Credit Suisse Trustees Limited v Haggiag et al
Royal Court
7th October 2015

JUDGMENT 47/2015

Application to set aside an order for service out of jurisdiction on the grounds that it should not have been made, or alternatively to stay the proceedings on the grounds of *forum non conveniens*.

Approved Text
07.10.2015

IN THE ROYAL COURT OF GUERNSEY

(ORDINARY DIVISION)

Case No Civil 1900

BETWEEN: **CREDIT SUISSE TRUSTEES LIMITED** **Plaintiff**

-v-

(1) Roberto Haggiag
(2) Simone Haggiag
(3) Michael Haggiag
(4) Mirella Pettini Haggiag
(for herself and as representative the class comprising all discretionary beneficiaries of the Translux Financing Trust other than the First to Fourth Defendants) **Defendants**

Hearing dates: 7th & 8th September 2015
Judgment handed down: 7th October 2015
Before: Her Hon Hazel Marshall QC, Lieutenant Bailiff

Counsel for the Plaintiff: Advocate I Swan
Counsel for the First Defendant: Advocate J M Wessels
Counsel for the remaining Defendants: Advocate J P Greenfield

Cases, texts and legislation referred to:

Legislation:

The Trusts (Guernsey) Law, 2007
The Royal Court Civil Rules 2007
Hague Convention on the Law Applicable to Trusts and on Their Recognition. Articles 2, 3, 6, 7, 8, 11 and 13.

Cases:

Guernsey

Carlyle Capital Corporation v Conway 2011 Royal Court Judgment 29/2011
Carlyle Capital Corporation v Conway (2012) Court of Appeal, Judgment 11/2012
Colussi v Investec Trust (Guernsey) Limited (2007) Royal Court, Judgment 16/2007
Re Westbury Property Fund Ltd [2005-06] GLR 176 (Royal Court)

England and Wales

Altimo Holdings Ltd v Kyrgyz Mobil Tel Ltd [2012] 1 WLR 1904 PC
Spiliada Maritime Corporation v Cansulex Ltd [1987] AC 460
Sim v Robinbow (1892) R 665
Curtis v Lockhead Martin UK Holdings [2008] EWHC 260 (Comm)
(AK Investment CJSC v Kyrgyz Mobil Tel Ltd [2011] UKPC 7 2011
Ferrexpo AG v Gilson Investments Ltd [2012 EWHC 721 (Comm))
VTB Capital plc v Nutritek International Corporation [2013] 2AC 337
Abela v Badarani [2013] 1 WLR 2043

JUDGMENT

The parties

1. The Plaintiff (referred to as "The Trustees" where natural) is trustee of the Translux Financing Trust ("TFT"), a discretionary trust established in 2005. This replaced, with additional assets, a previous trust called the United Prod Foundation ("UPF"), established on 6 September 1993 and of which the Plaintiff had also been trustee. Both trusts were established and settled by Roberto Haggiag Senior ("RHS"), a French citizen, since deceased. Both trusts were established in Guernsey and contained a choice of law clause naming Guernsey law. The beneficiaries of the TFT include a wide class of members of the Haggiag family comprising the lineal descendants of RHS' parents, a charitable foundation of RHS as settlor and other charities.

2. At the time of a key event giving rise to this action, the operative Trust was in fact UPF. The terms of its governing deed included the commonplace term that in exercising their powers or duties the Trustees should have regard to any letter of wishes addressed to and deposited with them by the settlor, but not so as to impose any binding trust or obligation on them (Clause 7). They also included consent requirements (Clause 15) stipulating that prior to the death of RHS several powers of the Trustees, mainly relating to distributions or variations in the class of beneficiaries, were not to be exercised without the consent of RHS, and that after his death, almost the same group of powers were only to be exercised with the consent of the Board of Protectors established by the Deed. The TFT Trust Deed contains similar but not identical provisions.

3. The First Defendant, Roberto Haggiag Junior ("RHJ") is the nephew of RHS. He is an Italian citizen resident in Israel. The Second and Third Defendants, Simone Haggiag ("Simone") and Michael Haggiag ("Michael") are the two sons of RHS, by successive marriages. Simone lives in London and Michael lives in the United States. The Fourth Defendant, ("Mirella"), is RHS' widow and I understand she lives in Rome. By an order made by this court on 27th August 2015, she now also represents the class of all remaining beneficiaries and discretionary beneficiaries of the TFT in these proceedings.

The proceedings

4. This action was commenced by the Plaintiff by Summons against the four Defendants on 25th February 2015. By it, the Plaintiff claims declarations under twelve heads, many further subdivided. The precise form of the relief is a matter which I consider in more detail later, but for present purposes I can summarise.

- Paragraph 3.1 seeks a declaration that UPF was validly constituted as a trust under and governed by the laws of Guernsey, with further, more specific, declarations as to aspects of the Trust and the ownership, control and powers of management of its assets.

- Paragraph 3.2 seeks a declaration that RHS did not "control" the assets of the Trust from its establishment until its determination in November 2005.

- Paragraph 3.3 seeks a declaration that a particular document dated 30th December 2004 addressed to the Plaintiff as Trustee of UPF was not deposited with UPF and was therefore not a valid letter of wishes under the Trust Deed. It goes on to seek further declarations that even it if had been, it was superseded by a later Letter of Wishes dated 26th January 2005, and/or did not survive the execution of a new trust deed and letter of wishes of 14th November 2005 (being those which established TFT). Of particular significance is the claim at paragraph 3.3.4 for a declaration that the December 2004 document

  > *"did not create any rights or obligations whether in the nature of a partnership or a associazione in partecipazione under Italian Law, or otherwise".*

- Paragraph 3.4 seeks a declaration that the 26th January 2005 document was a valid Letter of Wishes under the UPF Trust Deed, did not impose any binding trust or obligation on the Plaintiff as Trustee of UPF, was revoked by RHS on 26th May 2005, was in any event operative only pending a new trust deed and letter of wishes (which occurred on 14th November 2005 by the establishment of TFT) and likewise

  > *"did not create any rights or obligations whether in the nature of a partnership or a associazione in partecipazione under Italian Law, or otherwise".*

- Paragraphs 3.5 – 3.7 seek declarations to the effect that RHJ never procured the transfer of either a 20% or a 29% shareholding in a Guernsey company called Lotte Holdings Limited to or for the benefit of the Plaintiff as trustee of UPF, that accordingly pre-conditions for RHJ's possibly becoming a Percentage Beneficiary of the UPF trust (as referred to in the 24th December 2004 document or alternatively the 26th January 2005 document) were not satisfied prior to the revocation of those documents or at all, and that RHJ did not become a Percentage Beneficiary and thus could not have been entitled to a Capital Distribution under the terms of the UPF.

- Paragraph 3.8 seeks a declaration of the validity and effectiveness of the instruments whereby the assets of UPF were transferred to the Plaintiff as Trustee of the TFT on 14th November 2005.

- Paragraph 3.9 seeks declarations similar to those sought under Paragraph 3.1 with respect to the validity in Guernsey law and aspects of the ownership control and management of the TFT.

- Paragraph 3.10 seeks a declaration that RHS did not "control" the assets of the TFT from its inception until his death in 2009.

- Paragraph 3.11 seeks a declaration that Simone does not "control" the assets of the TFT.

- Paragraph 3.12 seeks a declaration that RHS "did not die intestate."

5. The Second to Fourth Defendants were properly served with these proceedings, having appointed Guernsey lawyers for that purpose. They have readily engaged in the court process. On 20th February 2015, the Deputy Bailiff gave permission to the Plaintiff to serve the proceedings on RHJ out of the jurisdiction, at an address in Israel.

6. By an application dated 2nd April 2015 RHJ has applied to the Court to set aside service upon him, alternatively to stay the proceedings in Guernsey on the grounds of *forum non conveniens.* The grounds relied upon in support of this combined application are that the matters to which the Summons relates (i) are not properly justiciable before this court, and (ii) are not proper ones for service out of this jurisdiction because the Court of Rome is already seised of the determination of these matters and is pre-eminently the more suitable forum.

7. In the application itself, it is stated, as the grounds for the application, that the declarations sought in these proceedings at Paragraph 3.3 and in particular that with regard to the letter of December 2004 not being an offer of an *associazione in partecipazione* is a matter of Italian law, (and indeed is expressly stated to be such) which is not justiciable in Guernsey

> *"the offer having neither been made within the jurisdiction nor subject to the law of Guernsey, whether by agreement or otherwise, by a person domiciled in Italy."*

This issue, it is said, is central and essential to the dispute in these proceedings, but it is the subject of existing proceedings which had already been brought by RHJ in Italy on 11th September 2014 against the now Plaintiff and Second to Fourth Defendants, ie before these proceedings were commenced.

8. It is further averred that the Italian proceedings are not only prior in time but are broader in their scope than the Guernsey proceedings as they seek findings with regard to other matters, as well as the majority of the matters in the present claim. The Italian proceedings having been commenced by RHJ as of right and being now under way and concerning a point of Italian law, it is said that the Italian court will not stay its own proceedings and cede jurisdiction to the Guernsey court, (indeed it is said that that under European Council Regulation (EU) 44/2001, "the Brussels I Regulation", it cannot do so), nor will it enforce any [presumably, conflicting] judgment of the Guernsey court, which situation thus creates a high risk of competing and unenforceable judgments and incompatible findings of facts. It is urged that the Guernsey court ought to seek to avoid such a situation and, being the court seised second in time, it should decline to proceed, either at all or at least until the conclusion of the Italian proceedings.

9. Reliance is placed on the claimed strength of the Italian connection with the factual matters in dispute. These are said to be the settlor's being Italian, the factual background concerning the running of family businesses in Italy which are the underlying subject matter in dispute. It is said that the main protagonists and witnesses are either domiciled or have their centres of main economic interest in Italy, witnesses speak primarily Italian, material documents are in Italian and underlying assets in issue include Italian immoveable property. Lastly, it is complained that the Plaintiff has been slow to engage with the Italian proceedings and that this action has been brought purely as a tactical response to those proceedings.

Preliminary matter

10. I deal with one matter of procedure at this point. This application is brought as an application either to set aside the order for service out of the jurisdiction on the grounds that it should not have been made or alternatively to stay the proceedings on the grounds of *forum non conveniens.*

11. The jurisdiction with regard to service out is contained in Rule 8 of the *Royal Court Civil Rules 2007.* Under r 8(2) the court will give the required leave only if satisfied that the relevant matter

> *"(a) is properly justiciable before the court and*
>
> *(b) is a proper one for service out of the jurisdiction."*

The relation between these two parts is curious, as it is difficult to see how the matter could be a proper one for service out of the jurisdiction if it is not properly justiciable before the court. However, the separate inclusion of that requirement could be said to emphasise the point that an overseas defendant should only be convened to a dispute which genuinely and properly arises for determination in Guernsey.

12. In interpreting the second requirement (r. 8 (2) (b)) this court has regard to English practice in a similar context: see *Carlyle Capital Corporation v Conway* 2011 Royal Court Judgment 29/2011 at [16]. In England, this has recently, in *Altimo Holdings Ltd v Kyrgyz Mobil Tel Ltd* [2012] 1 WLR 1904 PC at [71], been summarised as a three stage test (although the lasts stage has two limbs) namely that

    (i) there should be serious issues of law or fact to be tried in relation to the overseas Defendants;

    (ii) there is a good arguable case that the claim falls within at least one of the classes of case as to which permission to serve out may be given; and

    (iii) in all the circumstances, [Guernsey] is *"clearly or distinctly the appropriate forum for the trial of the dispute"*, and that in all the circumstances the court ought to exercise its discretion to permit service out of the jurisdiction.

13. The second requirement above is framed with regard to the more defined and prescriptive requirements of the English CPR. In Guernsey this has been interpreted by analogy as requiring the court to be satisfied of a recognisable, albeit not specific, "jurisdictional gateway" based on the nature of the case or procedural requirements, in support of joining the proposed overseas defendant into the case. This has been treated as part of the requirement of RCCR r 8(2)(a) that the matter should be *properly justiciable before the Court":* see *Carlyle Capital Corporation v Conway* (above) at [18].

14. The third stage of the English test has more recently been re-stated, referring back to the *locus classicus* of the relevant test in *Spiliada Maritime Corporation v Cansulex Ltd* [1987] AC 460 at 475, as being the task of

    "identify[ing] the forum in which the case can be suitably tried for the interests of all parties and for the ends of justice."

    citing *Sim v Robinbow* (1892) R 665 at 668 per Lord Kinnear.

15. On an overseas defendant's application to set aside the order for service out of the jurisdiction, there is an *inter partes* re-hearing of the original *ex parte* application for that order. The burden of satisfying the court of the qualifications for service out is therefore upon the plaintiff, and it is thus for him to satisfy the court that the Royal Court is the *forum conveniens.* On an application by the overseas defendant to stay proceedings on grounds of *forum non conveniens*, the issue is the converse of the third requirement above, but this places the burden on the overseas defendant making the application, to satisfy the court that the Royal Court is not the *forum conveniens. (Carlyle Capital Corporation v Conway* (2012) Court of Appeal, Judgment 11/2012.)

16. An overseas defendant who has submitted to the jurisdiction of the local court cannot thereafter apply to set aside service upon him out of that jurisdiction. Unsurprisingly, therefore, there is often a good deal of agonising or dispute as to whether particular actions by a defendant amount, or have amounted, to his submitting to the jurisdiction. If he has done so, he can still apply for a stay on grounds of *forum non conveniens*, but having lost the right to apply to set aside service upon him, he then shoulders the burden which would otherwise have been the reverse.

17. The Plaintiff and the Second to Fourth Defendants have averred, in their skeleton arguments on this application, that RHJ has submitted to the jurisdiction, and can therefore only apply for a stay. RHJ denies that he has done so. Since the dispute between the parties on this application centred on the *forum conveniens* point, it appeared to me that the only practical consequence of this was to affect the burden of convincing the court on that point, as mentioned above. Since, in turn, the incidence of that burden would only affect the outcome if I were to be so evenly persuaded by each side's arguments that it became necessary to have regard to that burden, and since all parties agreed that this possibility was remote in practice, I decided, on the grounds of the efficient and proportional use of court time, not to hear argument on the issue of submission to the jurisdiction, whilst confirming that

if the "burden of proof" did become material in my deliberations, I would raise it with the parties at a later stage. In the event, and as I anticipated, it did not.

18. However, for the sake of completeness, I think I should record my provisional impression that in the events which happened in this case, RHJ would be taken to have submitted to the jurisdiction of this Court. A submission to the jurisdiction is effected by a party's taking a step which, viewed objectively, unequivocally evinces the intention to participate in the proceedings. Merely denying the court's jurisdiction, or taking the procedural steps necessary to uphold that denial, or taking a step which is equivocal, is not sufficient. However, the step which RHJ took in this instance was to appear at, and seek to present (through submission of a skeleton argument and readiness to address the court) argument in opposition to an application by the Plaintiff to convene a further party to the proceedings (namely Michael's daughter) as a representative of the general class of beneficiaries of the TFT, when that application was heard by me on 27th August 2015. Since the success or otherwise of that application could only affect RHJ in his position *as a party* to the proceedings, it seemed, and seems, to me that by doing so he unequivocally sought to, and did, participate in the proceedings which had been served on him. However, I accept that I have not heard full argument on this point and as I do not need to make a final determination on it in the circumstances, I am not to be taken to have done so.

Further background

19. I turn, therefore, to fill in more of the factual background and to examine the nature of the Italian proceedings and the arguments on this application.

20. According to a letter written by RHS to the Plaintiff Trustees in December 2003, RHS had by then been proposing already to create a new trust structure to replace UPF, because he considered that his family circumstances had changed, such that UPF no longer provided the benefits he desired. The documentation was in the course of preparation.

21. By 2004, the assets of UPF were held under a complicated network of holding companies in favourable tax jurisdictions, with the underlying assets being, apparently, shares in banking or investment funds and also various companies with family business involvement. These included the well-known "Cinecitta" film studios and the RAI Italian broadcasting company.

22. Although I was not referred to any evidence as to distributions from UPF prior to December 2004, I have the impression that by that time (and apart from any individual distributions of which I am not aware and which are not material) a systematic pattern of distributions had evolved, by which certain specified beneficiaries received an annual income from UPF, and certain other beneficiaries received a more substantial but less frequent income and/or capital distribution. The former were certain female family members including the Fourth Defendant, Mirella, and they were, or became, known as the "Fixed Beneficiaries". The latter were RHS's two sons, Simone and Michael and his step-son, Jacopo Franzan, who were involved, to a greater or lesser degree, in the running of the businesses which brought wealth to UPF. They were, or became, known as the "Percentage Beneficiaries".

23. RHJ, I am told, never received any benefit from UPF. However, he was a successful businessman, with his own business empire, and had business interactions with enterprises within the UPF trust assets. His personal businesses were run either wholly or partly through a holding company, Lotte Holdings Limited, which was a Guernsey company.

The December 2004 Document

24. The December 2004 Document (as I shall call it) which has such prominence in this case, is a document in English signed on 30th December 2004 in Rome by RHS. His signature was notarised. It takes the form of a letter and is addressed

> "*To the Trustees of the United Prod Foundation*".

It refers to progress which RHS had made on issues previously under discussion, which appear to have related to governance of the UPF and the establishment of a Board of Advisers and the composition of the Board of Protectors. It then states:

> *"Letter of Wishes*
>
> *As anticipated I have reviewed the current Letter of Wishes. The final letter of Whishes [sic] will incorporate the following key points…."*

25. It then sets out three classes of beneficiaries, being the Fixed Beneficiaries, the Percentage Beneficiaries and a third being the "Robert Haggiag Charitable Foundation Beneficiary". This last was to receive a percentage income distribution and was about to be set up. It continued:

> *"Additional Beneficiary:*
> *In the best interest of the United Prod Foundation I deem it as very important that the already significant business and working relationship with my nephew Robert Haggiag Jr to be strengthened as much as possible.*
> *Therefore it is my wish to have Robert Haggiag Jr included as a Percentage Beneficiary with the same status as the beneficiaries mentioned in (b) under paragraph "Beneficiaries" here above. My desire is that Roberto Haggiag J have the following interest:*
>
> | | *% net interest* |
> |---|---|
> | *Robert Haggiag Jr:* | *10%* |
>
> *It is however conditional to the above that Robert Haggiag Jr procures that the owners of shares in Lotte Holdings Ltd (Robert Haggiag Jr's main business holding company) transfer for a US$1 consideration to the United Prod Foundation shares equivalent to 20% of the outstanding and paid up capital of Lotte Holdings Ltd. It is anticipated that such transaction will materialize by having the owners of that 20% shareholding transfer those shares to a Trustee with instructions to the latter to recognize the benefits of that shareholding in the United Prod Foundation until the time that those shares will be effectively transferred to the United Prod Foundation. Likewise the status of the beneficiary will take effect immediately after the transfer of the Lotte shares to the Trustee . The final transfer will take place as soon as the appointment of Robert Haggiag Jr as a beneficiary as described above, has become irrevocable."*

26. The document then deals with specific aspects of the intended time and amounts of distributions, and other matters, and then provides:

> *"Validity of this Letter*
>
> *The instructions included in this letter will be valid and effective until when You have received my final Letter of Wishes. However should I die before the final Letter of Wishes, new Deed of Trust and all other related documents have been duly completed and formalized, I inform You that the instructions contained in this letter are to be considered as final and that, in the case of inconsistency and contrast, they will prevail vis-à-vis my other previous Letter of Wishes.*
>
> *In the event that there is the need to have an interpretation of this Letter it is my desire that the proper interpretation be fully delegated to the Board of Protectors, which will decide on a majority basis."*

27. Those are all the material provisions of this document. It is the Trustees' evidence that this document was never deposited with them, and they in fact only became aware of its existence in 2010, after RHS' death and in the course of an earlier litigious dispute regarding Simone's position on the TFT Board of Protectors.

Further events

28. However, the Trustees did receive a document dated 26th January 2005 ("the January 2005 Document"). This was in materially identical terms to the December 2004 Document except that the quantum of the shareholding in Lotte Holdings which RHJ was to procure to be transferred to UPF in return for his percentage beneficiary status was increased from 20% to 29%. The Trustees regarded that as an (interim) Letter of Wishes from RHS.

29. It is the Trustees' further evidence that on 26th May 2005, they were informed orally by RHS at a meeting that the 26th January 2005 letter was to be ignored. They treated this as a revocation of that Letter of Wishes, noted this in the minutes of the meeting, and wrote a note to this effect on the January 2005 Document.

30. In any event, however, a New Trust Deed, Letter of Wishes and other documents were completed and finalised on 14th November 2005, and effected the creation and implementation of TFT. The Trustees say that this was effective to revoke either the January 2005 Document, or the December 2004 Document, according to the terms of either of those Documents.

31. The Trustees and the Second to Fourth Defendants refer to three further matters. They produce and refer to a letter of 20th March 2006 in which RHJ wrote to RHS, obviously after a deterioration in their relationships, agreeing that (in translation)

> "*our common path has come to an end"*

and that an amicable and dignified parting and separation or distancing of their business affairs should ensue.

32. Second, Lotte Holdings Limited was put into voluntary liquidation in 2010, as recorded in the Guernsey Company Registry. According to RHJ's own evidence, its assets have been distributed to shareholders, in specie.

33. Third, they refer the court to correspondence which they suggest explains the commencement of the Italian Proceedings, This was correspondence in relation to other Haggiag family trust interests (referred to as the "Teodora" matter) under which the Second to Fourth Defendants had declined to assist RHJ by contributing to the cost of Italian tax penalties which had been imposed on RHJ's interests but which theirs had escaped, in circumstances where RHJ suggested that it was fair and reasonable that they should all share this imposition as between themselves and that the Second to Fourth Defendants should therefore contribute to his liability. It is pointed out that the Italian action was commenced shortly after this refusal.

The Italian proceedings

34. It is now necessary to examine the proceedings brought in Italy. The Italian Writ was issued on 11th September 2014 in the Civil Court of Rome. It appears in the documents in this case in the original Italian and also in an English translation produced by RHJ.

35. It names the Plaintiff and the Second to Fourth Defendants as Defendants, and opens with the statement:

> *"We hereby ask the Court to establish who is/are the person/s required to fulfil an obligation to the plaintiff to make periodic transfers of a portion of the estate of the deceased uncle of the plaintiff, Mr Roberto Haggiag Senior ….. who died in Rome on 27 February 2009, in consideration of the fact that the said estate* ***has received*** *the contribution by the plaintiff Roberto Haggiag Junior ….. of a minority interest in the entrepreneurial assets of the same. This obligation arose from a private deed that was executive by RHS on 30 December 2004 and that was legalised….. Said deed was apparently addressed to [The Trustees]… as trustee of a trust that was then named United Prod Foundation… it is an original deed that it is*

> *considered to amount to a proposed partnership addressed to RHJ for the reasons that are illustrated below…" (emphasis added)*

It thus appears to assert that RHJ has already performed the consideration required by the alleged contractual offer contained in the December 2004 Document. However, I set no store by this, because that position is belied by the assertions later made in the claim and, on examination of the Italian version, appears to have been a loose translation of Italian participles.

36. The text of the writ then sets out a lengthy account of the Haggiag family business history in a discursive and hyperbolic style. It asserts RHJ's close connection with the business empire comprising the assets of the Trusts and with RHS himself, including, it is claimed, after 2006. It emphasises the Italian connections of the businesses and of the Defendants. It refers to the Trusts by various terms translated as "an artifice" "completely fictitious" and suchlike, and asserts that UPF and TFT were a "concealment" of RHS' ownership of its assets, and that latterly TFT constitutes merely "a shield between the heirs of RHS and the estate" that they had inherited.

37. I record here that RHJ asserts that Simone, Michael and Mirella are the heirs of RHS. They assert that it is only Simone and Michael who are his heirs (Mirella having renounced any entitlement), and they have produced a formal certificate to that effect from Switzerland. I consider this dispute to have no material effect for present purposes and I do not need to consider it further.

38. The Italian writ then goes on to assert that the December 2004 Document was a proposal of "partnership" under Article 2549 of the Italian Civil Code, and was not subject to any time limit. Italy being a signatory to the *Hague Convention on the Law Applicable to Trusts and on Their Recognition*, the writ then asserts that these Trusts will not be recognised by Italian law pursuant to Article 13 of the Convention. This states that

> *"No State shall be bound to recognise a trust the significant elements of which, except for the choice of the applicable law, the place of administration and the habitual residence of the trustee, are more closely connected with States which do not have the institution of the trust or the category of trust involved"*

Italy is one of this latter class of States and it is, of course, being argued that the relevant "significant elements" are Italian.

39. The Writ also asserts a second ground for this non-recognition argument. This is that the Trusts in this case do not even qualify as "trusts" under the description of a "trust" for the purposes of the Convention contained in Article 2. This is allegedly because they do not exhibit the *indicia* of a "trust" there stated for the purposes of the Convention, at all. This is said to be the case because RHS, rather than the Trustees, in fact retained control over the assets of the Trust as a result of the powers reserved to him in the Trust Deeds, and latterly a similar position arose out of the position of Simone on the Board of Protectors of the Trust.

40. RHJ's Italian writ therefore asserts that the Trust or Trusts are to be ignored as being a mere nomineeship or "man of straw" and that consequently it is the heirs of RHS (ie Simone, Michael and Mirella) who are thus now bound to fulfil the offer of partnership contained in the December 2004 Document. The relief finally claimed is a request to the Italian Court:

> *"after having disregarded any petition exception and argument to the contrary, and after having established and declared that the 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…[RHJ] is entitled to have the disposition implemented which is laid down therein in his favour at expense of the heirs of RHS, while declaring that [RHJ] is entitled to make the contribution envisaged in the deed of 30 December 2004 vis-a-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 [RHJ]"*

41. There is also a request to declare the "unlawfulness" of the Trustee's failure to "*fulfil the request*" of RHJ's then authorised legal representative, Mr William Simpson of the Advocates, Ogier, contained in a memo dated 13 March 2009. Quite what this means is not clear since, on examination, that letter merely introduces RHJ and other Haggiag family members to the Plaintiff as qualifying "Beneficiaries" (ie members of the class of discretionary beneficiaries) under the TFT and requests a meeting "*to discuss the Settlement*". There is a final claim regarding costs.

42. In short, the Italian Writ claims that the Italian Court should declare that the December 2004 Document constituted an "offer of partnership" (using this as a convenient shorthand term for whatever the Italian concept of "*associazione in partecipazione*" may cover as a form of common business venture), made to RHJ by RHS, which he remains entitled to accept upon providing the stipulated consideration, and which is binding on the heirs of RHS to perform, as the "trust" should not be recognised by the Italian Court.

The arguments

43. On behalf of RHJ, Advocate Wessels first enlarges on his complaint that these proceedings are a purely tactical manoeuvre by the Trustees to undermine RHJ's Italian proceedings. He points to the fact that several of the detailed declarations sought in the Summons seek findings of fact in terms which are relevant only to Hague Convention arguments, without identifying what legislation they relate to, or for what purpose or consequence they are sought. As examples, he cites the declarations sought that RHS did not "control" the assets of the Trusts, and that the "centre of interest" of UPF was in Guernsey. These matters, he submits are actually irrelevant to any matter of Guernsey law, and are not sought in furtherance of any other relief in Guernsey. Once all such matters have been stripped out of the action, he submits that all that is left is a dispute which is entirely rooted in Italian law; it is the effect in Italy of the December 2004 Document and, in the course of that, the question whether Italian law will recognise the Trusts. The Italian Court is plainly the more appropriate forum for the former, and indeed the only forum for the latter.

44. Advocate Wessels complains that the nature of the Italian proceedings is continually mischaracterised by the Plaintiff as an attack on the validity of the Trusts, in order to try to conjure up a dispute which can be argued to centre on Guernsey law. He stresses, that RHJ is not attacking the validity of the Trusts as such; he accepts their validity in Guernsey law and, indeed, has said so expressly in his affidavit evidence. It is similarly not being alleged in the Italian proceedings that the Trusts were "shams" (ie false documents never intended to operate according to their purported effect) notwithstanding the Plaintiff once again attempts to characterise the Italian proceedings in this way. That being the case, and since the Trustees found their claim to proceed in Guernsey on the perception of a supposed attack on the validity of the Trust(s), once it is accepted that this is not an issue, the only real issues can be seen to be properly justiciable only in Italy.

45. Advocate Wessels points out that the court must decide which is the appropriate forum for the trial of the case "*for the interests of all the parties and the ends of justice*", and that this has been said, on the authorities, to be the forum with which the action has the most real and substantial connection. Apart from the legal conceptual matters as mentioned above, the relevant practical factors include convenience, expense, availability of witnesses, language and location of parties. He submits that in this case these factors all clearly favour Italy as well, in that the protagonists are members of an Italian family, parties, and particularly individuals, are more readily available in Rome than in Guernsey, the key witnesses are Italian speaking, many documents are in Italian, and the underlying activities of the businesses which are the bedrock of the material assets are also Italian and include Italian real property.

46. When considering the merits of competing candidate jurisdictions, he submits that avoiding the risk of inconsistent decisions is a very strong factor to be taken into account *(Curtis v Lockhead Martin UK Holdings* [2008] EWHC 260 (Comm) at [71] (Teare J)) and that this can be seen to be a very major consideration in this case. Since the Italian proceedings have been commenced first, and can be pursued in Italy as of right, the Italian Court is bound to entertain them under the Brussels I Regulation (already mentioned), and there is therefore a significant risk of inconsistent decisions of

fact and law, and ultimately enforcement, if the Guernsey court continues to entertain this action in parallel with the Italian proceedings.

47. He warns that the court should be extremely cautious about acceding to any suggestion that there is a risk that justice would not be done in the foreign jurisdiction, and should only rely on any such factor upon cogent evidence *(AK Investment CJSC v Kyrgyz Mobil Tel Ltd* [2011] UKPC 7 2011 at [97]), as to which there is none here. Similarly he submits that the court can only take into account claims of likely delay in a foreign court if there is actual evidence before it as to this (see: *Ferrexpo AG v Gilson Investments Ltd* [2012 EWHC 721 (Comm)) and not as a matter of judicial notice. He submits that no such evidence has been adduced, and that the delay so far in the Italian proceedings has been caused (he submits) by the self-serving actions of Michael, who has delayed engaging with the proceedings by relying on the Italian time limits (150 days) with regard to responsiveness from a party resident in the United States.

48. On general principles, he emphasises that the exercise is to find the best forum for trying the whole of "the dispute" between the parties, and this means all of the issues between the parties, and not just some of them. There is a presumption against "fragmentation" of issues as being convenient, and this, he submits militates against any attempt to find a solution by allowing for some issues to be decided in the local court, but leaving others to be decided in the foreign court, an approach which the Court of Appeal roundly criticised as inappropriate in *Carlyle Capital Corporation v Conway* (CA) (*supra*) Judgment 11/2012 para [47]. Only if the party contending for such a fragmentary approach can justify it, exceptionally, as being "imperative" (*ibid*) could this be contemplated.

49. In summary, in order to permit these proceedings to continue against RHJ the court must be satisfied that Guernsey is "clearly and distinctly" the most suitable forum for the trial of the whole dispute. This, he submits, is simply not the case and not possible; the most obvious forum for trial of the whole dispute is Italy, because there is no attack on the validity of the Trusts in Guernsey, no reliance on the doctrine of "sham" (although even if there were, such legal concepts were not peculiar to Guernsey and could be competently decided in Italy), only Italy can decide the issues of recognition of the trust under Italian law and only Italy can decide the status and effect of the December 2004 Document under Article 2549 of the Italian Civil Code. Having regard to the matters of fact, law and circumstance set out above, the "centre of gravity" of the dispute as a whole is thus clearly Italian, and Italy, not Guernsey, is the more natural and obvious forum for its determination.

50. For the Plaintiff Trustees, Advocate Swan accepted that the task for the court was *prima facie*, to identify the appropriate forum for the trial of the dispute *in toto*, and not for individual issues or groups of issues. He agreed that severance or "fragmentation" was permissible only under the very high standard of it being "imperative". His initial submission was that on a proper approach, however, it could be seen that Guernsey was the appropriate forum for trial of the whole of this dispute and that there were no sufficient grounds for finding otherwise.

51. He submits that the main substance of this dispute does involve matters of Guernsey law, the key issues being (i) the validity of the Trusts and (ii) "*issues surrounding the purported partnership agreement*".

52. As to the former, he submits that the protestations of RHJ that it is not the *validity* of the Trusts which he is challenging in Italy, but only their *recognition*, are disingenuous and colourable.

53. First, although claiming to accept the validity of the Trusts, he has neither offered to consent to a declaration to that effect in these proceedings nor identified which declarations formulated in these proceedings he would consent to.

54. Second, the Italian proceedings are, on any basis, a collateral attack on the Trusts, since the effect of an Italian judgment refusing to recognise the Trusts (which is what RHJ is seeking), would impair their implementation according to their terms in the locality of Italy.

55. Third, on examination, the terms of the Italian writ are not even just a collateral attack but are a direct attack on the validity of the Trusts, because the matters upon which RHJ relies in support of his "non-recognition" argument in Italy are the same facts as would constitute an attack on the validity of the Trusts as trusts under Guernsey law. He cites allegations that (in translation) the Trusts are a "fiction", that RHS continued to own and to control the assets beneficially himself, and that the trusts were "merely a shield", and the repeated terminology of voidness fictitiousness, and lack of legal effect. Indeed, he points out that the ultimate claim is translated as being founded upon

> "*the legal voidness – which we ask the Court to establish and declare – of the apparently obliged entity* [seemingly considered, albeit incorrectly, to be the "Trust"]…".

56. He submits that the court must *"know what issues are likely to arise at the trial of the action on the merits"* in order to be able to compare the two jurisdictions: *VTB Capital plc v Nutritek International Corporation* [2013] 2AC 337 at [192] – [194] per Lord Clarke), and invites examination of the two potential recognition arguments in the Italian proceedings, which RHJ invokes as part of his case on the breadth and importance of matters of Italian law which are to be decided.

57. Advocate Swan submits that whilst RHJ's Article 13 argument may be a matter of Italian law, his Article 2 Argument, ie that there is a separate ground for non-recognition afforded by Article 2 of the Hague Convention, must either equate to an assertion of the invalidity of the Trusts as a matter of Guernsey law, or it is an argument which cannot be made at all. This is because of the effect of Articles 6, 8 and 11 of the Convention which lay down that:

> *"A trust shall be governed by the law chosen by the settlor"* (Article 6),
>
> *"The law specified by Article 6… shall govern the validity of the trust, its construction, its effects and the administration of the trust"* (Article 8), and
>
> *"A trust created in accordance with the law specified by the preceding chapter* (which includes Articles 6 and 8 but does not include Article 2) *shall* (emphasis added) *be recognised as a trust"* (Article 11).

"The law" in this case is Guernsey law.

58. Thus in applying the Hague Convention, the Italian court is obliged, Advocate Swan submits, to recognise as a trust, a trust which is created validly under its own chosen law, subject only to the available exception carved out by Article 13. There is no independent argument available based on Article 2, and the way in which an Italian Court might interpret the terms of Article 2 if called on to do so in isolation is irrelevant. Outside Article 13, recognition of the validity of the trust *as a "trust"* can only be a matter of Guernsey law. Advocate Swan submits that the terms of the Convention are beyond argument in this respect, and this court does not have to ignore that fact and that the Italian Court would be bound to apply the plain terms of the Convention.

59. Advocate Swan submits further, though, that there is nothing to prevent the Guernsey Court making findings of fact with regard to matters of "connection" as contemplated by Article 13 or the concepts in Article 2, and that these could then be taken to Italy. Indeed, he submits that with regard to the emphasis in the Convention on issues of essential validity being determined by the governing law of the trust, it would be wrong for the courts of a jurisdiction other than Guernsey to be deciding these.

60. He therefore submits that all the factual issues and most of the legal issues with regard to the validity and effect of the Trusts which are express or implicit in the Italian proceedings are properly justiciable in Guernsey, and are raised in the present proceedings. The only exception is the question whether an Italian court would decline to recognise these Trusts in Italy, even if they were valid by Guernsey law and therefore entitled to recognition under Articles 6, 8 and 11 of the Convention.

61. As regards the *"issues surrounding the purported partnership agreement"*, these are all about the effect of the December 2004 Document. However, he submits that the argument that this "concerns an alleged Italian partnership and therefore should be tried in Italy" is superficial in the extreme. He

characterises the issue as being whether the December 2004 Document was an abortive, or "draft" Letter of Wishes under the Trust, or was an offer of partnership or common venture ("*associazone in partecipazione")* under the Italian Civil Code, (although I record here that it seems to me that there is a logical possibility that it could be both, or even neither) and he suggests that even though the former is a matter of Guernsey law and the latter of Italian law, they are opposite sides of the same coin.

62. Looking at the further matters which would have to be canvassed in the Italian proceedings for RHJ to obtain the relief he seeks, he submits that the impact and effect of the dissolution of Lotte Holdings some years back must materially affect RHJ's argument as to the continuing efficacy of the December 2004 Document, but that Lotte Holdings was a Guernsey company and the effect of its dissolution is a matter of Guernsey law, thus demonstrating another connection with Guernsey.

63. Advocate Swan therefore submits that it is only the declaration sought at Paragraph 3.3.4 of the Cause (and presumably Paragraph 3.4.5 by parity of reasoning), quoted above, which may import Italian law considerations. However, these can be determined in Guernsey by expert evidence on Italian law, if necessary. The possible need to call evidence of Italian law was drawn to the attention of McMahon DB when he granted leave to serve the Summons out of the jurisdiction.

64. As to more practical aspects of convenience Advocate Swan submits that the overall "shape" of the present proceedings in this regard is Guernsey, and that if they were stayed, many of the Guernsey orientated issues raised will not fall to be decided in Italy, and perhaps could not lawfully be. He submits that the scope of the Italian proceedings is narrow; the only claim made is to identify the "correct" counterparty to the alleged offer, and that the proceedings are, in their own terms, claimed to be merely "preliminary" rather than being fully determinative of disputes between the parties.

65. Advocate Swan further submitted that other practical considerations also favoured Guernsey. He submitted that the court could take into account that proceedings in Guernsey were likely to be speedier than in Italy. Whilst no direct evidence of the general speed of Italian proceedings had been adduced, the court did have evidence of the actual speed, or lack of it, with which both this case itself, and other proceedings in Italy (the "Nemni" proceedings) in which the parties have been involved, have progressed. The court could properly infer from this that Italian proceedings would be likely to be very protracted.

66. In addition, the Trustees (and indeed the other Defendants) have confirmed that they will honour any decision by the Guernsey courts in these proceedings (subject to appeals), thus obviating any need for proceedings to obtain recognition of a Guernsey judgment in Italy. He further submitted that, that being the case, the impact of the one point which could only be decided in Italy, namely the "recognition" point, was really very narrow indeed, and indeed could only arise upon one possible combination of findings in the Guernsey proceedings, namely that the Trust was valid in Guernsey law, but that an offer of partnership under Italian law had been made by RHS personally, and was thus not binding on the Trust; only in that situation could the question which assets were to be taken to be the subject matter of the offer become a matter of dispute in Italian law, depending on the resolution of the "recognition" point.

67. Advocate Swan disputes RHJ's submissions about several of the practical aspects of trying the dispute in Guernsey or in Italy. He submits that almost all the truly relevant documents are in fact in English, and the only documents which RHJ has pointed to as being in Italian are peripheral to the dispute in these proceedings, being papers relating to the "Teodora tax" matter and a note made by Jacopo Franzan. All known witnesses - and these have been listed by the Trustees and the Second to Fourth Defendants - speak English, but the Trustees' principal witness, Mr Le Poidevin, does not speak Italian. He observes that RHJ's submission as to the pro-Italian balance of Italian/English speaking witnesses is not supported by any list. RHJ's assertion that most of the Trust's assets are in Italy is also not accepted and is suggested to be based on an illogical and illegitimate approach, such as looking at the location of underlying business activities conducted in subsidiary companies, and according undue weight to the location of income from land, and ignoring that of bank balances.

68. Advocate Swan also drew the court's attention to what he suggested were some serious obstacles to RHJ's claim in the Italian proceedings on any basis, such as interpreting the December 2004 Document, addressed as it was to the Trustees, as constituting an offer to RHJ himself, establishing that any such offer remained capable of acceptance in the light of the lapse of time, his own acceptance in 2006 of the severance of business relations between himself and the alleged offeror, RHS, and the intervening death of the alleged offeror, and lastly establishing that the offer relied upon could be capable of acceptance when providing the stipulated consideration was no longer possible because Lotte Holdings Ltd was no more.

69. In conclusion, Advocate Swan submitted that the decision on most convenient forum is, in modern times, a pragmatic one, taken in the interests of "the efficient conduct of litigation in an appropriate forum" rather than based on jealous "muscular presumptions" with regard to sovereignty or preservation of jurisdictional empires (see ***Abela v Badarani*** [2013] 1 WLR 2043 at [53] per Lord Sumption). He submits that taking all matters into account, that pragmatic choice must be Guernsey. Whilst accepting that there is a presumption against fragmentation of the issues in a dispute, he submits, as I understood him, either that this presumption is not in practice infringed by refusing to stay these proceedings, (because the Italian proceedings really relate to an issue – the efficacy of the alleged contractual offer – which is logically subsequent to the issues in the Guernsey proceedings) or that if this amounts to "fragmentation", then in the context of this case it can be justified as "imperative". He submits in any event, though, that until RHJ in fact produces a defence in the Guernsey proceedings, that latter point cannot be properly determined and the court is therefore both obliged and entitled to consider this application on the basis of the ingredients of this case as appearing in the Cause: see ***VTB v Nutritek*** *(supra)* at [194].

70. For the Second to Fourth Defendants, Advocate Greenfield supports the Trustees' submissions. He reminds me of the basic principle (see ***Spiliada*** above, at p 476C) that

> *"…a stay will only be granted on the ground of forum non conveniens where the court is satisfied that there is some other available forum having competent jurisdiction which is the appropriate forum for the trial of the action, ie in which the case may be tried more suitably for the interests of all the parties and the ends of justice"*

71. He refers to ***Colussi v Investec Trust (Guernsey) Limited*** (2007) Royal Court, Judgment 16/2007, in which the issues which weighed with the then Deputy Bailiff in refusing a stay of proceedings in Guernsey as against proceedings in Italy in Perugia included the relative speed of proceedings (although in that case based on expert evidence) and also the need for an early decision on the grounds of the efficient administration of a Guernsey Trust. He submits that a similar situation arises in this case.

72. He argues that it would be "undesirable" to abandon his clients entirely to decisions of the Italian courts who are inexperienced in the concepts of trusts, given the enormous impact which any decision affecting validity or efficacy of the Trusts might have upon them. In this context he reiterated the offer by these Defendants to abide by any final decision in Guernsey on the issues arising in the case, with the advantage of reducing potential further proceedings, whilst contrasting this with the fact that on their own face, RHJ's Italian proceedings were merely sought on a "preliminary" basis, with the clear implication of further disputes or issues then being raised.

73. Advocate Greenfield also supported the submissions of Advocate Swan with regard to practical considerations, and in particular that the true key documents were in English and that the key witnesses all spoke English but some did not speak Italian. He reiterated the apparent difficulties in the way of RHJ's claim in the Italian proceedings, and criticised his "disingenuousness" in failing to mention, in his claim, either the dissolution of Lotte Holdings Ltd, or his acceptance, in March 2006, that business relations between himself and RHS should be severed.

74. In response to the above points, Advocate Wessels reminded me that the issue on this application is to determine the appropriate forum for the trial of the issues in the dispute, and that for that purpose it was only necessary to identify the issues, and not to speculate on their merits. These were irrelevant – except possibly at the extremes which this case was not. Furthermore, the criticisms made by the

Plaintiff and the other Defendants of the merits of RHJ's case in Italy were matters of law in Italy, and as there was no evidence about this before me, I could not properly make any judgment on those points at all. He submitted that, on examination, it was submissions on such irrelevant matters which in fact comprised the bulk of the other parties' arguments in opposition to his client's case.

75. He further submitted that the invitation from the Trustee and the Defendants to determine the appropriate forum by seeking to "characterise what the case was all about" was misconceived and should be resisted, because it was the approach which was roundly disapproved by the Court of Appeal in *Carlyle*. The court should have regard only to the issues as appearing in the pleaded case, and considered in the round, and not seek to second guess or go behind these.

76. Whilst still maintaining his primary stance that the whole of these proceedings ought to be stayed, he indicated that if, despite his argument that that there was no justification for fragmentation, the court were to take the view that there should be some separation of issues, he urged that the court should formulate any such directions or order so as to take care to avoid there being a trial of the same issues in both Guernsey and in Italy.

Discussion and conclusion

77. At the hearing, the arguments in this case were basically put as a series of competitive propositions. Both "sides" rely on the fact that, they say, the action commenced in their preferred jurisdiction includes issues which only the courts of that jurisdiction can determine with authority - RHJ citing the issues of Italian recognition of the Trust and of the effect of the December 2004 Document in Italian law, and the Plaintiff citing the issue of the intrinsic validity of the Trusts in and under Guernsey law. Both sides then rely on authorities stressing the importance of that feature – namely that the proceedings raise an issue as to which one jurisdiction has exclusivity – as a factor in determining which is the more convenient forum for the trial of the dispute overall. The difficulty in this case is that, as both sides claim to pray in aid this principle, it leads to an *impasse.*

78. To meet this, Advocate Wessels argues that the matters of alleged dispute and exclusive jurisdiction in the Guernsey proceedings are not real disputes at all, because his client has expressly disavowed any intention to challenge the validity or genuineness of the Trusts in Guernsey. Advocate Swan says that this is disingenuous, and counters that whilst the ultimate point of the Italian proceedings is the claimed effect of the December 2004 Document which is an Italian law point, that can be ruled on in the Guernsey proceedings, as a matter of fact, by adducing expert evidence, and the issue of recognition in Italy could then only arise at the stage of enforcement. Advocate Wessels then responds by relying on the fact that the Italian proceedings were first in time and will continue whatever happens in Guernsey as, in effect, a final trump card on the issue of convenience of forum, supporting this by reference to the principle that the risk of conflicting decisions between jurisdictions should be avoided and the presumption against fragmentation of issues. Advocate Swan disputes that this point is the trump card which it is played as being.

79. Standing back from the close quarters fighting, I kept feeling, throughout the arguments, as if the parties were operating in parallel universes. To mix metaphors, there is a chasm between their respective starting points caused by the fact that one side's position is that the Trusts are effective and the other side's is that they are not. All their ensuing arguments start from this point and thus never really meet each other on common ground on which they can be compared and evaluated. I must therefore resolve this application having regard to that fundamental divide between the protagonists, and in my judgment, this means going back to first principles.

80. I therefore start by reminding myself that the question for me to decide is where "the dispute" raised in *this* case should more conveniently be tried. I am not looking at each set of proceedings, deciding where each would appear to be more naturally tried and then comparing the strength of that proposition in each case to see which is itself the stronger. At times this seemed to me to be where the parties' respective arguments led. I have to decide whether Guernsey is "clearly and distinctly" the more appropriate forum for deciding the issues arising in *this* case, or whether I should hold that, in all the circumstances, Italy is the more appropriate forum.

81. The test is: the more appropriate forum for the determination of the dispute in *this* case "*for the interests of all the parties and the ends of justice*". In this context, the interests of "all" the parties has, in my judgment, an objective meaning. It means their interests as a general body of litigants, and therefore, their interests, as presumed fair-minded persons who happen to be involved in a legal dispute, in obtaining a speedy, efficient, cost-effective and proper resolution of the issues between them, in all the circumstances.

82. In applying that test, I must consider and balance all the factors which have been drawn to my attention by the parties insofar as I consider them to be properly relevant to "convenience". Since I am deciding the appropriate forum for the determination of the issues in *this* case, the existence, scope and potential consequences of the Italian proceedings are therefore really just a factual situation or circumstance to be taken into account and given appropriate weight in coming to my decision about the conduct of *this* case. I am not determining anything to do with the course or scope of the Italian proceedings, over which I have no control. Equally, though, if I come to the conclusion that the Italian court is competent to try the disputes raised in this case, and is sufficiently seised of them by the Italian proceedings, then I must take into account the fact that proceedings have already started in Italy, and the assumption that they will continue, since that would be a very material fact in considering the convenience of letting these proceedings continue in Guernsey, or not.

83. However, I cannot accept the weight which Advocate Wessels ultimately seems to me to try to attribute to the fact that the Italian proceedings were commenced first. In the end his argument seemed to border on a submission that the combination of (i) his client's Italian action including a claim to determination of matters on which only an Italian court had jurisdiction and (ii) it having been commenced first, raised an almost irrebuttable presumption that Italy was the convenient forum for trial of the present dispute, or at least rendered it impossible to say that Guernsey was "clearly and distinctly" more appropriate. I find that submission to be too much of a blunt instrument, bearing in mind the need to reach a solution in the context of the divide between the parties in their starting points, mentioned above.

84. I start therefore, by examining the nature and character of *this* case, since it is the one which I am directly concerned with. That is plainly an exercise which it is appropriate to undertake. Whilst I have noted Advocate Wessels' cautionary warning that "characterisation" is an approach which was said to be inappropriate by the Court of Appeal in *Carlyle (supra),* I am satisfied that this is not an injunction against the court's seeking to form an evaluative judgment about the nature and scope of the claims in the case, but is really a composite warning against an inappropriate pre-judgment of the merits of particular issues (as opposed to recognising their existence as issues) and/or of trying to predict which issues will, in practice, become the most prominent at the trial and thus turn out to be what the case is "all about" in that sense. In *Carlyle*, the Court of Appeal considered that the judge below had been inappropriately influenced by an assessment of whether the case was "really" about bad decisions by the investment manager (made in the foreign jurisdiction) or "really" about breach of directors' duties (taking place in the local jurisdiction), when both were at that stage simply pleaded issues which would have to be tried. Whilst judicial crystal ball-gazing at this level may be permissible and even inevitable when making detailed case management decisions, it is not appropriate at the level of determining the appropriate forum for a trial, because at that stage it is just too speculative.

85. I have heeded this warning. I consider, though, that I am entitled to take what I regard as a common sense view of the nature and character of the proceedings, even though this will inevitably be based on considering the issues which are apparently raised, and noting that some may be more central than others. Indeed, it seems to me that this is supported by the observations of Lord Clarke in *VTB v Nutritek (supra)* at [192]-[194], cited above. However, I think it does mean that I should not place weight on the impressive but intricate analysis by Advocate Swan of the logical consequences of particular combinations of possible findings which might be made in these proceedings, as a factor by which to judge (and diminish) the supposed importance of the Italian law points in the Italian claim, when deciding whether this court is "clearly and distinctly" the more appropriate forum than Italy for trying this dispute. Attracted though I at one time was by this analysis, on reflection that seems to me to be entering upon the kind of unduly speculative or intricate estimation of the issues in the case which is what was held to be inappropriate in *Carlyle (supra).*

86. With regard to some other general points as to approach which have been urged on me, I accept Advocate Wessels' submission that I should disregard the apparent merits of RHJ's claim in the Italian proceedings, however questionable these may appear to be to the common law eye. I accept that I am not in a position to know, let alone judge, whether Italian law may in certain circumstances, recognise a letter addressed to one party as being an offer made to another, or may hold that an offer of a "partnership" under the Italian Civil Code can survive the offeror's death, or whether a contractual condition may be fulfilled otherwise than by the literal performance stipulated, or other suchlike questions. To ensure that I am not inappropriately influenced by such matters I have therefore approached my decision by assuming that RHJ's case on such matters in the Italian proceedings is well arguable as a matter of Italian contract law.

87. I have felt less of an obligation to take this approach as regards the Hague Convention points which are relied on in the Italian proceedings. Whilst I readily accept that the Article 13 point is a matter entirely of Italian law and public policy which is plainly arguable in principle, I cannot say the same of the Article 2 point. The argument made by Advocate Swan with regard to the very clear meaning and effect of Articles 6, 8 and 11, appears to me to be obviously right, and is underscored by the point that the whole purpose of the Convention was to harmonise the treatment of trusts across signatory States (subject to the Article 13 exception, giving an ultimate "opt out" for states whose laws did not include the trust concept and for whom recognition of a "foreign" trust in certain circumstances might go too far with regard to national public policy considerations). This seems to me to show that there is no room for an argument for "non-recognition" based on an Italian court's own evaluation of facts and qualifications as described in Article 2, but which, by Articles 6, 8 and 11 are consigned to the decision and jurisdiction of the Guernsey court. Since this is a matter of construction of an international convention rather than Italian national laws, I regard it as being rather different from arguments of Italian contract law, which I have accepted is an area on which I should not tread. However, in the end, I still conclude that I ought to approach this case on the basis that even the Article 2 issue, raised as it is on RHJ's written case in the Italian proceedings, is one which I should not prejudge. I therefore proceed on the basis that that point, too, is well arguable in the Italian proceedings.

88. Returning to the general overview of the issues, and therefore, the "shape" of *this* case, on an initial impression, I find that the character or nature of this case is a claim brought by a Guernsey resident Trustee of Trusts constituted on their face under the laws Guernsey, for determination of matters of actual or potential dispute with regard to (i) the validity of the Trusts and (ii) the proper basis upon which the administration of the putative Trust assets should proceed, in the light of certain documents and events which have happened. The issues on which the judgment or ruling of this court is sought in these proceedings seem to me to go essentially to the due administration of the assets comprised, or believed to be comprised, in the TFT, and to the position, function, duties and obligations of the Plaintiff as Trustee in the circumstances.

89. It is a fundamental tenet of trust law that a trustee who finds his position or the proper performance of his functions to be in doubt should be able to come to the court for assistance and obtain a ruling upon which he can act with confidence in dealing with the assets under his control. I start, therefore, from the position that it would be a strong thing for this court to refuse to entertain such an application. By making it, the trustee invokes the supervisory jurisdiction of the court over the trust. I also observe that this is not a function which the Italian court has jurisdiction to perform. This suggests to me that the natural forum for determination of the matters of dispute in these proceedings is *prima facie* Guernsey.

90. I therefore next ask myself whether there are any matters in the circumstances of this case which might make it right for this court to decline to entertain the Trustee's application at least *pro tem* as RHJ urges, which is what staying the proceedings would amount to. These could, in my judgment, only be matters which showed that in reality the trustee did not require the assistance of the court, because it could conduct the affairs of the trust perfectly safely (for itself) and properly (for the beneficiaries) without such assistance. This would seem to me to entail either that the trustee's concerns were, on examination, without foundation or that it was sufficiently plain that the substance of the trustee's concerns could and would be sufficiently effectively dealt with or obviated in some

other way – here through the medium of the Italian proceedings which have already been commenced – that this court does not need, in the interest of pragmatism and proportionality, to act and indeed that it would cause "inconvenience" in some form if it were to do so.

91. Advocate Wessels has submitted that the reality of even *this* case, and the "centre of gravity" of the disputes raised herein, is really Italy, because there is no dispute about the *validity* of the Trusts in the Italian proceedings at all, all matters relating to the Trusts being arguments of *recognition;* recognition is a point purely of Italian law, as are the consequent issues about the effect of the December 2004 Document under the Italian Civil Code, and these are the real substance of the case. He argues that the validity of the Trusts is not in issue because he recognises their validity in Guernsey, is not running a "sham" trust argument, and his only argument is a purely "Italian" argument that Italy should not *recognise* the Trusts despite their acknowledged validity under the law of Guernsey.

92. I do not find this argument convincing in fact, nor do I find the assertion above sufficient to remove the "validity" issue from these proceedings, still less to relegate its significance to a matter which can, and conveniently should, be consigned to decisions of the Italian court. Nor do I find it sufficient to take away the justification for the Plaintiff's coming to this court to seek relief which will give it a degree of certainty about its position, and to which it is entitled.

93. First, and despite encouragement from the bench, RHJ has conspicuously declined to indicate that he will consent to any declaration or declarations authoritatively confirming the validity of the Trusts as a matter of Guernsey law, despite the professions in his affidavit. However, I agree with Advocates Swan and Greenfield that the language used in RHJ's writ in the Italian proceedings is consistent only with a challenge to the actual validity of the Trust, and is not confined to assertions merely supporting a recognition argument in Italy. This may arise from the fact that RHJ is attempting to run a two pronged challenge on the "recognition" point in Italy, based separately on both Articles 13 and 2. However, if he is trying to run an Article 2 point in Italy independently of Article 13 and in the face of Articles 6, 8 and 11, then it seems to me that this inevitably must raise questions or concerns about the status or validity of the trust in Guernsey, having regard to the similar terminology of the Trusts (Guernsey) Law 2007 (see ss 1, 6, 8(4) 15, 23-25, 27 and 30) to that of Articles 2 and 3 of the Hague Convention.

94. I do not accept that the language of challenge to validity used in the Italian proceedings can be brushed aside as just a normal extravagance of style in Italian pleadings, or mere regrettable hyperbole, or even infelicitous translation, as Advocate Wessels suggested. The number of instances in the pleading, and the fact that the translation is the Second Defendant's own, is inconsistent with this. Further, there is no hint of any concession in the Italian cause that the Trust is valid in Guernsey, and it is difficult to see how, in the context of his actual pleadings, RHJ would propose to make good his intention professed in these proceedings, to disavow any challenge the intrinsic validity of the Trusts in the Italian proceedings. Combining that with RHJ's failure to consent to any actual declaration as to the validity of the Trusts in Guernsey law, I have no confidence on what arguments or assertions RHJ may in practice put to the Italian court. The result, in my judgment is that the Trustee is most certainly entitled to ask this Court to make the position in Guernsey law, at any rate, clear, something which only the Guernsey Court can do.

95. That is enough, in my judgment, to justify the bringing and continuing of these proceedings before this court in principle, but in fact I think the position is even stronger. It is, ironically, strengthened by my view that I should not proceed on the basis that RHJ's Article 2 argument in the Italian proceedings is without merit. The recognition arguments made in the Italian proceedings are plainly intended to produce a decision in Italy which would impact adversely on the Trustees' prospects of administering the TFT in Italy according to its terms. The Trustee would be entitled to form, and implicitly has formed, the view that such an impediment would be contrary to the best interests of the Trust with which it is charged. It can therefore reasonably pursue such steps as it may think fit to protect the interests of the Trust by trying to minimise the prospects of an adverse decision in Italy, even on the recognition point. In my judgment, this would reasonably involve seeking to ensure that recognition in Guernsey of the validity of the trust and particular aspects or effects of its

constitution are underpinned by actual pronouncements of the Guernsey court, rather than being left merely to be advanced as matters of submission or argument in the Italian proceedings.

96. That being so, it appears to me to be reasonable and appropriate for the Trustee to seek such declarations as it considers appropriate from the Guernsey court in that regard, in order to protect the Trust's interests. Even if it might be said that this was a "mere evidence gathering exercise", I do not consider that that would render the taking of the proceedings somehow an illegitimate resort to the Court process here. If evidence is needed for the benefit and protection of the Trusts then the Trustee can reasonably take the appropriate steps to obtain it. Indeed, I think it is well arguable that it would even be the duty of the Trustee to do so. Not only is Guernsey the most natural forum for any such application by the Trustee, it is the only forum.

97. It follows that I attach no weight to Advocate Wessels' complaint that the launching of these proceedings has purely been a reaction to the Italian proceedings and in order to try to undermine them. It can be no criticism of trustees that they seek to prevent a perceived threat to the interests of their trust, and if steps are taken to defend against such a perceived threat, then these can of course be characterised as "undermining" it by a party whose interests lie in the threat succeeding. The question is whether the steps taken are proper and legitimate, and in my judgment they are.

98. In addition, in my judgment, the Trustee is entitled to seek authoritative assurance as to the validity of the TFT and its history, as a reasonable requirement in order to enable it to continue to act as Trustee and administer the TFT in the way in which it believes it should do in accordance with the Trust Deed, or else to take appropriate steps if the situation is held not to be as it thinks.

99. This consideration deals, in principle, with the appropriateness of Guernsey as the forum for determining the issues raised in the Cause going to the validity and effect of the Trusts (ie the broad scope of Paragraphs 3.1, 3.2 and 3.8 – 3.11 of the Cause). I therefore turn to the further issues with regard to the true effect of the December 2004 Document and others, and the declarations sought as to other matters in the other paragraphs of the Cause.

100. The Trustees' interests in the effects of the various documents referred to, and in particular the December 2004 Document, lie in establishing that the way in which it has administered UPF and latterly TFT has been proper, and to establish with assurance the basis on which it should now continue to administer the affairs of TFT. To this end it seeks, and is entitled to seek, declarations regarding facts and effects of documents and events which happened, insofar as it needs to confirm these matters for the purpose of judging what it can or should lawfully do in administering the Trust. I regard this as clearly established by the *Colussi* case (supra), which I found very helpful.

101. On considering the scope of the various declarations sought in the remainder of the Cause, I find that, with one exception, I accept Mr Swan's arguments that they are all directed in principle at this aspect of the Trustee's functions. It follows that I take the view that the Trustee is justified in principle (but subject to the caveat at the end of this judgment) in seeking such declarations. They relate to aspects of the correctness of the basis on which the Trustees has, so far, administered the UPF and the TFT and the foundation for future administrative acts.

102. In this regard, I accept that the declaration sought at Paragraphs 3.3.1 (first five words), 3.5 and 3.12 are declarations regarding facts which could and very possibly would fall to be made as determinations of fact in the Italian proceedings. However, all the other declarations sought, apart from Paragraphs 3.3.4 and 3.4.5, are declarations of mixed fact and law or of legal rights which relate to issues appropriate to be resolved in connection with the Trustees' application for confirmation of the propriety of its past administration of the Trust and of its position going forward. I do not consider that the prospect of the factual issues in paragraphs 3.3.1, 3.5 and 3.12 arising for decision in the Italian proceedings is such that they can conveniently be detached and severed from those other matters which are in my judgment overwhelmingly appropriate to be decided in proceedings here, as brought by the Trustee. They require to be determined as the foundation for the continuing administration of the Trust. Still less do I think, therefore, that those issues, if they were *prima facie* appropriate to be left to the Italian court, could "conveniently" take with them the potential disputes on the other issues which I have mentioned.

103. I have more concern over the declarations sought in Paragraph 3.3.4 (and, by parity of reasoning, Paragraph 3.4.5) of the Summons, which are the exception which I mentioned above. These claimed declarations relate to matters which are undoubtedly matters of Italian law. Absent these two claimed declarations it does not seem to me that there would really be any issue but that the natural forum for resolution of the matters in dispute *in this case* (I emphasise) would be Guernsey.

104. Does the inclusion of the claim for the declaration sought at Paragraph 3.3.4 (and 3.4,5) affect this sufficiently to convert the dispute to one which is more naturally and conveniently heard in Italy? I have concluded that it does not, but for reasons which I will elaborate on below.

105. I then turn to the argument about the risk of inconsistent decisions. As previously mentioned, Advocate Wessels placed great weight on this point, and I have given it very careful consideration. However, in my judgment this is not a good point and certainly not a sufficiently countervailing point when weighed against the alternative of denying a Guernsey Trustee the benefit of a determination as to its position by a Guernsey court. I think there are two answers to it, one short and the other less so.

106. The short answer is that insofar as the result of both these proceedings and the Italian proceedings continuing may be to give rise to inconsistent decisions in the two jurisdictions, this seems to me really to be the consequence of the Hague Convention, and the fact that the prospect of inconsistent decisions is inherent within the Convention and contemplated by it. The Convention plainly contemplates that one jurisdiction, the home of the "trust", may treat the trust as valid and effective according to its terms, but that another jurisdiction may decline to do so, with apparently inconsistent results.

107. The second and more intricate analytical answer is that in my judgment the actual decisions which the two courts will take will not, in essence, be inconstant decisions because they will not be decisions on the same question. I accept that there can be said to be some possible exceptions with regard to findings as to matters of bald fact such as that the December 2004 Document was not deposited with the Plaintiff, that RHJ did not procure the transfer of any shareholding in Lotte Holdings to the Plaintiff or that RHS "did not die intestate", but I do not think this suffices to invalidate this analysis. The actual decisions which the Guernsey court will make are declarations of legal right or consequences, and will be declarations of such rights and consequences for the purposes of Guernsey law. The decisions which the Italian court will make will be such decisions for the purposes of Italian law. They will therefore not be inconsistent at that level, because they will be different decisions on different issues.

108. The actual problems of inconsistency between any such parallel decisions will not have practical effect unless and until there is a cross-jurisdictional issue. That, however, is likely to be an enforcement problem. As such it is the kind of problem which no doubt has to be dealt with quite commonly by persons involved in institutions operating internationally. I do not regard that prospect, therefore, as being a result which should disturb the natural forum for the Trustee's claim generally in this case, or render Guernsey not "clearly and distinctly" the most convenient forum for trying and deciding the issues raised under Guernsey law in these proceedings.

109. Are there, then any practical matters which need to be weighed in the balance and which are of sufficient weight to tilt the balance of convenience in favour of an Italian forum, even despite the considerations mentioned above? I have reviewed the competing arguments with regard to language, both of documents and of witnesses, ease of access and ease of availability of witnesses. I find the submissions of Advocates Swan and Greenfield on these points the more persuasive, and in fact to favour Guernsey. I am certainly not satisfied that considerations such as these, even if given the strength which Advocate Wessels argues for, come near to supporting the proposition that Rome would be the more convenient forum for determination of the issues in this case, even insofar as there was arguable overlap with issues properly raised in the Italian proceedings. For reasons already given, I take the view that on the proper analysis of the true nature of this case, that overlap is small in any event, because Italy cannot determine issues going to the proper administration of this Guernsey Trust.

110. As regards practical considerations such as likely speed of proceedings, I do consider that I have sufficient evidence of the likelihood that Italian proceedings will be slow to regard that as a possible disadvantage of consigning the proceedings to Italy. I regard the criticism of Michael as irrelevant; the key factor is that Italian procedure does provide such a lengthy time response for overseas Defendants, and there is the other evidence referred to by the Plaintiff. However, comparative speed has not been a factor which has had any actual influence on my decision. I also accept that there is no evidence from which I could properly infer any risk that the Italian court would not come to a just, proper and independent decision on the matters properly before it.

111. I should finally add that the submission that RHJ had been disingenuous in the advancement of his Italian case is also a matter which I regard as irrelevant. The discretion to determine a convenient forum is a discretionary judgment as to facts, and short of an abuse of the process argument, it is not, in my judgment, to be exercised as if it could be denied as a sanction for behaviour of which the court might disapprove. I make no judgment on that point, in any event.

112. It will be gleaned from the above that I will be rejecting the First Defendant's application for a stay of these proceedings. I do this on the basis that I am positively persuaded by the Plaintiff's and Second to Fourth Defendants' arguments that I should not do so; I would consequently have refused to set aside the service of the Summons out of this jurisdiction upon the First Defendant if I had been considering his application on that basis. However that is not the end of the matter.

113. Towards the end of the hearing, Advocate Wessels retreated somewhat from his argument that the proceedings should be stayed in their entirety and hinted at a *via media*, no doubt intended to meet the court's obvious unhappiness with the parties' "winner takes all" approach to this application. He suggested that if I were not minded to stay the entire proceedings, I could consider a partial stay of the trial of some of the matters raised in them, in the interests of avoiding duplication of the trial of issues in the Italian proceedings. Advocate Swan argued that I should not do that, at least at this stage, as it would be premature because the First Defendant had not put in Defences yet, so that it was really not possible to identify any such issues sufficiently, yet. He accepted (and I think Advocate Wessels wished it to be recorded) that there would be no bar on the First Defendant later making any application for a stay of particular issues on grounds that they were being tried in Italy and that their determination in these proceedings ought conveniently to await the outcome of the Italian proceedings.

114. This approach seems to me to be proper, convenient and attractive, and I will therefore implement it in the order which I shall make.

115. However, in considering this course, I have also examined whether I ought even now to stay the proceedings in respect, only, of the declarations sought in Paragraphs 3.3.4 and 3.4.5 which blatantly ask for a declaration regarding the effect of two documents in Italian law. I have concluded that I ought not to do so, at any rate at this stage, for two reasons.

116. First, the status of the January 2005 Document is not actually in issue in the Italian proceedings and so there is no potential decision of the Italian court to which it could be consigned, even though the issues with regard to it have some similarity to those with regard to the December 2004 Document.

117. Second, the essence of what the Trustees can properly require in these proceedings is not so much a declaration of the non-effectiveness of the December 2004 Document as an offer of an "*acceptazione in partecipazione*" in Italian law, but a declaration that they have been, and are, correct (ie in Guernsey law) to act on the footing that this document was and is not an offer of an "*acceptazione in partecipazione*" in Italian law. Thus viewed, the purpose of the Trustees seeking this declaration, and the possibility of its not even being inconsistent with whatever the Italian court may decide on this topic, becomes apparent. This position is underlined by the fact that any issue of Italian law requiring to be decided in Guernsey would be decided as a matter of fact by the Guernsey court rather than as law. Thus a potential pattern of consistency between prospective decisions of both courts begins to fall into place.

118. However, this leads me to a further general point which I feel obliged to make in relation to the declarations which are actually sought by the Plaintiff in these proceedings, and because of which I have so far been careful to say I find it justifiable for them to seek such declarations from the court *in principle.* I have certain misgivings with regard to the actual formulation of several of the declarations sought. Therefore, whilst coming to the conclusion that I should not stay this action, I must add a caveat to the scope and effect of this decision.

119. The actual declarations sought by the Plaintiff are not only very numerous but also very general, and frequently contain several limbs. The jurisdiction of this court to grant declarations is inherent and undoubted. Its scope follows English practice: see *Re Westbury Property Fund Ltd* [2005-06] GLR 176 (Royal Court). A declaration can be, and usually is, a declaration of right, but it can be a declaration of fact. Indeed, any finding of fact which a court makes as a necessary foundation for its ultimate conclusion in a case has the status of a judicial declaration of fact in the form of *res judicata* on that issue, even if it is not embodied in a formal declaration of the court.

120. However, the granting of any declaration is a matter of discretion. The court will therefore grant a declaration only if satisfied that it is appropriate to do so, and only if also satisfied that the terms of the declaration which it is asked to make are appropriate. It will not therefore make a declaration which is imprecise, unclear or overly wide. Nor will it make one on a purely hypothetical or academic matter. Nor, in my judgment, will it make a declaration which could serve no useful purpose. Since the claim for a declaration will, or should, include an indication, express or at least implied, of the purpose for which it is required, the court will wish to consider this and what form of declaration is appropriate for that purpose. It is unlikely to think it appropriate to grant a declaration in a vacuum. It will also be careful to ensure that any declaration which it does make is framed in words which are apt to define, and if necessary limit, its scope.

121. It does not follow from the fact that I have declined to stay these proceedings that I have decided that every declaration which is sought by the Plaintiff in this action is one which the court could, would or might be prepared to grant. Before granting any such declaration the court will still have to be satisfied that it ought to do so. I will give four examples to illustrate where, in my judgment the court may well, and even of its own motion, decline to grant declarations in the actual terms of those sought in this case. These are examples only.

122. By Paragraph 3.1 a declaration is sought that the United Prod Foundation "… was validly constituted as a trust ….*with its centre of interests in Guernsey…..".* The phrase "centre of interests" is an expression which is not a simple expression of bald fact, but a term of art or metaphor. It is unlikely that the court would be willing to make a declaration in such terms without tying its meaning down sufficiently precisely, such as by reference to the source of the phrase. Where a declaration is sought as to a word with flexible, variable or indeterminate content, it is conventional to tie that down by reference to the source of the term by adding a phrase such as "within the meaning of s.[x] of the [y] Law" or "within the meaning of paragraph [a] of the [b] settlement". This has the additional merit of often identifying the purpose for which the declaration is sought, as well as the source from which its content is to be ascertained.

123. Similarly, Paragraph 3.2 seeks a declaration that "Roberto Haggiag Senior *did not control* the assets of the United Prod Foundation". The meaning of the word "control" in this declaration is at large, and potentially unreasonably imprecise unless its content is identified by reference to some relevant benchmark against which the court has evaluated the propriety of making the declaration sought.

124. By Paragraph 3.12 a declaration is sought that Roberto Haggiag Senior "did not die intestate". This is a negative declaration, to the effect, only that RHS left a will (unidentified). I doubt if that could ever be an appropriate form of declaration as it is a "negative pregnant", carrying the implicit assertion that RHS did leave some will. It would have to be proved by adducing evidence of some will. The more appropriate declaration would therefore be the positive one as to what will he did leave. In fact, even if the court were prepared to find in a particular case that a party had apparently not left any will, a declaration in that form would almost certainly serve no useful purpose in any event. Any useful declaration would have to be in the positive form of identifying any valid will

which was left by Roberto Haggiag and which might have practical effect in relation to some actual or potential issue of which the court was seised.

125. Lastly, there are the already controversial declarations sought in Clause 3.3.4 (and by parity of reasoning Clause 3.4.5), that the December 2004 document and the January 2005 document "did not create any rights or obligations whether in the nature of a partnership or a *associazone in partecipazione* under Italian Law, or otherwise". First, this talks of "rights or obligations" in a vacuum without specifying in or upon whom. Second, the words "or otherwise" are literally far too wide ever to found a declaration that the court could properly be satisfied that it could make. The court would, in my view, have to qualify any such declaration to limit it to the particular purpose or situation for which it was required. Lastly, however, this declaration is framed as a declaration of right under Italian law. Only an Italian Court could make such a declaration. In Guernsey, Italian law is a matter of fact, and not law, and therefore in my judgment, a Guernsey court could properly only make a declaration which recognised that it was based on this situation, and limited its scope. It could possibly, for example, make a declaration that "the Trustee is authorised to administer the Trust on the footing that [this document did not constitute …]" or it might make a declaration as to some such consequence for the assistance of the parties, but prefaced by the preamble "And it appearing to the court that [this document did not constitute ….] …." so as to assist the trustee but without purporting to make a declaration of controversial permanence or absolute quality.

126. These are four examples only of instances where I take the view that questions may arise, from the court itself, as to the appropriateness of granting declarations in the form actually sought in the Summons, and I have indicated the matters which I think would affect its willingness or otherwise to subscribe to the particular terms in which the Plaintiff has chosen to seek relief. The Plaintiff may care to reflect upon this.

127. I should add that in the course of deliberating, I considered whether the actual wording of the declarations sought meant that the Plaintiff must be taken to have opened up issues for determination which would make it appropriate for this case, with those issues thus introduced by the Plaintiff itself, to be tried in Italy. I have come to the conclusion that it does, not. The nature of this case is and remains an application by the Plaintiff Trustee to confirm (or otherwise) its status and authority to act as Trustee and to direct it as to the basis on which it should give credence or effect (and if so what effect) to certain documents or events which have happened, for the purpose of the due and proper administration of this Trust. The relief granted is ultimately under the control of the court. The scope of the issues properly encompassed by the declarations which the Plaintiff seeks is therefore, in my judgment to be managed by the court, and if appropriate will be limited, to that context. This means that any unduly wide formulation of the relief sought does not become grounds for staying this action in favour of another jurisdiction.

128. Lastly, if this decision, and my comments are argued to lead to "fragmentation" of the issues in this case, then so be it: I am satisfied that, in this case, it is sufficiently "imperative" because I cannot conceive of a more sensible way of enabling the disputes between the parties - ultimately really disputes between the Defendants inter se - to be resolved sensibly in accordance with their asserted bases (whatever the merits of these), whilst at the same time enabling the trusts, which Guernsey Law will uphold until the contrary is decided, to function reasonably under the authority of the putative Trustee.

Decision

129. For the above reasons, my decision is that the First Defendant's application is dismissed, and I refuse to stay this action, but expressly without prejudice to the right of the First Defendant to apply in the future, if so advised, for a stay of further proceedings in respect of any identifiable issue on the grounds of *forum non conveniens* and/or as a matter of case management.

Lt Bailiff Hazel Marshall QC
7th October 2015

