell. It became incorporated as a limited company under the laws of England and Wales in 2005. The Company now also has offices in Manchester, Philadelphia and St Petersburg and employs over 50 people.
11. By 2009, the success of her business was such that Ms Dervan was considering selling her shares to reap the profits to her that they represented. At that time, she was the sole shareholder of the Company and, having consulted BCMS Corporate Limited about her proposal to sell her shares, she was led to believe that the sale of the Company might realise £6-7 million. Given the sums involved, the advice from BCMS Corporate Limited was to speak to a wealth management advisor and an introduction to the Wissenbach Group was effected.
12. Ms Dervan first met Stefan Wissenbach on 11 December 2009, albeit that it was a relatively brief meeting. It was apparent to her that Mr Wissenbach understood that it was her intention

to sell her shareholding for her own personal benefit and, because she was interested in finding out more about possible investment strategies, there was a follow-up meeting on 24 March 2010, which was also attended by Ash Prinjha of the Wissenbach Group.

13. At that second meeting, Ms Dervan was introduced to something called “Your Magic Number”, which related to how to maintain a portion of a person’s wealth in safe investments, designed to produce a minimum standard of living throughout the person’s lifetime, with any additional assets being available to be allocated to higher risk investments. It was at this meeting that the idea of including a trust structure within Ms Dervan’s investment strategy was first mentioned. Ms Dervan understood the advice being given to her as representing a choice between paying significant amounts of tax on the sale of her business or making use of a trust structure. It was strongly recommended to her that she meet with Bill Auden who would be able to explain the trust structure to her in more detail.
14. Some further background to the relationships between the various entities involved in assisting Ms Dervan was provided in Ms Eley’s Affidavit. A Guernsey protected cell company, Pan Continental Consultants PCC Limited, was registered in April 2007, beneficially owned by Roger Berry and Ms Eley. That company was formed as a result of a proposition from Bill Auden and Alan Thomson, directors of Wye Associates Limited, an English company which offers wealth and tax consultancy services, with a view to assisting clients of Concept Group Limited, of which Mr Berry and Ms Eley are directors, through the procedure of setting up an appropriate structure for the management of their assets. By an agreement of 30 January 2008, Wye Associates Limited was engaged as a consultant for Pan Continental Consultants PCC Limited. At Mr Auden’s request, Pan Continental Consultants PCC Limited entered in a consultancy agreement with the Wissenbach Group on 10 December 2009, under which the Wissenbach Group agreed to refer clients who came to them to Wye Associates Limited and Pan Continental Consultants PCC Limited. Another element of the arrangements envisaged was that a solicitor, Roger Bindschedler, would be put forward to prospective clients as available to provide legal advice.
15. Following the recommendation from the Wissenbach Group, Ms Dervan met with Mr Auden on 31 March 2010. The meeting took place at the offices of the Wissenbach Group. Mr Wissenbach and Mr Prinjha, as well as Mr Auden’s assistant, Daniel Hayes, were also present. At that meeting, Mr Auden explained about a structure involving a remuneration trust. Ms Dervan understood this structure as being something from which she could benefit for the rest of her life. Ms Dervan has further explained that she asked at the meeting how something like this, which sounded to her too good to be true, was available. However, apart from confirming to her that it was legal and above board, Mr Auden did not provide specific answers to her enquiries. Mr Auden also recommended Mr Bindschedler of Davenport Lyons as a solicitor who could assist with establishing the proposed remuneration trust and that Mr Auden would contact him for that purpose.
16. As it happened, 31 March was the end of the Company’s financial year. Ms Dervan explained that it had been drawn to her attention that, if the Company wished to safeguard its small business exemption, thereby avoiding the need to produce group accounts, £500,000 needed to be transferred out of the Company before the 1 April deadline. The Company had had the idea of paying this amount to Ms Dervan as a dividend on her shares. However, at the meeting on 31 March 2010, Mr Auden suggested that it would be better to pay this amount into the proposed remuneration trust, from which Ms Dervan could then benefit through taking loans. Mr Auden explained that this would result in a saving in Ms Dervan’s taxes.
17. Because of the imminent ending of the Company’s financial year, it was suggested to Ms Dervan by her advisors that the Company should consider effecting a transfer of £500,000 to Concept Group Limited. Another director of the Company, Mr Ismay, joined a hastily convened board meeting by telephone. Mr Auden made a telephone call from that meeting to Trevor Pinchemain, a director of Concept Group Limited and of the First Respondent and explained that the benefits of a remuneration trust had been explained to the directors of the

Company and that they had resolved to establish such a trust. Because of the need to remove excess cash from the Company's balance sheet, Concept Group Limited was requested to accept an initial contribution into its client account pending the setting up of the trust. On behalf of Concept Group Limited, Mr Pinchemain agreed to do so. His handwritten note from that day is timed at 4.24 pm and records the name "*Rob Ismay*" and immediately below "*strictly to the order of the company*".

18. A prepared board minute was presented to Ms Dervan for signature. Although Ms Dervan says she was told that this board minute had been prepared by Pan Continental Consultants PCC Limited, Ms Eley has confirmed that it was not. The Jurats have concluded that it was prepared by one or more of the advisors present at the meeting. The minute records that the meeting was held at 4.08 pm and that the decisions taken were:

- “2. *Following discussions with the consultants, Wye Associates Ltd, it was proposed to take immediate steps to establish a Remuneration Trust, subject to all satisfactory due diligence, anti-money laundering formalities and subject to the receipt of satisfactory legal and tax advice for both the Company and its Director, Miriam Dervan, which regard to the status of her tax residency and domicile.*
3. *It was resolved to commence the Remuneration Trust formation preparation immediately, and following a telephone discussion with a Director of Concept Group Limited, Trevor Pinchemain, and the provision of satisfactory anti-money laundering documentation, to arrange a bank transfer to Concept Group Limited's client account to be held to the company's order pending the completion of all necessary legal establishment work and tax advice.*
4. *Robert Ismay was instructed to make a payment of £500,000 to Concept Group to hold upon constructive trust in their clients' account, on behalf of the proposed Company's Remuneration Trust.”*

19. On 6 May 2010, Pan Continental Consultants PCC Limited Contracting Cell 2 sent a letter of engagement to Ms Dervan, as director of the Company, signed by Mr Pinchemain and Ms Eley. That letter set out the services to be provided to the Company in respect of the remuneration trust and the fees payable by the Company in return. Those fees included fixed sums and amounts by reference to the percentage of value of shares contributed to the trust, whether on their sale or by reference to tranches at specified times after those shares were transferred to the trust, and on other assets contributed to the trust. On behalf of the Company, on 13 May 2010 Ms Dervan signed that letter, agreeing to its terms and conditions.

20. By a letter dated 14 May 2010 signed by Mr Bindschedler, Davenport Lyons confirmed their instructions from the Company in accordance with their Terms of Engagement. This was Ms Dervan's first contact with the firm. The scope of the work to be undertaken was stated to "*involve explaining to you the tax report and providing your company with a parallel report*". The tax report to which reference was made was going to be provided to Concept Trustees. The firm's "*charges for the matter will be £100, exclusive of disbursements and VAT*".

21. Davenport Lyons then wrote to the Company on 17 May 2010. It states it was "*written upon the instructions of the Directors of Pan Continental Consultants PCC Limited ... following a request to them from Miriam Dervan who is a director and current shareholder in MD Events Limited*" and that "*The facts discussed in this Letter are taken from the facts provided to us by Pan and the Company*". Ms Eley has confirmed that the facts set out in this letter were provided to Davenport Lyons by Mr Auden and that the form of letter is a standard one generally used by Davenport Lyons for clients wishing to set up a remuneration trust, adapted to reflect the client's circumstances. The Jurats noted from some of the terminology used, including referring to "shareholders" in the plural in one heading and to "a Shareholder's death" when it was clear that there was a single shareholder, Ms Dervan, that making the

necessary adjustments for an arrangement involving a single shareholder company had not been carried out particularly well.

22. That letter sets out that Ms Dervan's assets included all the shares in the Company and says that "*It is [her] intention to make a gift of her shareholding in the Company to the Trustees of the Trust that is to be established by the Company*". Under the heading "SUMMARY", the letter records Ms Dervan's objectives (and not those of the Company despite the letter being addressed to the Company's Directors) as follows:

- “1. *To utilise the Trust as a commercial executive incentive scheme.*
2. *To receive loans and other financial assistance directly or indirectly from the Trust subject to Benefit in kind tax charges or subject to payment of a commercial rate of interest.*
3. *For the Trust funds to be used to provide benefits in cash and/or in kind to directors and employees (past, present and future) of the Company.*
4. *For the Shareholder's family to be able to enjoy the Trust funds tax free after the Shareholder's death.*”

Ms Dervan asserts that those were not the objectives she had in mind and had explained to her advisors.

23. Ms Dervan does not recall being provided with this letter at the time. She believes it may only have been supplied by Davenport Lyons the following month. However, if she is mistaken and it was provided to the Company at the meeting on 18 May 2010, she does not recall its contents being discussed. In particular, she highlights a passage relating to the establishment of the remuneration trust which states that:

*“Any controlling shareholder and her family, (or former controlling shareholder) in the Company is excluded from receiving capital distributions. Income distributions can be made, however, subject to normal income tax rules. However, upon her death, her family become full beneficiaries.”*

In that regard, she has emphasised that the notion that she would be unable to benefit from the remuneration trust in a way that she had understood would enable her to use it as “her” trust is completely at odds with what her objectives were and had not been explained to her by her advisors.

24. 18 May 2010 was a significant day for both of the Applicants. Ms Dervan attended a meeting at the offices of Davenport Lyons. The purpose of the meeting was for her to execute the Trust Deed establishing the proposed remuneration trust. She had not previously seen the Trust Deed. It is unclear whether anyone on behalf of the Company had previously seen the Trust Deed, but the Jurats have concluded that it is more likely than not that the document had not been provided prior to the meeting taking place. It was not enclosed with the letter of 17 May 2010 from Mr Bindschedler to the Company, which would have been the most obvious place to have expected to have seen it, nor was it mentioned in the Report for Directors dated 18 May 2010, also apparently signed by Mr Bindschedler.
25. By 18 May 2010, the sale of Ms Dervan's shares in the Company was no longer imminent, but selling those shares was still her ultimate goal, although it might have taken a further couple of years to realise that objective. She assumed Mr Wissenbach and others at the meeting knew about that. Ms Dervan recalls discussing matters with Mr Bindschedler for about 30 minutes, but there was no line-by-line consideration of the Trust Deed or of the other documents presented to her, which were a Deed of Assignment and a Deed of Contribution.

26. Although Ms Dervan states that the Report for Directors document had been enclosed with the Davenport Lyons letter of engagement dated 14 May 2010, the Jurats find it more likely that the Report, being dated 18 May 2010, was supplied to Ms Dervan, and so to the Company, at the meeting held on that day. That conclusion is further supported because Ms Dervan has explained that the Company did not need to establish a scheme “*to attract, incentivise and retain key executives for the benefit of the business*” (described in para. 3.3 as the Company’s “*sole purpose*”) because the Company had already established an employee benefit trust, on advice from HBA Remuneration Facilities Limited, in Jersey in 2009.
27. The Report for Directors does not refer to any intention to deal with Ms Dervan’s shareholding, but does state at para. 2.5 that “*The Company proposes to make an initial gift of cash to the Trustees of the REM. Trust which is to be established by the Company*” and goes on to set out the consequences for the Company of “*a cash funded Rem Trust and its applicability to the circumstances of the Company*” (para. 3.2). The document also appears to be in standard form, suitably tailored, at least in places, to reflect the factual position of the Company. This is potentially best shown by reference to para. 6, which reads in part:
- “6.3 *It is our preference that a Guernsey resident trust company is appointed as Trustee due to the strict regulatory regime in Guernsey. Concept Fiduciaries Limited is a prestigious independent group that provides cost efficient and effective trustee services.*
- 6.4 *However the choice of Trustee is a matter for the Company. ...*
- 6.6 *We note that you wish to appoint Concept Fiduciaries Limited, who have developed these arrangements, to act as independent Trustees and that you have already completed their Trust Questionnaire. It should be noted that the acceptance of an appointment as Trustee is always entirely at the discretion of the individual offshore Trustees.*”
- Quite why para. 6.6 has been added in the way it has without modifying either or both of the preceding sub-paragraphs is a mystery.
28. Three board meetings of the Company were held whilst Ms Dervan was at the offices of Davenport Lyons on 18 May 2010. The meetings were attended by two other directors of the Company, Mr Ismay and Annette Steele, by telephone. If, as appears to be the case, the documentation was only supplied to Ms Dervan on that day for the first time, it is quite possible that the other two directors had not even had sight of the documentation or, if they had, had not received it any earlier than that day. In any event, none of them seems to have queried why a new remuneration trust for the benefit of past, present and future employees of the Company was necessary or desirable.
29. Albeit that Ms Dervan recalls them happening about 10 minutes apart, the Minutes of those board meetings record that they took place at 3.35 pm, 4.01 pm and 4.05 pm. As with the hastily convened meeting on 31 March 2010, prepared board minutes were produced for Ms Dervan’s signature at the time. It is most likely that these had been prepared by Mr Bindschedler, Mr Auden or upon direction from one of them.
30. The purpose of the first meeting at 3.35 pm “*was to consider and if thought fit to approve a commercial executive incentive scheme for the purposes of attracting, incentivising and retaining key executives for the benefit of the Company*” (Minute 3.1). In Minute 4, it is stated that the Chairman, Ms Dervan, produced to the Board the Report for Company and the draft Trust Deed, which was prepared by Davenport Lyons. As already noted, it is unclear whether these documents were actually made available to the two directors attending by telephone. Ms Dervan’s Affidavit does not explain anything about the mechanics of document-sharing.

31. The resolutions at that meeting were to establish the MD Events Limited Remuneration Trust “*in the manner set out in the Report*”, to appoint the First Respondent as the trustee of that trust and to authorise Ms Dervan “*to sign and execute any documents relating to or necessary for the establishing of the REM Trust*”. Ms Dervan’s signature on the Trust Deed on behalf of the Company was witnessed by Mr Prinjha.
32. By clause 2 of the Trust Deed, the proper law was expressed to be the laws of England and Wales. Clause 10 deals with powers of exclusion. Clause 43 then contains the provision that:

*“No Excluded Persons shall be capable of taking any benefit of any kind by virtue or in consequence of this Settlement”*

and spells out in particular (at clause 43.2) that:

*“No part of the capital of the Trust Fund shall be paid or applied for the benefit either directly or indirectly of any such Excluded Person in any manner or in any circumstances whatsoever”.*

£100 was indicated as being the property constituting the initial Trust Fund.

33. The Affidavit of Paul Yerbury sets out the explanation as to why Ms Dervan is an Excluded Person for the purposes of the MD Events Limited Remuneration Trust. That Trust was established for the benefit of employees so as to fall within section 86 of the Inheritance Tax Act 1984. Clause 10.3 of the Trust Deed cross-refers to “*any person specified in the Inheritance Tax Act 1984, ... section 28(4)*”, providing that the Trustees shall not apply the Trust Fund for the benefit of such a person who shall be an Excluded Person. As Mr Yerbury explains, section 28:

*“... provides that in general where an individual makes a disposition of shares in a company to a section 86 trust the disposition is exempt from inheritance tax. However if the shareholder of that company is a beneficiary of the trust the disposition is not exempt from inheritance tax.”*

Therefore, in order to benefit from the exemption to inheritance tax provided by section 28 of the 1984 Act attaching to a disposition of her shares into the Trust, Ms Dervan could not be included among the beneficiaries of the MD Events Limited Remuneration Trust.

34. Ms Eley exhibited a note of a telephone conversation made by Mr Pinchemain that afternoon. It records that the time of the conversation with Mr Bindshedler was 3.48 pm, that Mr Bindshedler explained that he was calling from a meeting of the board of the Company, which “*had resolved to establish a Remuneration Trust with Concept Fiduciaries Limited*”, and the asked whether the First Respondent was prepared to accept that trusteeship. Mr Pinchemain agreed on behalf of the First Respondent to do so and to arrange for the Trust Deed to be executed. He also reminded the directors of the Company during that call “*that Concept Group Limited was holding the sum of £500,000.00 plus accrued interest of £96.57 which was being held by Concept Fiduciaries Limited as constructive trustee pending the formation of the Trust.*”
35. The Minutes of the board meeting of the Company held at 4.01 pm record that “*the purpose of the meeting was to consider and if thought fit to approve the transfer by way of gift from one or more Shareholders to Concept Fiduciaries Limited acting as the Trustees*” of the shareholding of Ms Dervan. The reference to “one or more Shareholders” is odd in the context of a situation where the Company knew it had just a single shareholder, namely Ms Dervan. The Jurats infer that this Minute was prepared from a format used for other clients and insufficient care was taken to ensure that it read appropriately for the purposes of the Company. The documents produced at this meeting, although the same comment applies as to whether they were seen by all the directors attending, were a deed of assignment to the

Trustees and a stock transfer form in respect of the shares. The Company resolved to approve the transfer of the shares and instructed its Company Secretary to update the Company records.

36. The Deed of Assignment between Ms Dervan and the First Respondent, also prepared by Davenport Lyons, was executed on 18 May 2010. By clause 5.2, it was expressly to “*be governed by and interpreted in accordance with English Law*”. The third recital records that the MD Events Limited Remuneration Trust “*is intended by the Company and the Trustees thereof to constitute an employee trust for the purposes of Section 28 Inheritance Tax Act 1984 and Section 239 Taxation of Chargeable Gains Act 1992*”. Clause 2 provides that Ms Dervan, the Assignor, “*assigns all its legal and beneficial right and interest in the Ordinary Shares [in the Company] by way of gift for no consideration*” and, by clause 3, the First Respondent undertook “*to hold the Ordinary Shares for the purposes of the Scheme and as capital of the Scheme*”. The reference to the Assignor as “*its*” rather than “*her*” is an indication that this document may also have been a template document rather than one drafted specifically for Ms Dervan’s needs.
37. The third and final board meeting of the Company that afternoon was held at 4.05 pm. A draft Deed of Contribution, similarly prepared by Davenport Lyons, is recorded as having been produced to the meeting. The purpose of this meeting was to consider whether the Company still wished to contribute to the remuneration trust that it had just resolved to establish the £500,000 that had been transferred on 31 March 2010. The directors present at that meeting resolved that “*the contributions listed in the deed would promote the success of the company for the benefit of the members as a whole*”.
38. In accordance with the authority conferred on her by the resolution of that final board meeting, the Deed of Contribution between the Company and the First Respondent was executed on behalf of the Company by Ms Dervan on 18 May 2010. By clause 5.2, it was expressly to “*be governed by and interpreted in accordance with English Law*”. By this Deed, the Company made a contribution of £500,000 to the MD Events Limited Remuneration Trust, and the First Respondent, as Recipient, agreed to accept it and undertook to hold it “*for the purposes of the Scheme and to pay and discharge all fees, outgoings and disbursements on behalf of the Scheme as necessary out of the Reserve Contribution or other contributions received by it*”.
39. At para. 54 of her First Affidavit, Ms Dervan summarised evidence about the events on the afternoon of 18 May 2010 as follows:
- “The entire approach was that no detailed explanation was given in relation to any of the documentation involved in the establishment of the Remuneration Trust and I was simply presented with a number of documents which I was to sign to establish the trust.”*
40. By an e-mail dated 20 May 2010, Ms Dervan provided to Mr Prinjha details of her solicitor and the solicitor for the developer in relation to the proposed acquisition of a property in Dublin. Those details were forwarded to Mr Pinchemain by e-mail on 24 May 2010. On 26 May 2010, the First Respondent declared the MD Events Limited Remuneration Trust – First Sub-Trust by a Deed apparently signed by Ms Eley and Mr Pinchemain. As at that date, £10 of assets of the MD Events Limited Remuneration Trust was declared as being held in the First Sub-Trust. The Beneficiaries were split into “*the Class “A” Beneficiaries*” and “*the Class “B” Beneficiaries*”, but Ms Dervan continued to be an Excluded Person. Ms Eley further explained that the specific purpose of this Sub-Trust was to incorporate the Second Respondent to be used as the vehicle to purchase the envisaged Dublin property. The purchase price was to come from part of the £500,000, a mortgage and “*possibly a loan from Ms Dervan to make up the balance*”. This structure was chosen “*to keep the property purchase intended by Ms Dervan separate from the principal trust*”. The Second Respondent was duly incorporated as an asset of the Sub-Trust but remained dormant until later in 2010.

41. Given the proximity of the dates to the events of 18 May 2010, the Jurats find that Ms Dervan's request to purchase a property in Dublin through the trust structure being created must have been in the minds of her and her advisors in the run-up to 18 May 2010. Accordingly, an element of the underlying rationale for the MD Events Limited Remuneration Trust being gifted the assets it was, especially the sum of £500,000, was to facilitate the acquisition of real property for the benefit of Ms Dervan.
42. On 6 July 2010, the three directors of the Company signed what appears to be a standard Concept Group Limited Application Form in respect of a Remuneration Trust. A separate Part B needed to be completed by "*each Beneficial Owner of the Sponsoring Company*". Because Ms Dervan was, prior to the Deed of Assignment, the only shareholder of the Company, she has completed this Part. She records that the source of her wealth is as "*founding shareholder of M D Events Limited*".
43. On 8 July 2010, Wissenbach Group was appointed as investment adviser to the MD Events Limited Remuneration Trust. On 30 July 2010, Wissenbach Group informed the First Respondent that the envisaged Dublin property purchase was cancelled.
44. On 14 September 2010, Ms Dervan attended a meeting at the offices of Concept Group Limited. This was the only occasion on which Ms Dervan and Ms Eley met. Also in attendance were Ms Dervan's colleague and friend, June Pearce, Ms Eley's colleague, Karen Tostevin, Mr Auden and, for part of the meeting, one of his colleagues. The meeting discussed the possibility of appointing one or more protectors to the MD Events Limited Remuneration Trust, a letter of wishes from Ms Dervan and how to arrange paying periodic bonuses for staff through the trust. Ms Dervan appointed herself and June Pearce as Protectors. Ms Dervan also requested that she be provided with a loan to purchase an apartment in London. Mr Auden continued to play a central advisory role in the arrangements relating to the trust. For example, Ms Eley explained that he clarified that Ms Dervan's request for a loan to assist with the purchase of the apartment would be best met by way of deep discounted bonds "*so that interest would not be liable for UK income tax on repayment*".
45. Mr Bindschedler gave advice to the First Respondent about some re-structuring of the trust arrangements on 30 September 2010. His advice related to the entity where the shares of the Company should be held and the most appropriate way to introduce a company to make loans or deep discounted securities to ensure some separation between the main shareholding entity, to which dividend payments would be made by the Company, and any entity lending to individuals. The next day, Ms Dervan was informed by Ms Tostevin that "*a new offshore company is required for the loan (or more correctly the deep discounted bond)*". Ms Dervan replied later that day, indicating that she had not realised that a new company was needed, but had no preference as to the name to be chosen. The Third Respondent was duly incorporated on 4 October 2010.
46. On 6 October 2010, Pan Continental Consultants PCC Limited Contracting Cell 2 wrote to Ms Dervan offering revised fees for the services set out in its letter of 6 May 2010, as accepted on behalf of the Company on 13 May 2010. Instead of payments being calculated by reference to 7.5% of the value of the shares and other assets contributed to the MD Events Limited Remuneration Trust, this letter proposed payment of a fixed amount, whether in three tranches or, with a small discount, in a single payment. On 10 October 2010, Ms Dervan, on behalf of the Company, chose the option involving payment in three tranches.
47. On 11 October 2010, the re-structuring of the trust arrangements took place. As a result, 80% of the shares in the Company held by the First Respondent were appointed to the First Sub-Trust and then gifted to the Second Respondent. This was also the day when Ms Dervan informed Ms Tostevin that she had posted a signed copy of a Deep Discount Bond issued by the Third Respondent, which she had executed the day before. The Subscription Price for this bond was £360,000 and the Nominal Amount payable on its maturity in October 2015 is £439,268.39.

48. On 6 November 2010, having completed the purchase of her apartment, Ms Dervan e-mailed Ms Tostevin asking for a further loan as she had left herself “*a little short for the purchase of furniture, carpets etc for the apartment*”. She explained that her “*own money is tied up in Bonds which cannot be released for a few months*”. Ms Dervan subsequently executed a second Deep Discount Bond issued by the Third Respondent on 25 November 2010. The Subscription Price for this bond was £30,000 and the Nominal Amount payable on its maturity in November 2015 is £36,609.67.
49. The Company held a board meeting on 18 November 2010. Ms Dervan and Mr Ismay were present. They resolved to approve making a contribution of £37,500 from the Company’s cash reserves to the First Respondent as trustee of the MD Events Limited Remuneration Trust. On 2 December 2010, on Mr Auden’s advice, the Company sent a letter to all of its employees at that time about the MD Events Limited Remuneration Trust. On 9 December 2010, on behalf of the Company, Mr Ismay wrote to the First Defendants asking the trustee to consider paying Christmas bonuses to staff as set out in the list appended to the letter, which would then be effected by the First Defendant transferring to the Company the sum of £37,500 for distribution by the Company through its payroll.
50. By letters dated 13 June 2011, Pan Continental Consulting PCC Limited terminated its consultancy agreements with Wye Associates Limited and the Wissenbach Group. Both letters made express reference to Pan Continental Consulting PCC Limited conducting an investigation, following a complaint from the Company, into how the consultants went about introducing the remuneration trust to Ms Dervan.
51. Although not known to Ms Dervan in 2010, she has since discovered that Mr Auden had been struck off the roll of solicitors by the Solicitors Disciplinary Tribunal. The Court was shown an extract from *The Law Gazette*, relating to Application 9124-2004 concerning Paul Michael Baxendale-Walker and William Hugh Derek Auden, both of whom were struck off the roll for unbecoming conduct. It was accepted by the Tribunal that Mr Auden, who was not an equity partner in the firm of Baxendale-Walker, had played a “*lesser role in the subject-matter*”. However, the Tribunal was sure that the allegations were proved against both men and that “*much of [their] evidence was untrue, and their assertion that it was true could not have been honestly held*”. The Court considers that it is unfortunate that either or both of the Applicants did not undertake more due diligence before relying on Mr Auden, and others associated with him, for advice.

### The law

52. The Application is brought pursuant to section 69 of the Trusts (Guernsey) Law, 2007. The Deputy Bailiff directed the Jurats that he was satisfied that Ms Dervan and the Company were persons mentioned in section 69(2) for the purposes of bringing their applications and that, insofar as it might have been necessary, he had granted Ms Dervan leave in accordance with subsection (2)(g).
53. As set out in the Deputy Bailiff’s judgment of 30 November 2012, he concluded that the applicable law in relation to the two dispositions the Applicants sought to have set aside for mistake was English law. The approach that the High Court of England and Wales would take to determine the application under English law was set out in Mr Wilson’s affidavit, from which the following principles are drawn.
54. The starting point is the decision of the English Court of Appeal in *Ogilvie v Littleboy* (1897) 13 TLR 399, in which Lindley LJ stated:

*“Gifts cannot be revoked, nor can deeds of gift be set aside, simply because the donors wish that they had not made them and would like to have back the property given. Where there is no fraud, no undue influence, no fiduciary relation between donor and donee, no*

*mistake induced by those who derive any benefit by it, a gift, whether by mere delivery or by deed, is binding on the donor. ... In the absence of all circumstances of suspicion a donor can only obtain back property which he has given away by showing that he was under some mistake of so serious a character as to render it unjust on the part of the donee to retain the property given to him.”*

55. The most recent statement of the law is in the Court of Appeal’s judgment in Pitt v Holt [2011] EWCA Civ 197 and the following extracts from the judgment of Lloyd LJ:

“203. ... as a matter of authority and of principle, the correct test is in part as set out by Lindley LJ in Ogilvie v. Littleboy, endorsed by the House of Lords ... That identifies the critical relevance of the court’s view of the effect of the mistake, once identified, upon the conscience of the recipient. Thereby it points to a need to protect the recipient in his possession and enjoyment of the property given. In that respect it sets a very high test as to the gravity of the mistake. However, I do not consider that it can be taken as definitive as to the type of mistake that may be relevant, so as to leave that entirely at large. I would accept that, in general, equity does not define dogmatically the categories of case in which it may intervene. Nevertheless, it seems to me that, with the benefit of the review of the relevant cases over the past 150 years or so, it is possible and right to say in what kinds of case the jurisdiction is available, and in which it is not. ...

204. For that purpose, Gibbon v Mitchell provides the best starting point. A mistake as to the effect of a disposition by which I mean (as Millett J did) its legal effect, may be sufficient. Gibbon v Mitchell is such a case, since the nature of the donor’s interest under the trust meant that the disposition which he entered into could not have the effect that he intended and desired. ...

210. I would therefore hold that, for the equitable jurisdiction to set aside a voluntary disposition for mistake to be invoked, there must be a mistake on the part of the donor either as to the legal effect of the disposition or as to an existing fact which is basic to the transaction ... Moreover the mistake must be of sufficient gravity as to satisfy the Ogilvie v Littleboy test, which provides protection to the recipient against too ready an ability of the donor to seek to recall his gift. The fact that the transaction gives rise to unforeseen fiscal liabilities is a consequence, not an effect, for this purpose, and is not sufficient to bring the jurisdiction into play.”

56. Lloyd LJ also endorsed the position as summarized by Millett J in Gibbon v Mitchell [1990] 1 WLR 1304:

“... wherever there is a voluntary transaction by which one party intends to confer a bounty on another, the deed will be set aside if the court is satisfied that the disponent did not intend the transaction to have the effect which it did. It will be set aside for mistake whether the mistake is a mistake of law or of fact, so long as the mistake is as to the effect of the transaction itself and not merely as to its consequences or the advantages to be gained by entering into it.”

Accordingly, the test to be applied is that set out in para. 210 of the judgment in Pitt v Holt, reading into it the requirement that it must be “*some mistake of so serious a character as to render it unjust*” for the recipient to retain the property given. The Deputy Bailiff directed the Jurats to apply this test when considering both of the dispositions to the First Respondent on 18 May 2010.

## Discussion

57. As a general comment, the Jurats feel that Ms Dervan has not been well-served by her wealth management advisors and also that Ms Dervan herself may have reposed more confidence and

trust in them than she should have done. It is obvious that Ms Dervan is a successful businesswoman and probably should have been more enquiring as to why things were happening as they were. The Jurats noted that, because the sale of her shareholding in the Company was no longer imminent, the urgency of the situation had reduced quite significantly by the time of her attending at the offices of Davenport Lyons on 18 May 2010. In those circumstances, they question why her advisors seemed so intent on the decisions being taken then, especially when documents had only been produced at that time and so had not necessarily been fully understood and it being the first occasion on which Ms Dervan had met Mr Bindschedler unless, of course, these were transactions very much for the benefit of those advisors rather than Ms Dervan and the Company. Resolving such issues, however, is not a matter for this Court.

58. The Jurats believe that some pressure was being exerted on Ms Dervan to agree to everything, which she says was presented to her as formalities that needed to be completed when there was apparently no pressing need to finalise matters on that day. The Jurats consider that the documentation relating to the board meetings, both what was said to have been produced to those meetings and the Minutes, were not produced with care and probably not considered properly. There are simply too many small errors in them to suggest anything other than that templates were being used and insufficient care was taken by the person or persons responsible for modifying them to suit Ms Dervan and the Company.
59. The Jurats are surprised that the two other directors who attended the Company's board meetings on 18 May 2010 have not given any evidence about those matters. Both continued to be officers of the Company until their departures in March 2012 (as shown on the list of employees exhibited to Mr Blows' Affidavit). There were, of course, notified about these proceedings and have chosen not to involve themselves, whether to confirm or contradict the evidence of Ms Dervan. Accordingly, the Jurats recognise that the evidence of Ms Dervan about the matters to which she deposes stands unchallenged.

#### *The shareholding*

60. The Jurats are satisfied that Ms Dervan's shareholding in the Company represented the bulk of her accumulated wealth by May 2010. The Company was the business that she had started and developed in the preceding years. She planned to sell her shareholding to realise the personal assets she had tied up in the Company. There may well have been tax payable by her on the sale of her shares. The Jurats understand that someone like Ms Dervan may quite properly have sought advice on steps that could be taken to arrange her affairs in such a way as to minimise those tax implications or defer when they might apply. However, they are satisfied that, whatever structures might have been proposed or used, Ms Dervan always had the intention to be able to benefit from the capital represented by her 100% shareholding in the Company. Without access to that capital, she would not be able to pursue the other types of investment opportunity she had in mind.
61. The MD Events Limited Remuneration Trust, to which those shares were gifted by Ms Dervan on 18 May 2010 when she executed the Deed of Assignment, was established in such a way that she is an Excluded Person. Consequently, she is prevented from benefiting from the capital represented by that shareholding. The Jurats find that this is completely at odds with the intentions she had. They find that she did not understand the consequences and so was labouring under a mistake as to the legal effect of assigning her ownership of those shares to the First Respondent as trustee of the trust. As she put it in her First Affidavit (at para. 7), "*I thought I was putting my shares into a structure from which I would be able to benefit for the rest of my life*".
62. In relation to her shareholding, the Jurats accept the explanation given by Ms Dervan at para. 22 of her First Affidavit:

*“My broad understanding was that this was an entirely legitimate way to make savings on tax that would otherwise be due upon the sale of MD Events by placing my shares in trust now. Importantly, my understanding was also that I would be able to benefit from the trust for the rest of my life, particularly the proceeds of the sale of the shares in MD Events whenever they were sold and whenever I wished.”*

They have found no evidence that Ms Dervan’s position changed so as to place her shareholding into a trust for the benefit of the Company’s employee’s, past and present, but excluding herself. Ms Dervan thought she was gifting her shares to the MD Events Limited Remuneration Trust in order to receive back the sale price when those shares were eventually sold, but without the same tax implications as would arise if she sold them directly as the vendor of them.

63. As already noted, the Jurats have concluded that Ms Dervan was not adequately advised about the effect of assigning her shareholding in the Company into the MD Events Limited Remuneration Trust. Her shareholding was her main asset. By gifting those shares to the trust on the terms under which the trust had been established, Ms Dervan was foregoing any benefit during her lifetime in respect of the capital represented by that asset. She was also foregoing receipt of any future dividend declared by the Company and would only have the potential to benefit in less direct ways thereafter. They accept Advocate Le Tissier’s submission that the likelihood of a person choosing to transfer the vast bulk of her wealth to another in circumstances where she is unable to benefit is a remote one. Accordingly, the Jurats are satisfied that this was a momentous decision for her to have taken and that the differences between the position as she understood it and the actual effect is so great that she is entitled to say, in the words used in *Ogilvie v Littleboy* that she “*was under some mistake of so serious a character as to render it unjust on the part of the donee to retain the property given to him*”.
64. As a result of those conclusions, the Jurats are satisfied that Ms Dervan’s disposition of her shareholding in the Company, made by way of the Deed of Assignment she executed on 18 May 2010, resulted from a mistake of the type envisaged by the ruling in *Pitt v Holt* and so is capable of being set aside. The Jurats are further satisfied that this is a proper case in which they should properly exercise the Court’s discretion to set aside that disposition and grant the relief sought by Ms Dervan in para. 1 of the Application. The entire shareholding in the Company should be re-vested in Ms Dervan as soon as practicable so as to restore the position as it existed prior to 18 May 2010.

*The £500,000 contribution*

65. The position in relation to the Company’s application in respect of its contribution of £500,000 to the MD Events Limited Remuneration Trust is different from Ms Dervan’s personal application in respect of her shareholding. Although the evidence in support of this aspect of the Application is also contained in the Affidavits sworn by Ms Dervan, the Jurats have taken into account that the decision-making process for making the contribution to the trust involved more people than just Ms Dervan. Any mistake must, therefore, be the shared mistake of the directors of the Company who took the relevant decision.
66. The Jurats have drawn a distinction between the underlying motivations in respect of Ms Dervan’s shareholding and the Company paying away £500,000 of its reserves, initially to be held on constructive trust and subsequently into the MD Events Limited Remuneration Trust. The Jurats accept that Ms Dervan was thinking about selling her shares in the Company and was taking advice as to the optimal ways in which to effect the best return to herself. In relation to the cash sum of £500,000, the Jurats accept that the directors of the Company had choices to make about that money. The decision was not just a decision for Ms Dervan, however much she may have regarded the Company as “*her company*”.

67. One of the choices for the Company was whether to declare a dividend. The Jurats accept Ms Dervan's evidence that this option was under active consideration. The benefit to the Company of transferring out £500,000 before the end of its financial year was "*to safeguard the small business exemption that meant we could avoid producing group accounts*" (para. 25 of Ms Dervan's First Affidavit). At the meeting on 31 March 2010, as Ms Dervan has explained, "*Mr Auden suggested that the money would be better paid into the proposed Remuneration Trust and then out to [her] in the form of a loan or loans*" (para. 26 of her First Affidavit). There has been no suggestion from Ms Dervan that she did not understand the concept of a loan. She accepted Mr Auden's advice that such an arrangement would save her money from a tax perspective.
68. The initial decision for the Company to transfer this money from the Company to Concept Group Limited was taken at the board meeting also attended by Mr Ismay. The payment out was made in contemplation of establishing a remuneration trust. Given their positions in the Company, the Jurats believe that both Ms Dervan and Mr Ismay were aware of what a remuneration trust could achieve for employees, including Ms Dervan, because, as Ms Dervan has explained, the Company had established a trust in Jersey as recently as 2009. Accordingly, in relation to the Company's apparent choice between declaring a dividend, potentially taxable in Ms Dervan's hands, or transferring the money to a third party as a preparatory step to contributing it to a remuneration trust, even though this step was taken in some haste, the Jurats are satisfied that both of the Company's directors were not labouring under any mistake. The sum of £500,000 was held by Concept Group Limited (or subsequently by the First Respondent) to the order of the Company, which according to Mr Pinchemain's note was apparently insisted upon by Mr Ismay, and so could have been applied thereafter to whatever legitimate purpose the Company directed.
69. By 18 May 2010, the Company had engaged Pan Continental Consultants PCC Limited, by returning the letter of 6 May 2010 from the latter's Contracting Cell 2 accepting the terms set out for its services and had received Mr Bindschedler's letter of engagement dated 14 May 2010. Although Ms Dervan simply states in para. 49 of her First Affidavit that "*On 18 May 2010 I attended a meeting at Davenport Lyons' offices in London in order to execute a Trust Deed that would establish the Remuneration Trust*", without explaining what discussions took place within the Company beforehand, the Jurats have drawn the inference that the other directors of the Company, Mr Ismay and Ms Steele, must have been aware that that was the purpose of Ms Dervan's attendance at the meeting that day. They must also have been aware, especially given Mr Ismay's previous involvement, that £500,000 had been transferred from the Company and earmarked by it as a future contribution to this remuneration trust.
70. There has been no suggestion that the Company did not intend to establish the MD Events Limited Remuneration Trust, only that it was mistaken when it contributed the £500,000 to it. The Jurats have noted that the Application does not attack the lawfulness of the entire settlement, but only relates to the two dispositions made to it which are the subject of these proceedings. The focus, therefore, has to be on the Company's decision to make a substantial contribution to the trust and the reasons underlying that decision.
71. Given all this background, the Jurats find that when the three directors held the board meeting on 18 May 2010 it was their intention to divest the Company of £500,000 and to direct payment of that amount to the First Respondent and into the trust. The effect of that decision was that the money was no longer the Company's to apply as it saw fit, but became the property of the trustee. Accordingly, as regards that basic decision of the directors of the Company, the Jurats do not find that they were labouring under any mistake.
72. In relation more broadly to what the directors of the Company thought they were doing, the Jurats find that they were providing a capital asset to the remuneration trust, which in turn could enable Ms Dervan to benefit in accordance with the terms of the deed establishing the remuneration trust. Ms Dervan herself refers to the advice given by Mr Auden on 31 March 2010 that, instead of her receiving the money directly by way of a dividend, she could benefit

indirectly by receiving the money through a loan or loans and that this would produce a tax benefit to her. The Jurats also regard it as significant that, just two days after the documents were executed and the Company's board meetings held, Ms Dervan was providing details to Mr Prinjha, which were relayed to Mr Pinchemain, relating to the proposal to purchase a property in Dublin. The timing is such that it demonstrates that Ms Dervan had in mind acquiring this property before the decisions taken on 18 May 2010.

73. The arrangements to which she and the Company were party at that time were part of the structure to enable her to give effect to her wish to purchase a property in Dublin. Although that potential purchase was abandoned, the Jurats consider that the arrangements that were then put in place later in 2010, when Ms Dervan purchased an apartment in London with assistance of the Deep Discount Bonds issued from within the MD Events Limited Remuneration Trust structure, support their conclusion that Ms Dervan understood sufficiently the effects of the Company choosing to contribute the £500,000 to the trust and the access to those monies available for Ms Dervan's benefit. It is implicit that the understanding of the other directors must also have been sufficiently clear as to what the effects of their decisions were. Accordingly, the Company, through its directors, was not mistaken in the manner required by *Pitt v Holt* when it approved this disposition and paragraph 3 of the Application therefore fails.
74. In reaching that conclusion, the Jurats have rejected Advocate Le Tissier's submission that, in broad terms, the position in this case is analogous with that in *Wolff v Wolff* [2004] EWHC 2110 (Ch). The explanation for Mann J changing his mind from his initial reaction (set out in para. [26]) was that although the Wolffs "*intended to give away an interest to their daughters ... there were limits to that gift*" and those limitations had an effect on the transaction into which they entered. As his Lordship put it, "*they have given away more than they intended*". However, in the present case, the Company has given away what it intended to give away and there was no mistake as to what they gave and to whom. Although Ms Dervan now says that she thought at the time that the MD Events Limited Remuneration Trust was to be "her trust", for the reasons just given, the Jurats do not find that the directors of the Company have mistakenly given away more than they intended. In relation to the contribution of £500,000, this is not akin to the situation in *Wolff v Wolff*, whereas it was for the assignment of Ms Dervan's shares.
75. In the light of the Jurats' decision on para. 3 of the Application, para. 4 necessarily falls away and is also dismissed.

### Conclusion

76. The decision of the Court, therefore, is that Ms Dervan has succeeded on her parts of the application because her assignment of her 100% shareholding in the Company on 18 May 2010 arose because of a mistake that was of such a serious character that it would be unjust for the recipient of those shares to retain them. However, the Court has concluded that the contribution of £500,000 made by the Company to the MD Events Limited Remuneration Trust, from which Ms Dervan has derived benefits by being able to obtain the advance of monies from the Third Respondent, did not arise as a result of a mistake, meaning that the Company's parts of the Application fail.
77. Paragraph 2 of the Application seeks an order that "*The First Respondent take all action necessary to transfer the Shares to the First Applicant forthwith*". The shareholding in the Company is currently split between the First and Second Respondents. However it is to be achieved, the order of the Court is that those Respondents must cooperate to enable the shareholding to be re-assigned to Ms Dervan as soon as reasonably practicable. Counsel are requested to prepare an appropriate form of wording for that part of the Act of Court.

78. The question of the appropriate costs order is reserved. The parties are encouraged to agree how the costs of this action are to be resolved. In default of agreement, the parties are, of course, at liberty to re-list the case at an appropriate time before the Interlocutory Court.