



**Credit Suisse Trust Limited (as Trustee of the Translux Financing Trust) v Mourant Ozannes et al**  
Royal Court  
29th May 2015

**JUDGMENT  
25/2015**

**Application for injunctive relief.**

**Approved Text  
29.05.2015**

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

**Between:** **CREDIT SUISSE TRUST LIMITED** **Plaintiff**  
(as Trustee of the Translux Financing Trust)

**-and-**

(1) **MOURANT OZANNES (A Guernsey partnership)**  
(2) **SIMON E HAGGIAG**  
(3) **MICHAEL HAGGIAG** **Defendants**  
(4) **MIRELLA PETTENI HAGGIAG**

**Application for Injunctive Relief**

**Date of hearing: 14<sup>th</sup> May 2015**  
**Decision handed down: 29<sup>th</sup> May 2015**

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

**Counsel for the Plaintiffs: Advocate A D Laws**  
**Counsel for the First Defendant: Advocate J M Wessels**  
**Counsel for the Second to Fourth Defendants: Advocate J P Greenfield**

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

The Royal Court Civil Rules, 2007  
The Hague Convention on the Law Applicable to Trusts and on their Recognition  
*Prince Jefri Bolkiah v KPMG* [1999] 2 AC 222  
*Ogier v Jeffreys* [2009-10] GLR 88  
*Geveran Trading Co Ltd v Skjevesland* [2003] 1 WLR 912  
*Takilla Limited v Olsen, Backhurst & Dorey* 2004 JLR 219  
*Kallinicos v Hunt* [2005] NSWSC 1181  
Rule 79 of the Guernsey Advocates Rules of Professional Conduct

**Introduction**

1. The Plaintiff, Credit Suisse Trust Limited, has commenced declaratory relief proceedings in this Court against Roberto Haggiag, Simon E. Haggiag, Michael Haggiag and Mirella Petteni Haggiag. All four are beneficiaries of the Translux Financing Trust (frequently abbreviated to “the TFT”), of which the Plaintiff is the trustee. They were formerly beneficiaries of the

United Prod Foundation, of which the Plaintiff was the trustee. None of them is resident within the jurisdiction. However, the Second to Fourth Defendants had indicated that they could be served through the offices of their Advocates, Carey Olsen. Leave to serve out of the jurisdiction on the First Defendant was granted on 20 February 2015.

2. The Plaintiff's Cause was tabled on 20 March 2015. The First Defendant appeared through Advocate Edwards of Mourant Ozannes. The question about whether it was appropriate for Mourant Ozannes to represent the First Defendant was raised on behalf of the Plaintiff and the Second to Fourth Defendants. On behalf of the Plaintiff, Advocate Laws had indicated through correspondence that if Mourant Ozannes did not voluntarily withdraw from representing the First Defendant, he was instructed to seek injunctive relief. On behalf of the First Defendant, Advocate Edwards indicated that Mourant Ozannes were instructed to challenge the leave given to serve the Summons convening the First Defendant to the Plaintiff's proceedings. In those circumstances, the Plaintiff's application for procedural directions in respect of its Cause was adjourned to 10 April 2015 to enable the parties to consider their positions.
3. The First Defendant's Application to set aside the Court's Order for service on him outside the jurisdiction was duly settled and signed by Advocate McHugh on 20 March 2015. Both that application and the Plaintiff's Cause seeking injunctive relief against Mourant Ozannes were put before the Court at the adjourned hearing on 10 April 2015. The Court decided that the injunction application should be heard first and distinctly and case managed that application to the hearing of it that took place on 14 May 2015.
4. The relief pleaded against Mourant Ozannes (as the First Defendant to those proceedings) by the Plaintiff was as follows:

- “1.1 An injunction restraining the First Defendant from advising or acting for Roberto Haggiag (“RHJ”) in the Declaratory Relief Claim (as hereinafter defined) and/or in relation to any matter involving or connected with an allegation that the TFT is invalid, or which touches on the Letter of Wishes Dispute (as hereinafter defined).
- 1.2 An injunction restraining the First Defendant from acting for any other person or entity in the Declaratory Relief Claim and/or in relation to any matter involving or connected with an allegation that the TFT is invalid.”

By the conclusion of the hearing, Advocate Laws acknowledged that the Plaintiff was no longer pursuing para. 1.2 at all and that its primary focus was on the first element in para. 1.1 relating to representation of the First Defendant in the proceedings brought by the Plaintiff and known as the Declaratory Relief Claim.

## Evidence

5. The evidence in support of the Plaintiff's injunction application is contained in an Affidavit sworn by one of its directors, Geoffrey Le Poidevin, on 10 April 2015. He refers to previous proceedings involving the TFT in which Advocate Wessels, a partner of Mourant Ozannes throughout, acted for the three members (being Lea Ketty Genah, Giuseppe Nemni and Haivito Arbib) of the Board of Protectors of the TFT, which is a settlement governed by Guernsey law and which was established by a deed dated 14 November 2005. The Settlor of the TFT was Roberto Haggiag, who had died on 27 February 2009. (In order to distinguish this Roberto Haggiag from the First Defendant in the Declaratory Relief Claim, who is a nephew of the Settlor, they are commonly referred to as “Senior” and “Junior” or, more easily, by the initials “RHS” and “RHJ” respectively.) Those proceedings, which have been referred to as “the Letter of Wishes Dispute”, were settled on 19 February 2010, which was the fifth day of a hearing before Lieutenant-Bailiff Talbot QC. The main issues in those 2010 proceedings surrounded a document of the Settlor dated 22 October 2008: did the Settlor have capacity at the time the letter was signed, was it to be regarded as a letter of wishes for the purposes of the TFT and, if so, how should it be implemented?

6. The Order made by the Court in 2010 endorsed Terms of Compromise negotiated on behalf of the parties to those proceedings by their Advocates, who were Advocate Greenfield on behalf of Simon E Haggiag, Advocate Wessels on behalf of the Second to Fourth Respondents, who were the three members of the Board of Protectors, and Advocate Laws on behalf of the Applicant, Credit Suisse Trust Limited. The Court had made a representation order under rule 34 of the Royal Court Civil Rules, 2007, which extended to persons having an interest under the TFT. The Applicant was to represent such persons. RHJ was (and is) such a person. The Terms of Compromise included an exclusive jurisdiction clause in favour of Guernsey law and Guernsey's courts, led to the withdrawal of proceedings in Italy, as well as those matters before the Guernsey Court, and the acceptance of Simon E Haggiag as a member of the Board of Protectors, with consequential amendments being made to the trust deed, and provided that all parties' costs were payable out of the trust fund on the indemnity basis without taxation. It is implicit from these terms that everyone involved regarded the TFT as a valid Guernsey law trust.
7. RHJ commenced proceedings in the Tribunale Civile di Roma by an "Atto di Citazione" dated 11 September against Mirella Petteni Haggiag, Simone Haggiag, Michael Haggiag and Credit Suisse Trust Limited, ie, the same persons who are parties to the Declaratory Relief Claim. The Conclusions, or relief sought in those proceedings, state (in translation):

*"May it please the Honourable Court, after having disregarded any petition, exception and argument to the contrary and after having established and declared that United Prod and Translux are trusts that cannot be recognised by the Italian legal system, to preliminarily establish that, by virtue of the deed executed on 30 December 2004 and authenticated by Alberto Vladimiro Capasso, Notary Public, ROBERTO HAGGIAG JUNIOR is entitled to have the disposition implemented, which is laid down therein in his favour, at expense of the heirs of RHS, which declaring that ROBERTO HAGGIAG JUNIOR is entitled to make the contribution envisaged in the deed of 30 December 2004 vis-à-vis the heirs of RHS and that, at the same time, the heirs of RHS are obliged to prepare the financial deeds in favour of ROBERTO HAGGIAG JUNIOR; in any case, to declare the unlawfulness of the refusal by CS to fulfil the request submitted by a memo dated 13 March 2009 and signed by William Simpson, Esq., based on the mandate granted by RHJ as to his inclusion among the Percentage Beneficiaries; any expenses, fees and emoluments shall be borne by the losing party."*

Defences to RHJ's proceedings were filed prior to a hearing held at the end of March 2015, with the exception of Michael Haggiag, in respect of whom the court still has to determine whether service was validly effected. They primarily raise jurisdictional issues, although they proceed to deal with the substance of the claims made by RHJ.

8. The position of the Second to Fourth Defendants, supporting that of the Plaintiff, is set out in two Affidavits of Simon E. Haggiag and Lea Ketty Genah, both sworn on 16 April 2015. Mr Haggiag asserts that it would be hypocritical for Advocate Wessels to be supporting RHJ in respect of proceedings in which RHJ argues that the TFT is invalid because Advocate Wessels had argued on behalf of the Board of Protectors in the 2010 Guernsey proceedings the importance of maintaining the sanctity and integrity of the TFT. He then adds:

*"If the Guernsey Court allows Mourant Ozannes to continue to act in such proceedings then it will in my opinion cast doubt as to the legitimacy and integrity of the Guernsey legal structure, since I feel uneasy with the proposition that anyone could even think it would be acceptable to allow a lawyer to argue in one case that the Trust is valid and then to argue in another case for a different beneficiary that the Trust is invalid."*

The Affidavit of Ms Genah aligns her position to that of Mr Haggiag, but also deals with a slightly different issue because she was one of Advocate Wessels' clients in the 2010 proceedings. As she states:

*“I am willing to be a witness in the TFT’s proceedings against RHJ in Guernsey to explain my knowledge about RHJ’s claim pursuant to the document which is said to be a letter of wishes of 30 December 2004. Again if Mourant Ozannes and Mr Wessels were allowed to continue to act for RHJ in the TFT’s proceedings in Guernsey, I understand that would mean Mr Wessels would be cross-examining me as a witness. Again this makes no sense to me. Mr Wessels previously acted for me as one of the Protectors in a dispute where the basis of the that [sic] action was maintaining the integrity and validity of the TFT. I fail to understand how he could then act in a different dispute where he would be arguing that the TFT was invalid and cross-examining me, one of his former clients, about advice he had given.”*

9. The evidence in opposition to the application for an injunction is an Affidavit of RHJ himself sworn on 29 April 2015. (That Affidavit is also made in support of his own application dated 20 March 2015 in relation to setting aside the order giving leave to serve out of the jurisdiction or a stay of the Declaratory Relief Claim.) He spends some time setting out in detail what he says will be in issue in the proceedings he has commenced in Italy and the arguments that will be deployed under the Hague Convention on the Law Applicable to Trusts and on their Recognition, which may be of greater relevance to his own application. He suggests that the Plaintiff has misunderstood his position and comments on the Defences filed in Italy. He apologises for the uncomplimentary language used in his “Atto di Citazione”, suggesting that some of the translations used, whilst “*not strictly incorrect*” could have been phrased more accurately. In particular, though, he began his evidence by confirming the following:

- “5.1 I accept that the Translux Financing Trust (TFT) and United Prod Foundation (UPF) (collectively, the Trusts) are valid trusts as a matter of Guernsey law;*  
*5.2 I am not seeking to challenge the validity of the Trusts in Italy as a matter of Guernsey law, only their recognition;*  
*5.3 I am not running a “sham trust” argument, which I am informed has a particular legal meaning in Guernsey (per Lewin on Trusts 19<sup>th</sup> Edition at 4-020 to 4-030), either in Italy or Guernsey;*  
*5.4 I accept that Civil Action File No 1421 (Action 1421) was brought and settled in accordance with Guernsey law and civil procedure;*  
*5.5 The settlement agreement in Action 1421 (the Settlement Agreement) and consequential order of 19 February 2010 (the 2010 Order) are valid;*  
*5.6 I am not seeking to challenge the validity of Action 1421 or the Settlement Agreement in Italy.”*

RHJ makes it clear that he wishes to be able to make use of his preferred choice of legal representation, certainly insofar as handling his application to set aside the leave granted to serve out of the jurisdiction or for a stay of the Guernsey proceedings.

10. The final piece of evidence before me is Mr Le Poidevin’s Second Affidavit sworn on 8 May 2015. In it, he comments on the way RHJ has portrayed what the Italian proceedings will cover and expands upon the possible consequences were those proceedings to be successful. There is, however, little by way of additional factual evidence contained in this Affidavit that goes to support the Plaintiff’s application for injunctive relief.

### The law

11. It was common ground that the present application is not one of those allegedly restraining a lawyer from breaching a confidence owed to a former client, ie, where the principles derived from *Prince Jefri Bolkiah v KPMG* [1999] 2 AC 222, as applied in Guernsey, are engaged. Instead, the Plaintiff asserts that Mourant Ozannes are professionally embarrassed (whether or not they recognise that fact themselves) from acting in a manner which undermines a Court order for which they are in part responsible, and which recognises the validity of the TFT and,

further, that if that firm continues to act for RHJ, it may undermine public confidence in the administration of justice.

12. By way of domestic decisions in this area, Advocate Laws referred to the decision of Deputy Bailiff Collas (as he then was) in *Ogier v Jeffreys* [2009-10] GLR 88, in which he decided to exercise the Court’s discretion to restrain Ozannes from acting where it was clear that a partner of that firm was to be a witness. In doing so, he was concerned that there was a real risk that being permitted to continue to act would lead to the court’s judgment after trial being set aside on appeal because (at para. 42):

*“One issue that may arise when an advocate proposes to cross-examine his own partner is that, by reason of their relationship, the cross-examiner may have knowledge of the witness and his working methods that might assist him in conducting the cross-examination. (A similar issue was considered by Carey, Deputy Bailiff in *Havelet Holdings Ltd. v. Ozannes* (1998) 25.GLJ.1). Advocate Dawes says that is not the case here but in my opinion that is not the end of the matter. It is impossible to predict what issues will be raised in the cross-examination and how significant it will be in determining the outcome of the case but, in my view, there is a real risk that the cross-examination may appear to be influenced even if it is not in fact influenced to the advantage of the defendant by knowledge that Advocate Dawes might reasonably be presumed to have of his partner Advocate Torode. Hence, there is a real risk that the plaintiff and any informed, independent observer may consider that the plaintiff has been prejudiced by Ozannes’ acting in the case. That could lead to the court’s decision being overturned on appeal.”*

13. The question of professional embarrassment was mentioned in this case but without, it seems, it being resolved whether this constitutes a grounds for restraining an Advocate from acting. The issue arose because of the way it had been aired in *Geveran Trading Co Ltd v Skjevesland* [2003] 1 WLR 912, to which reference was made in *Ogier*. Advocate Laws sought to use the description applied to the submissions made by Mr Hollander QC in the English case as having been “helpful” as indicating that this Court accepted them as valid propositions. Advocate Wessels, on the other hand, concentrated on the fact that the decision in *Geveran* had not been based on any professional embarrassment meaning that, at best, the question had been left open. Before turning to the passages from the judgment of Arden LJ in *Geveran* supporting that submission, I will just mention the approach taken by Deputy Bailiff Collas in *Ogier* (at para. 40):

*“I raised with Advocate Dawes the question of professional embarrassment and he said he would not feel any embarrassment in cross-examining members of his firm and said that although Advocate Torode is his partner, he does not know him well and there are many advocates in other firms with whom he is much better acquainted. He added that the risk of professional embarrassment, if there is any risk, is inevitable in a small Bar in a small jurisdiction where practitioners are known to each other. I accept his statement that he would not feel any professional embarrassment.”*

14. In *Geveran*, Advocate Laws drew my attention to paragraphs 26 and 29 of the court’s judgment:

- 26** *As to professional embarrassment, Mr Hollander submits that this would usually involve a risk of breach of what Millett LJ referred to in a different context in *Bristol and West Building Society v Mothew* [1998] Ch 1 as the “no inhibition” principle, namely a risk that counsel will be unable to represent his client without his conduct consciously or unconsciously being influenced by the relationship. Thus counsel may be professionally embarrassed if, for instance, his professional duty to his own client would require him to argue that a friend had been negligent.*
- 29** *Counsel should always disclose the matter to his own client if a problem of confidential information or professional embarrassment arises, or arguably arises, even if counsel does not think there is an objection in his acting because the client*

*may wish to instruct other counsel in any event. Alternatively, if it leads to an objection the client may hold him personally responsible for the wasted expenditure. Moreover, if indeed counsel is professionally embarrassed that objection does not go away simply because his lay client consents to his acting.”*

However, as Advocate Wessels noted, these passages recite the submissions of counsel appearing on behalf of the Bar Council rather than representing the decision reached by the Court. They should, therefore, be treated as such and, although Advocate Laws might adopt them as his own submissions, they do not represent judicial authority and so are not persuasive in the same way as the *ratio decidendi* of the case, or indeed, any *obiter* statements, might be.

15. Instead, Advocate Wessels pointed to para. 42 as representing the decision in Geveran:

*“Where a party objects to an advocate representing his opponent, that party has no right to prevent the advocate from acting based on the Code of Conduct as the content and enforcement of that Code are not a matter for the court. However, the court is concerned with the duty of the advocate to the court and the integrity of the proceedings before it. The court has an inherent power to prevent abuse of its procedure and accordingly has the power to restrain an advocate from representing a party if it is satisfied that there is a real risk of his continued participation leading to a situation where the order made at trial would have to be set aside on appeal. The judge has to consider the facts of the particular case with care: see the words of Lord Steyn in Man O’ War Station Ltd v Auckland City Council [2002] UKPC 28 at [11]. However, it is not necessary for a party objecting to an advocate to show that unfairness will actually result. We accept Mr Jones’s submission that it will be difficult for the party objecting so to do. In many cases it will be sufficient that there is a reasonable lay apprehension that this is the case because, as Lord Hewart CJ memorably said in R v Sussex Justices, Ex p McCarthy [1924] 1 KB 256, it is important that justice should not only be done, but be seen to be done. Accordingly, if the judge considers that the basis of objection is such as to lead to any order of the trial being set aside on an appeal, as in R v Smith 61 Cr App R 128, he should accede to an order restraining an advocate from acting. But we stress that the judge must consider all the circumstances carefully. A connection, for instance, between counsel for one party and a witness on the other side may be an important factor where the evidence is of fact but, depending on the nature of the connection, it may be less important where the evidence is of an expert nature and the cross-examination is likely to be on questions of technical expertise. The judge should also take into account the type of case and the length of the hearing, and any special factor affecting the role of the advocate, for instance, if he is prosecuting counsel, counsel for a local authority in care proceedings or as a friend of the court.”*

This paragraph sets out the test that was applied by the Deputy Bailiff in Ogier. Accordingly, it contains the test that I consider I should also apply in the present case.

16. Paragraph 42 does not refer to professional embarrassment. I incline to the view that professional embarrassment is something that an Advocate should recognise for himself or herself and so cease to act. It seems that this was the basis of the submissions made by Mr Hollander because of the way in which Arden LJ referred to the issue in para. 30 of her judgment in Geveran:

*“Different circumstances arise where the litigant on the other side objects. This is likely to arise only in very limited situations since if counsel had confidential information or counsel felt that his own conduct would be affected by his prior relationship with the opposing party he would be professionally embarrassed and should have ceased to act.”*

Accordingly, rather than professional embarrassment being a standalone ground of complaint, I consider that the issues raised by an Advocate's former relationship with someone involved in new proceedings turns on that Advocate's duty to the Court and the integrity of the Court's proceedings. If, for example, an Advocate did not of his or her own motion decline to act in circumstances where the Court, after careful consideration of the facts, took the view that continued participation would lead to the Advocate being unable to fulfil his or her duties to the Court, or would amount to an abuse of its proceedings, the Court would be able to exercise its discretion to order the Advocate to stop conducting the proceedings on behalf of the party being represented.

17. In that context, I also bear in mind the guidance given by Arden LJ at para. 43 of her judgment:

*“A judge should not too readily accede to an application by a party to remove the advocate for the other party. It is obvious that such an objection can be used for purely tactical reasons and will inevitably cause inconvenience and delay in the proceedings. The court must take into account that the other party has chosen to be represented by the counsel in question. Moreover, an advocate is subject to the cab-rank rule. If the court too willingly accedes to applications to remove advocates, it would encourage advocates to withdraw from cases voluntarily where it was not necessary for them so to do and the cab-rank rule would be undermined. We accept that the cab-rank rule is a salutary rule. It is an integral and long-established element in our adversarial system.”*

Although the Guernsey Bar does not operate a cab-rank rule, so it might be thought that this justification for the cautious approach to be adopted is somehow undermined, there are times when a litigant does find difficulties obtaining suitable representation because of the smallness of the domestic legal profession. I take into account that every Advocate being asked to represent a party will inevitably first consider whether it is appropriate for him or her to accept the potential client's instructions. Generally, there will be no obligation to do so. However, if the client is struggling to secure representation I am aware that it is often the case that the Bâtonnier's assistance will be sought and/or the intervention of HM Procureur, at which point gentle persuasion may be used so as to assist the smooth administration of justice. Perhaps the more pertinent feature of this guidance from Arden LJ is that the Court should, insofar as it is able, respect the choice of Advocate of the party concerned and realise that any objections raised by another party need to be scrutinised carefully to ensure that the application is not just a tactical move. To that extent, the Court will not accede to an application to restrain an Advocate from acting without careful consideration being given to the basis for objection.

18. I have drawn further assistance from the guidance offered in Takilla Limited v Olsen, Backhurst & Dorey 2004 JLR 219 by Commissioner Page, which considers and applies the passages from Geveran to which I have just referred:

*“22 In such cases, the court's jurisdiction is a discretionary one, to act as it thinks best in the interests of justice in the action in question. In some extreme cases, such as where counsel finds himself in a position of plain and serious conflict of interest, there may in practice be little scope for the exercise of such discretion and the outcome in such instances is more or less a foregone conclusion. In general, however, the discretion has to be exercised in the light of the facts and other circumstances of each individual case; with due regard for the principle that justice needs not only to be done but to be seen to be done and with regard to a possibility of an appeal if the practitioner in question were permitted to continue to act. But it also needs to be exercised with restraint: per Arden L.J., giving the judgment of the court in Geveran Trading ([2003] 1 W.L.R. at 922-924):*

*“We accept that the circumstances, other than those where he has relevant confidential information, where an advocate may be restrained by the court from acting as an advocate in litigation are likely to be very exceptional ...*

*A judge should not too readily accede to an application by a party to remove the advocate for the other party. It is obvious that such an objection can be used for purely tactical reasons and will inevitably cause inconvenience and delay in the proceedings. The court must take into account that the other party has chosen to be represented by the counsel in question.*

- 23 *The codes of conduct of the professional bodies can be a convenient point of reference in so far as they crystallize or otherwise embody principles of law or practice that a court would itself adopt in any event, or in so far as they reflect rulings of courts in particular cases (this being the way in which such codes and guides tend to grow): to that extent they can be a legitimate factor in the exercise of the court's discretion. It is not, however, for the Court to enforce these codes and guides as such (see Geveran Trading (3) ([2003] 1 W.L.R. at 923 and 926).*
- 24 *The primary consideration in most cases where problems such as those presently under consideration arise (and confidential information is not in issue) is the duty every advocate owes to the court, a duty that overrides that owed to his own client: the judgment of the court in Geveran Trading gives a number of illustrations of what this means in practice ([2003] 1 W.L.R. at 922). Fundamental to the effective discharge of that duty in general is the need for the advocate to be independent as far as possible of any and all external interests and motives, whether financial, professional or personal. Both the Jersey Law Society Code of Conduct and the Bar Council Code of Conduct expressly reflect these ideas as basic tenets of practice, the purpose being to ensure that wherever professional advocates are employed the court can be reasonably confident that the case – whatever its ultimate merits – will be presented fairly and responsibly. Whenever circumstances arise that suggest that that independence may be open to question and that counsel's freedom to discharge his duty could be in jeopardy, other parties and the court itself will rightly be concerned. At the same time, it needs to be recognized that litigation is a far from perfect process, the ideal is not always obtainable, and one principle sometimes has to be balanced against other considerations of equal weight and against the practicalities of everyday life. It is not uncommon, for example, for counsel to build up a close professional relationship with a particular client, sometimes extending over many years. Yet it must be rare if ever that objection is taken to someone in such a position appearing as advocate for such a client, even where this entails him calling as witnesses persons who are well known to him and who may even be the effective source of his regular work for that client.”*

19. Finally, I consider that the summary of principles drawn from the extensive analysis of comparative authority undertaken by Brereton J in Kallinicos v Hunt [2005] NSWSC 1181 can be applied as applicable to the position in Guernsey. The full set of principles extracted feature at para. 76 of that judgment, of which the following apply in the present case:

*“After termination of the retainer, there is no continuing (equitable or contractual) duty of loyalty to provide a basis for the court's intervention, such duty having come to an end with the retainer ...*

*However, the court always has an inherent jurisdiction to restrain solicitors from acting in a particular case, as an incident of its inherent jurisdiction over its officers and to control its process in aid of the administration of justice ...*

*The test to be applied in this inherent jurisdiction is whether a fair-minded, reasonably informed member of the public would conclude that the proper administration of justice requires that a legal practitioner should be prevented from acting, in the interests of the protection of the integrity of the judicial process and the due administration of justice, including the appearance of justice ...*

*The jurisdiction is to be regarded as exceptional and is to be exercised with caution*

*...*

*Due weight should be given to the public interest in a litigant not being deprived of the lawyer of his or her choice without due cause ...  
The timing of the application may be relevant, in that the costs, inconvenience or impracticality of requiring lawyers to cease to act may provide a reason for refusing to grant relief.”*

## Discussion

20. With these principles in mind, I now turn to the objections raised on behalf of the Plaintiff, as supported on behalf of the Second to Fourth Defendants.
21. The principal objection appears to be that Mourant Ozannes, and in particular Advocate Wessels, has appeared before the Court for clients previously on the basis that the TFT is a valid trust and is now instructed by a different client to adopt a fundamentally inconsistent position. In response, Advocate Wessels submits that this mischaracterises RHJ’s Italian proceedings in that there is no attack on the validity of the TFT (or its predecessor) as a matter of domestic Guernsey law, but rather that there are arguments that can be deployed as a matter of domestic Italian law in an attempt to persuade the Italian court that the TFT should not be recognised as a trust in Italian law. At this stage, the consequences of non-recognition as a matter of Italian law are not entirely clear, but this is a necessary step for RHJ to seek to persuade the Italian Court to construe the document of 30 December 2004 not as a letter of wishes addressed to a trustee but as an offer to participate in a partnership. The correctness of that assertion does not concern me, at least in relation to the present issue. Advocate Laws summarises the position as being that Mourant Ozannes, and in particular Advocate Wessels, are professionally embarrassed because the course of action being taken by RHJ undermines the Court’s order endorsing the Terms of Compromise in 2010. Further, it would undermine public confidence in the administration of justice for the reasons referred to explicitly by Simon E. Haggiag and Ms Genah.
22. Advocate Greenfield supports those contentions. In doing so, he has undertaken a thorough analysis of the “Atto di Citazione” of RHJ in the Italian proceedings, highlighting the number of occasions in which it has been suggested that the TFT, as a Guernsey trust, is fictitious, is used to conceal true ownership and assets and that the Guernsey legal system is somehow complicit in giving effect to these structures when really it should not.
23. The mere fact that a person actioned before this Court, through action taken elsewhere, does not appear to have a full appreciation of Guernsey law does not, of itself, mean that he is not entitled to be heard through the Advocate of his choice. The Advocate chosen will determine for himself whether or not the instructions he is given are capable in law of being presented to the Court. If they are not, he should explain to the client why that is the case. The conduct of the action is a matter for the professional judgment of the Advocate concerned. He should decline to give effect to any instructions of a client where he cannot properly act in the manner instructed. In the present case, RHJ has set out his factual position clearly in his Affidavit: there is no attack on the validity of the TFT under Guernsey law or any challenge to the lawfulness of the 2010 proceedings and the outcome. Unless and until that position changes (and I imagine that resiling from it will now be difficult for RHJ), that is the evidence that constrains what any Advocate representing him can argue. That is no doubt why Advocate Wessels has gone to some lengths to draw the distinction between domestic Guernsey law validity and the manner in which recognition is capable of being argued in Italy. Those arguments are for another day, but I do recognise the distinction he has articulated as being open to RHJ.
24. In my view, it is important to focus on what is going to take place in the Plaintiff’s Declaratory Relief Claim. If I were dealing with the application for an injunction after pleadings had closed and at around the time of the case management conference, the position would be different. If the Plaintiff indicated that Ms Genah was to be called as a witness on its behalf, I suspect that Advocate Wessels and Mourant Ozannes might acknowledge the difficulties presented if cross-examination of a former client were to be required. The position would potentially be further complicated if the Plaintiff sought to call as a witness

Advocate Wessels himself, thereby bringing the case within the purview of rule 79 of the Guernsey Advocates Rules of Professional Conduct. The complaints made in the Affidavits of Ms Genah and Simon E. Haggiag would, in those circumstances, have a far greater impact on me if Advocate Wessels and/or Mourant Ozannes did not recognise the professional embarrassment arising and voluntarily ceased to act. However, that is not the position at the moment.

25. Instead, there is an application by RHJ for an order setting aside the leave given to serve him out of the jurisdiction or, in the alternative, for the Declaratory Relief Claim to be stayed. If the first limb of that application were to succeed, RHJ's involvement in the Declaratory Relief Claim, and so Advocate Wessels' representation of him, would come to an end. If the second limb were to succeed, there would be no requirement for RHJ or the Second to Fourth Defendants to participate further for the time being. Because I accept Advocate Wessels' submission that the applicable test can look at discrete stages of the action and ask whether there is a real risk of his continued participation leading to a situation where the order made on the current application of RHJ would have to be set aside on appeal, I have not speculated about the stages of the proceedings following determination of that application.
26. Concentrating on the conduct of RHJ's application of 20 March 2015, being the next known stage of the current proceedings, I do not find that the Plaintiff's complaints are made out. Whilst I have paid particular attention to the contents of Ms Genah's and Simon E. Haggiag's Affidavits, I consider that they highlight problems that may arise, rather than problems that actually exist at present. I have, therefore, asked myself whether the possible future problems should influence my decision now. In other words, would the fair-minded, reasonably informed member of the public conclude that Advocate Wessels and Mourant Ozannes should be restrained from representing RHJ now. I am not persuaded that such a person would reach that conclusion.
27. I consider that RHJ can be regarded as a person to whom it has been explained that future problems may arise. Indeed, the type of professional embarrassment that would need to be addressed in the event that Ms Genah is a witness is precisely the type of issue that experienced Advocates such as Advocate Wessels are inevitably alive to when considering whether or not to accept a retainer on behalf of a client. As such, I further consider that I can infer that RHJ wishes to instruct Advocate Wessels and Mourant Ozannes in the knowledge that he might need to seek alternative representation at some point in the future. He is, therefore, taking the financial risk that making use of his choice of Advocate now will, in the event that his application of 20 March 2015 fails, involve him in greater expense than if he chose at this stage to switch Advocates. That is a choice I believe he is entitled to make and the Court should only intervene in those circumstances if it can look at the conduct of the application in question and be satisfied that there is a reasonable apprehension that permitting Advocate Wessels to continue to represent RHJ would result in any order made at the conclusion of that application being set aside on appeal. As I have indicated, I take the view that this hurdle has not been surmounted by the Plaintiff. The evidence to be adduced in support of and in opposition to that application will not involve evidence where the type of professional embarrassment mentioned arises and so the integrity of the judicial process will not be adversely affected. The submissions to be made are likely to be of a technical nature. In my opinion, no one would suggest that justice was not being seen to be done if RHJ's submissions were to be presented by Advocate Wessels. In saying that, I am conscious that Ms Genah and Simon E Haggiag view the position differently, but I am satisfied that they have concentrated on the trial itself rather than the interlocutory application which falls to be resolved next.
28. Insofar as it was suggested that RHJ's stance will lead to any undoing of the Court's order on 19 February 2010 with the consequence that the order for the costs incurred in funding Mourant Ozannes is affected, thereby giving Mourant Ozannes a financial interest in the outcome of the present proceedings of a type that should preclude the firm from acting, I reject that suggestion. As I have already indicated, RHJ has clarified his position in relation to the 2010 proceedings in unequivocal terms. Whatever submissions are made on his behalf

when his application of 20 March 2015 is heard, RHJ's evidence will have to be factored in. Because there is no challenge, direct or indirect, to the order of 19 February 2010, I find there is no substance to any suggestion that Mourant Ozannes should, for this reason, be restrained from acting for RHJ.

### Conclusion

29. For all the reasons given, the Plaintiff's application for injunction relief against Mourant Ozannes is dismissed. I did consider whether it would be better to regard the application merely as premature and to adjourn it with liberty to restore on notice, however, I have concluded that it is best to discuss and leave the Plaintiff and/or any of the Second to Fourth Defendants to re-apply in the event that it is felt Mourant Ozannes are continuing to act when they should not.