



**Elite Properties PCC Limited et al v  
Trident Trust Company (Guernsey) Ltd**  
Royal Court  
4th August, 2016

**JUDGMENT  
35/2016**

**Application by the Applicants for disclosure of documents by the Respondent.**

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

Civil Action File No 1995

**Between:**

- (1) **ELITE PROPERTIES PCC LIMITED**
- (2) **LAM DEVELOPMENTS LIMITED**
- (3) **LAM INVESTMENTS LIMITED**
- (4) **ENTERTAINMENT GROUP LIMITED**

**Applicants**

**and**

**TRIDENT TRUST COMPANY (GUERNSEY) LTD**

**Respondent**

Hearing Dates: 6th and 10th June 2016

Decision handed down: 10th June 2016

Judgment handed down: 4th August 2016

Before: Her Honour Hazel Marshall QC Lieutenant Bailiff

Advocate for the Applicants: T W McGuffin

Advocate for the Respondent: J A Tee

Cases, Texts & Legislation referred to:

(a) Legislation

The Companies (Guernsey) Law 2008, ss 154, 156, 228, 231,238, 239, 242, 483, 484, 486-8 and 513

The Trusts (Guernsey) Law 2007 s 44

(b) Cases

Guernsey

*Gaudion v Weardale Ltd* [1998] GLJ 61

*Inalux SA v Old Crown Trust Ltd* (Royal Court, Unreported , June 2000)

Jersey

*Cristiana Crociani and ors vs Edoardo Crociani and ors* [2016]JRC 089C

England and Wales

*Hollis v Claridge* [1813] 4 Taunt 407

*Bleadon v Hancock* [1829] 4 C&P

*Steadman v Hockley* [1846] 15 M&W 553

*Re Capital Fire Insurance Association* [1883] 24 Ch D 408

*Re Anglo-Maltese Hydraulic Dock Co Ltd* [1885] 54 LJ Ch 730

*Chantrey Martin (a firm) v Martin* [1953] 2 All ER 691

*Woodworth v Conroy* [1976] QB 884

*K Chellaram & Sons Ltd v Butlers Warehousing and Distribution* [1978] 2 Lloyds Rep 412

*DTC (CNC) Ltd v Gary Sargeant & Co Ltd* [1996] 1 WLR 797

(c) Texts

Terrien, Commentaires du Droit Civil tant public que privé observé au pays & Duché de Normandie, Book VIII Chapter 1 (p.258)

Bowstead and Reynolds Law of Agency Article 65 para 7.073

Halsbury Laws of England (5th Edition Volume 68)

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**JUDGMENT**  
**Approved by the Court**

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The parties and the Applications

1. The first Applicant, Elite Properties PCC limited, is a protected cell company containing ten cells. The second to fourth Applicants are companies which I understand to be incorporated individually within two of those cells. The second and third Applicants own valuable properties in Central London, at least one of which is the family home of a Mr El Bashliwi. The main asset of the fourth Applicant is understood to be cash proceeds of a sale of shares. All four companies are within an overall corporate group or structure, ultimately owned either in whole or in part by Mr El Bashliwi.
2. The Respondent, Trident Trust Company (Guernsey) Limited, to whom I will be referring as “the Respondent”, is a licensed corporate service provider. It entered into an agreement in 2006 with a Jersey company, Amir Limited, which was there designated “the Client”, to provide corporate services for reward according to its usual scale charges. This was to be for the second and third Applicants and any further or other companies as might be requested. These services were to be company formation and acquisition (which is not relevant for present purposes), and then “company management services” which were: the provision of directors and alternate directors, provision of company secretary, provision of other offices for the company, provision of registered office for the company, provision of administrative office for the company and provision of nominee shareholders. There was then also “company administration”, which was to comprise maintenance of statutory records and filing of any statutory returns of the company, preparation and maintenance of minutes of meetings of directors, preparation and maintenance of minutes of meetings of shareholders, maintenance of books of account of the company, preparation of financial statements for the company, safe custody and insurance of assets of the company, investment of funds of the company on the Client’s recommendation or on the advice of such advisor as the Client may recommend and contained in a separate investment management agreement, and operation of bank accounts.
3. The agreement provided that the Respondent should “receive from the companies or the Client” fees set out in its published scale of charges or as otherwise agreed with the Client. The companies were not, of course, parties to the agreement. The Respondent was to be entitled to pay itself out of the funds of the companies, or of Amir Ltd, under its control. Interest ran on overdue payments. Amir Ltd covenanted to ensure that the companies were

kept in funds to meet their liabilities and also expressly guaranteed the payment of all fees and expenses by the companies at clause 6(ii) of the administration agreement.

4. Until about 2013 the agreement proceeded smoothly, it appears. The Respondent used its sister companies, Trident Corporate Services No 1 Limited (“TCS”) and Trident Nominees Limited (“TN”) as corporate director and nominee shareholder of the companies. Their and the Respondent’s charges and expenses were duly paid up to this time by the companies and expenditure was also reimbursed. However, there was then a falling out between Mr El Bashliwi and the Respondent over the level of fees. Non-payment ensued from about the end of December 2013 and commercial hostilities commenced. I am not concerned with the precise course of manoeuvrings which have taken place since, but the upshot at present has been, first, that between 1<sup>st</sup> March and 22<sup>nd</sup> April of this year four resolutions were passed by TN, as it was directed to do, removing TCS as sole director of each of the companies and appointing Mr Nigel Carter in its place. Nerine Limited was also appointed company administrator and resident agent for each company in place of the Respondent. Second, the Respondent, and I think TCS also, served statutory demands on the respective companies in respect of their claimed outstanding fees and charges. Those fees are in dispute, I am told, as regards both their recoverability at all and/or on account of cross claims that have been made.
5. This application is, however, concerned with a side issue arising from the change of the company’s director. Mr Carter, it is accepted, is now the validly appointed director of the four companies, whose operating and registered offices have also been changed. Mr Carter is now charged with the duties of a director as regards running the companies effectively and lawfully. However, there are documents containing information which would naturally be in the control of the companies and/or comprise their records which remain in the hands of the Respondent, who has declined to hand them over upon the several requests made in respect of each company, claiming entitlement to a lien over them. As the position of each company is identical, I will at times in the remainder of this judgment probably refer to “company” in the singular where it is more natural or convenient to do so.
6. The history of this matter is largely identical for each company. There was an initial request, in the case of Elite, for example, on 7<sup>th</sup> March 2016, for delivery, ie for the Respondent to “provide” to Nerine all documents in TCS’s or the Respondent’s possession “relating to” the relevant company. The initial response in March of both TCS and the Respondent through their solicitor, Collas Crill, was that, first, the Respondent and TCS assumed that the request meant “belonging to the company” rather than “relating to it” since this was all the company was entitled to. This foreshadowed arguments that were later to be made. Second, TCS, the former director, held (it was said) no documents belonging to the company; all documents belonging to the company had “at all material times been maintained and held by [the Respondent]”. Third, the Respondent was currently owed a stated figure for fees for administrative services etc plus interest, as stated in the letter, and it knew of no reason why those should not be paid; a mere imprecise intimation of some unparticularised dispute was all that had been made. Fourth, in the circumstances, the Respondent claimed a lien over “all of” the company’s property in its possession and would not deliver any up until the fees had been paid.
7. In response to a request for clarification, the Respondent stated that its claim to a lien was not under contract but was a lien “pursuant to the common law”. That phrase must, of course, be taken as a reference to the general common law of Guernsey, ie the customary law, as contrasted with statutory enactment.
8. Objection was made on behalf of the company Applicant that the effect of withholding the relevant documents was to prevent the company from complying with its statutory obligation to maintain certain records and registers under company law, ie *The Companies (Guernsey) Law 2008*, and that this could not be permissible. The retort was that such obligations were the company’s obligations and not the Respondent’s and they (the Respondent) were under no obligation to assist until they were paid. There was an impasse as a result.

9. This application was therefore instituted on behalf of all four companies on 4<sup>th</sup> May 2016 claiming delivery up to Nerine of “any” document, or where appropriate copies, relating to the affairs of each company “or” falling within any category listed in Schedule A to the application. The breadth of the claim is to be noted, although in practice the proceedings have concentrated solely on the Schedule A categories.
10. Schedule A contains 38 categories which I need to read. They are grouped. The first group is “Regulatory” and contains category (1), “Confirmation of the legal and beneficial owners including, but not limited to, any declarations of trust”, and category (2), “Correspondence with or any disclosures made to the Guernsey Financial Services Commission with respect to beneficial ownership or as to any other regulatory matter”.
11. The second group is “Financial”. This reads:
- “(3) financial accounts, profit and loss and balance sheets including, but not limited to, draft accounts for the past five accounting years;
  - (4) management accounts for the period from the last accounting date to the Production Date; [*which is defined in the Application as the date for which production was there claimed*]
  - (5) trial balances as at the Production Date;
  - (6) all aged debtor schedules as at the Production Date;
  - (7) all aged creditor schedules as at the Production Date;
  - (8) tax computations for each accounting period for the last five years;
  - (9) detailing any outstanding tax obligations or liabilities;
  - (10) all bank statements relating to any bank accounts in the name of the applicants or any bank account used in the transmission of funds belonging to any of the applicants as at the Production Date;
  - (11) all bookkeeping records including, but not limited to, copies of all ledgers;
  - (12) all borrowing and facility documentation including, but not limited to, all relevant agreements;
  - (13) all banking customer agreements including any mandate documents;
  - (14) all intercompany loans documentation;
  - (15) all engagement documentation relating to fees and expenses charged to the applicants by any service providers, including the Respondent;
  - (16) all documentation evidencing payment of fees and expenses paid by any of the applicants to any service providers.”

Then there follows “Constitution and statutory information” which are at items (17) to (21), being the various registers of directors, members, secretaries, share transfers and share certificates and then;

- “(22) all minutes and resolutions of the board of directors;
- (23) all minutes of general meetings or any written resolution passed by members;

(24) any shareholders agreement, if any.”

There is then a group called “Asset information” which comprises three items:

“(25) any valuations or estimates of any assets owned legally or beneficially in whole or in part by any of the applicants;

(26) all freehold and/or leasehold property title documentation including, but not limited to, reports with respect to any leases estimating liabilities such as dilapidations and service charge property obligations and with respect to assets and equipment capital operating obligations;

(27) detailing of any assets not shown on the balance sheet including, but not limited to, intellectual property rights or other intangibles.”

There are then eleven further miscellaneous categories of documents as follows:

“(28) documentation evidencing all material trading exposures and positions as at the Production Date;

(29) documentation evidencing all assets and liabilities with respect to each applicant as at the Production Date;

(30) documentation evidencing all dividends declared or proposed before the Production Date;

(31) documentation evidencing all joint ventures or any other associations or agreements;

(32) group structure chart and group organisation chart;

(33) all agency and commission agreements or memoranda of arrangements;

(34) all tax returns, assessments, notices and correspondence with Her Majesty’s Revenue and Customs or any other department or agency of Her Majesty’s government;

(35) documentation evidencing all pending or threatened litigation or other disputes;

(36) all professional indemnity and other insurance policies or cover notes and any documentation evidencing claims or notifications made hereunder;

(37) any key director, officer or employee contracts and any consultancy contracts or memoranda of arrangements; and

(38) all service, benefit, pension or bonus trust deeds or agreements or memoranda of arrangements in place or proposed at the date of production.”

12. There have been some developments since the application, and matters have moved on in one or two respects. First, the categories I mentioned above in relation to registers have all, in fact, been delivered as requested. However, these are insufficient to enable Mr Carter to understand the affairs of the companies of which he is now director and on the basis of various arguments I will come on to, the remainder are still sought. Second, at the outset, on the working day before this application first came on, the Respondent agreed to deliver up records of the beneficial ownership of the fourth Applicant, (ie part of item (1), category 1, of the items claimed) and also financial statements in relation to all four Applicants for the last

five years, this being agreed to be a reference to item (3). At the hearing it was agreed that these concessions, in reality, applied to all four Applicants, there being no material distinction between them. I therefore understood it to be accepted that, insofar as any beneficial ownership of entities comprised in or within the cells of the first Applicant was concerned, it was also agreed that the records would be delivered to that extent. It follows that at least part of item (1) and the claim in respect of item (3) has, in effect, I think, been conceded in respect of all four Applicants. The hearing therefore proceeded as a request for an order for delivery up in respect of the remaining classes of documents.

### The Applicants' case

13. For the Applicants Advocate McGuffin characterised the claim in his skeleton as being one for delivery up of documents "belonging to the Applicants" and his submissions all proceeded on that basis, ie that the documents that were claimed were documents which were the property of one of the companies. He submitted that there were two grounds on which the court should make the order sought. These were, first, that there was actually no lien over the documents at all, so that there was no answer to a claim for delivery of the companies' own property, but second, if there was, any such lien did not extend to at least the overwhelming majority of the documents sought, because it was, on authority, subordinated to statutory requirements as to how such documents or records were to be held and dealt with by the company. In other words, requirements of the law as to where particular records of the company were to be kept, or were to be made available, were paramount.
14. As to the first main point, ie "no possible lien", his submissions I think were as follows. First, whilst Guernsey law did appear to recognise liens to some extent, there was no principle of Guernsey law that a *corporate service provider* was entitled to a lien, of any kind, over documents of the entity to which its services were provided. Second, even if a corporate service provider did potentially have a lien, this would be limited to documents held in the service provider's (ie the Respondent's) role as agent of the company and not those held as a result of TCS's role as its director through TCS consigning documents to the custody of the Respondent for convenience or safety, which was, by inference, what had happened. No contract by the company with the Respondent was alleged, no agency agreement was alleged and initially, at any rate, no agency was alleged at all. (I think that was a reference to the time before Advocate Tee's skeleton argument on behalf of the Respondent.)
15. Explaining this latter point, the Respondent, (said Advocate McGuffin) could only be lawfully holding documents as the agent of the company, under an agreement encompassing such agency. However, there was no evidence of an agency agreement with the company. The Respondent could therefore only be holding the documents in practice, as an organ of the company, through having simply been given custody of the documents by its director. In that case the Respondent's position could be no better than that of the director which had given it such custody. As a director was an organ of the company, its possession was that of the company and could not be asserted adversely to it. The Respondent must therefore be holding the documents to the order of the director, and not on its own account. The Respondent's authority to hold on to the documents depended on the continuing authority of the directors, but that had terminated on the change of directors. The Respondent could not set up a supposed holding of documents in a different capacity from that which had given rise to them (rather than the actual director) holding the documents in the first place. They could not recharacterise their possession in order to assert a lien they did not have.
16. Advocate McGuffin then went on to his second main argument, which was that even if the Respondents could establish that they were, in principle, entitled to exercise a lien on their own account, they could not do so so as to contravene the implicit limitations created by statute. In this respect he referred me first to the case of *Re Capital Fire Insurance Association [1883] 24 Ch D 408*. In that case the Court of Appeal held that a solicitor's lien did not extend to the books which a company was obliged by statute or by its memorandum and articles to keep at its registered office. At page 418 of the judgment Cotton LJ said, dealing with the arguments at the main paragraph:

*“The solicitor says, ‘I was employed by the directors to do legal business for the company and these documents came into my hands for the purpose of that business and so by common law I am entitled to a lien of them’. Two of these documents, the register of shareholders and minute book, stand in a peculiar position. Can the appellant establish any lien upon them so as to prevent the official liquidator from having them in his possession for the purpose of the winding up? In my opinion, he cannot. No doubt a solicitor gets his lien without any special contract but his lien still arises from contract and he can claim no greater lien than the person who puts the documents into his hands is capable of creating. It is true that the directors of the company have a general power of dealing with the property of the company but so far as no express power is given to them, they have only such powers of mortgage and sale as are reasonably incidental to the business they carry on. They must not deal with any property of the company in a way inconsistent with the objects and constitution of the company and this decides the case as to these two books. The register of shareholders is a book which under the Companies Act 1862, section 32, is to be kept to the office of the company for the purposes there mentioned and that being so, in my opinion the directors have no power to deal with it in such a way as to interfere with these purposes.”*

Then he went on also to consider that the same applied to the book, the minutes of the meetings:

*“Although not so clear but having read the articles and constitution of the company, I am of the opinion that the directors have no authority to deal with that book so as to deprive themselves of the full power of using it for the purposes of the company.”*

17. This approach was approved in relation to accountants in a case called *DTC (CNC) Ltd v Gary Sargeant & Co [1996] 1 WLR 797*. This was a case regarding whether an accountant could withhold accounting records. The documents over which a lien was sought to be exercised were documents which it was said were “accounting records” within s. 221 of the English Companies Act 1985, an Act which is in very similar terms to the present Guernsey Law as I shall mention. The headnote reads:

*“An accountant’s lien over a client’s books of accounts, files and papers in respect of unpaid fees was unenforceable insofar as it conflicted with the statutory provisions requiring such documents to be available for inspection by the company’s officers or to be kept in a specified place, that original documents that constituted accounting records did not cease to be such merely because the information contained in them had been collated and transposed in whole or in part on to a fresh document and that, accordingly, since all the documents being sought by the plaintiff were “accounting records” within section 221 of the Companies Act 1985 which were required by section 222 to be kept at a company’s registered office or some other fit place available for inspection, the defendants were not entitled to exercise a lien over them.”*

18. At page 801, the learned judge in that case approved, or followed (I should say more accurately) the line of authority in *Capital Fire Insurance* which I have just read, noting that it had been approved by Kay J in *Re Anglo-Maltese Hydraulic Dock Co Ltd [1885] 54 LJ Ch 730* where he said that:

*“Such books as by the articles of the company or the Companies Act ought to be kept at the registered office of the company or to be dealt with in any special way are books which ought not to be placed in the hands of the solicitor to the company and are therefore books over which the solicitor can obtain no lien.”*

The judge observed that there appeared to be no relevant distinction to be made between the position of a solicitor and that of an accountant and therefore applied the particular principle. He went on to consider what, in context, were “accounting records” and he dismissed the submission that once accounts were prepared, any supporting documents were no longer “accounting records”. He said:

*“The fact that documents which are accounting records have been reviewed by an accountant and summarised in other documents does not mean that the source documents thereby cease to be accounting records within s. 221.”*

He went on at page 803(e) to (f) to say:

*“In my judgment, once a document as created is an accounting document within s. 221, it does not lose its status as such an accounting record because an accountant collates the information contained or derived from it and transposes such information in whole or in part on to some other document.”*

Consequently, having considered one or two other submissions, he looked at the categories of documents which were there claimed and which comprised, it is to be noted a range of documents quite similar to the present, he ordered the defendants to deliver the plaintiff’s statutory register, the plaintiff’s statutory book of minutes, the plaintiff’s company seal and he made an order that the defendant do deliver up to the plaintiff all accounting record documents owned by the plaintiff which were in the possession of the defendants. The expansion of this, to be found at page 799(f) was that the documents claimed were: aged debtors at a particular date, aged creditors, lists of bank payments and receipts, sales day book and purchase day book. At the end of the judgment, the judge stated:

*“I am satisfied that each of the categories of documents pleaded in paragraph 4(a) to (e) of the statement of claim are accounting records within the meaning of section 221. Accordingly, the firm cannot lawfully maintain a claim to a lien over them. The plaintiff is therefore entitled to an order from the court for their delivery up.”*

Immediately beforehand he had also stated:

*“In my judgment, the potential ambit of ‘accounting records’ falling within the meaning of s. 221 of the Companies Act 1985 is very wide indeed.”*

19. Advocate McGuffin’s argument in this case is that there are in fact four categories of document to which the principle of his submission applies. The first is “accounting records”. The second is, similarly, minutes of board meetings, the third, minutes of shareholders’ meetings and the fourth, records of beneficial ownership, which a company’s resident agent (an office which I will come on to) is also obliged to keep. I will call these Class (1), (2), (3) and (4).
20. With regard to Class (1), “accounting records”, he refers to s. 238 of The Companies (Guernsey) Law 2008 which reads that:

*“238. Every company shall keep accounting records which are sufficient to show and explain its transactions and are such as to—*

*(a) disclose with reasonable accuracy, at any time, the financial position of the company at that time; and*

*(b) enable the directors to ensure that any accounts prepared by the company are prepared properly and in accordance with any relevant enactment for the time being in force.”*

There is no greater elaboration of this as there has been in further developments in the English companies legislation, but the wording of the Guernsey Law is thus very similar to that of the English Companies Act 1985. By s. 239, these records are to be kept at the company's register office or at such other place as the directors think fit.

21. Advocate McGuffin points out that s. 242 makes it an offence to fail to comply with this part of the Companies Law, and that by later sections, including in particular s. 513(1)(b) of the Law, this is a Level 5 offence where a fine can be as much as £10,000. He submits that his argument is reinforced by the company articles of association in the case of the First to Third Applicants; their Articles 119 require such documents to be kept and available for inspection in accordance with statute. (The position in respect of the Fourth Applicant, which is Entertainment Group Limited and which has a short form of Articles, is simply that under the Companies Law.) Advocate McGuffin submits that the meaning of "accounting documents" is very wide and includes not just financial statements but all source and supporting documentation, relying on the *DTC* case. Indeed, the terms of s. 238 which I have just read illustrate the breadth of what are "accounting records". They are, in effect, anything that is needed in order to be able to draw up accounts, explain the company's transactions and show its current financial position day by day.

22. As regards Class (2), board minutes, he referred me to s. 154 of the Law which states that such records must be kept in the following terms:

*"(1) A company must cause minutes of the proceedings at meetings of its directors to be recorded*

*(2) Where the records are not kept in Guernsey, a copy of them must be kept*

*(a) the company's registered office or*

*(b) at such other place in Guernsey as the directors think fit."*

There is a duty under s. 156 to hold those minutes

*"open, during ordinary business hours, to the inspection of any director without charge"*

and at s. 156(2):

*"A director may require a copy of any minutes of directors' meetings, or part of them, without charge and the company shall cause any copy so requested to be sent to the director within 5 working days after the date of receipt of the request."*

Once again, these sections are the subject of an offence if not complied with.

23. As regards Class (3), minutes of members' meetings, the relevant provisions start at s. 228 of the Companies Law. The company must keep records of members' meetings and it is an offence not to do so. Although in this case it is not specified where they must be kept, these records must, similarly to board minutes, and under s. 231, be open to inspection during ordinary business hours by any member or director of the company without charge, and any member (on payment of a fee) or any director may require a copy of the records referred to. Once again, where the company fails to comply it is guilty of an offence. This provision is also reinforced in the case of the first three Applicant companies by their Articles 110 and 120 which I do not think I need to read for present purposes

24. The position with regard to Class (4), the records of a resident agent, applies to all companies except for specified exemptions, (see s. 483). It is agreed that the Applicant companies are not excepted. The provisions are in ss. 484 onwards of the Law, and they provide that a company to which this Part of the Law applies must have a resident agent who is either an

individual resident in Guernsey who is a director of a company, or who is a corporate services provider. The regulation details of such a resident agent are specified in ss. 484 and 485 of the Law and then in s. 486 it is provided that:

*“486. The resident agent of a company shall take all reasonable steps to ascertain the identity of the persons who are the beneficial owners of members’ interests in that company.”*

and at s. 487:

*“(1) Where a resident agent has ascertained, in accordance with section 486, that a member of a company is not a beneficial owner of that member’s interest, he shall keep a record of the required details of the beneficial owner in respect of that member in the ‘record of beneficial owners.’”*

That record, under s. 487(2), is to be kept at the company’s registered office and include various required details. There are, of course, later provisions for its disclosure to any authorities who are entitled to seek to obtain that information, and s.490 provides the basis of the duty of the resident agent to disclose this. Advocate McGuffin observes that a resident agent’s ability to disclose can, of course, only be as good as the information given to it by the company or by the persons on whom it serves notice (under s.488) to obtain it.

25. Therefore, it is submitted that there is a statutory requirement on the company that Class (1), (2) and (4) documents are kept by it at its registered office, or at any rate in the case of Classes (1) and (2) at such place as the directors (emphasis added) see fit and there is a statutory requirement on the company that the records and registers which are Classes (1), (2) and (3), (ie accounting records, minutes of directors’ meetings and records of members’ meetings), although in slightly differing terms, are kept available for inspection, and/or copies provided, which necessarily implies that they are kept within the control of the company’s directors.
26. As far as Class (4) is concerned, it is suggested that as the resident agent’s ability to disclose can only be as good as the information it is given, a lien could not arise so as to prevent that information from being obtained. However, I have noted that the resident agent’s duties are only to take “reasonable steps” to obtain the information which must therefore depend on particular circumstances. Also, since by ss.486-488 the resident agent is entitled to give notice to members to provide such information, and there is an obligation to comply, otherwise the member is guilty of the particular offence, it could be said that there is an alternative route for the current resident agent to obtain the information he is obliged to record.
27. It can be seen, though, that most of these obligations are subject to some form of criminal sanction and Advocate McGuffin therefore submits that any lien over any such documents which would cause the company to be in breach of the statutory scheme cannot be permitted, and simply will not operate, by reference back to the principles of *Capital Fire Insurance Association* and the *DTC* cases. This, he says, will apply at least to Items (3) to (16) of the documents in his Schedule A list, which are documents comprising “accounting documents”, as are also, in his submission, Items (24) to (38). He says that item (24) (any shareholders’ agreements) is a special case because it actually relates to dividends, and therefore it would have materiality to the question of dividends, which is sought expressly as Item (30). Items (22) and (23) are specifically the registers of board and members’ meeting minutes with which the Law is specifically concerned. As regards Item (2), ie the regulatory “correspondence”, he submits that this relates to the information required by the resident agent, although he does accept that this could probably be obtained from the Guernsey Financial Services Commission.

## The Respondent's case

28. In response to Advocate McGuffin's arguments, Advocate Tee starts by saying that a mere assertion that the absence of documents is interfering with the smooth operation of the company is not a good enough basis to resist a lien; this is nothing but inconvenience, and imposing inconvenience is the whole, permissible, purpose of the lien. The terms of the application, he submits, show that that is what Mr Carter is, in fact, doing, and when you look at the material already disclosed, and the way the particular documents are classed, the applications smack more of an attempt to obtain information in general terms than of any real need to obtain particular documents in order to manage the companies.
29. I asked about the sums the payment of which is claimed to be secured by the Respondents claimed lien. I am told that the amount sought from the First Applicant (Elite) is £56,064.65, the amount sought from the second applicant, LAM I, is £54,797.80, in respect of the Third Applicant, LAM D, it is £81,264.99 and in the case of the fourth Applicant, Entertainment Group Limited, it is £19,360.32. It is thus a total of approximately £211,000. When I asked what, in fact, these fees were covering, I was told that they covered administration fees as earned by the Respondent in relation to its company administration functions and disbursements, such as annual charges like the company's annual validation charge and so forth.
30. Advocate Tee's considered argument for the purpose of this application is now that the Respondent was, in law, the agent of the Applicants and that the Respondent accordingly has a possessory lien over the documents in its possession. In his skeleton argument he specifically notes the distinction between a "general lien" and a "particular lien", as mentioned in *Bowstead and Reynolds on Agency* (para 7.073 Article 65) where it states:

*"An agent has a general or particular possessory lien on the goods and chattels of his principal, the Applicants, in respect of all lawful claims he may have as such agent against the principal for remuneration and/or advances made or losses or liabilities incurred in the course of the agency or otherwise arising in the course of the agency provided that:*

*(a) the possession of the goods or chattels was lawfully obtained by him in the course of the agency and in the same capacity as that in which he claims the lien;*

*(b) there is no agreement inconsistent with the right of lien and;*

*(c) the goods or chattels were not delivered to him with express directions or for a special purpose inconsistent with the right of lien.*

*The possessory lien of an agent is a particular lien only except where he has a general lien by agreement, express or implied, with his principal."*

31. I should at this stage indicate that the difference between a general and a particular lien, in English law at any rate, is that a particular lien is a lien which applies to a particular commission or fee, whilst a general lien is a lien which applies to all outstanding balances generally. That is not the same, of course, as the property over which the lien may be exercised and confusion may arise here. It is very natural to recognise a particular lien in the case of, for example, a repairer of goods who claims the fee for having repaired them before he returns them. There is no rigid requirement, though, that a "particular" lien operates only on the "object" (as it were) of the work being done for reward, or the documents or the items that the claimant has been concerned with; it can apply more broadly but it is obviously more likely that the subject matter of the lien is confined to such object or materials where the commission is for a specific and discrete task concerning them. The ambit of the particular lien in question is a matter of interpretation, which may be a matter of documentary construction, or of implication from fact and circumstance. A general lien, however, as a lien for all outstanding balances in the relevant commercial relationship, will be far more likely to

be held to operate on a wider class of material, such as all documents or materials which are in the hands of the claiming party. This is simply because the nature of the work for which the payment is being claimed will be wider and more diffuse, and therefore it is more naturally reasonable for the lien to apply generally to all property held.

32. So that is the background meaning of the terms “general” or “particular” lien. I did not find it clear from Advocate Tee’s skeleton argument exactly which kind of a lien he says is being asserted, despite his having noted the two classes, and submitted that English law could and should be looked to for guidance as to Guernsey law. In paragraphs 11 of the skeleton he asserts simply a right of lien, apparently in respect of all fees and over all documents sought in the application. This therefore suggests a general lien, unless the Respondent is asserting that the work which it was doing and for which it is claiming payment was factually on all the documents which it holds. In paragraph 12, though, Advocate Tee appears to rely on the principles relating to a particular lien, although confining this claim to documents which he says the Respondent has produced (but without specifically identifying these). This, however, is a different point and actually his secondary argument.
33. His main argument is that the Respondent asserts that, as the agent of the Applicants, ie for the purpose of administering their business affairs (this being the work with which it has been tasked), it lawfully obtained documents from the Applicants; there is no agreement which is inconsistent with a right of lien, and the documents (etc) were not delivered with express provisions which are inconsistent with any right of lien; therefore the way is open for there to be a lien, and the court should uphold the Respondents’ right to claim a lien over the documents which the Applicants are now claiming, this being likened to a particular lien over something worked on or produced by an agent or contractor.
34. Advocate Tee further suggests an analogy with an “unpaid vendor’s lien”. However, I do not regard that as a helpful or convincing analogy, since such a lien may be of many different kinds, and the phrase has a particularly specialist use in English law, where it usually refers to the species of equitable lien which is conferred on the unpaid vendor of land. Such refinement, though, as a creature of equity, is peculiar to English law, and not to be assumed to apply in Guernsey Law without authority. The only potentially appropriate analogy here would be the very much more basic one, in English law, of the legal lien conferred from early times by common law (custom and usage) and based on claims to obtain or retain physical possession of chattels.
35. On any basis, though, Advocate Tee suggests that, applying his analogy the Respondent is not obliged to deliver up the relevant documents until it has been paid. That is, of course, the general principle of rights of lien in any event.
36. At his paragraph 13, Advocate Tee submits that the lien extends to all documents of the debtor that are in the possession of the creditor, and this includes documents created prior to the existence of the relevant relationship, proposition for which he refers to the case of *Cristiana Crociani and ors vs Edoardo Crociani and ors* [2016]JRC 089C, which recorded the Jersey Royal Courts’ understanding at [21] that

*“a solicitor’s lien extend[ed] to all the property of the client in the solicitor’s possession”*

The position here, of course, is that the relationship will have arisen between the parties pretty well from the time of the creation of the companies, and since the fees were paid up until December 2013 it would appear that no issues in relation to creation of documents before that relationship was constituted are likely to arise.

37. Advocate Tee’s basis for asserting that a lien arises in principle is really simply that (i) the documents are in the possession of the Respondent as corporate services provider, (ii) they have come into its possession in the course of its provision of its services as manager and administrator of the company, and accordingly (iii) the Respondent has a lien of sorts,

whether it is general or particular, over those documents until its fees for its services have been paid.

38. Advocate Tee has an alternative argument. He submits that the documents, or at least some part of them, have never become the Applicants' property at all and can never, therefore, have been the subject of a lien at all. This is in relation to documents which the Respondent has brought into existence. Such documents, he says, are the property of the Respondent and they remain so until actually paid for. I think this may be, once again, by some kind of analogy with an unpaid vendor's lien, at least as regards an unpaid manufacturer's lien, but possibly also having regard to the recognised exception to the general lien of a solicitor, accountant, etc applicable to that professional's own working papers, attendance notes, calculations and so forth. Such documents have been analysed as being the professional's own property at all times, not being documents which the client has implicitly "bought" by instructing the professional, expressly or impliedly to prepare them, as for example, the correspondence which the professional (eg a solicitor) may write on the client's behalf. Advocate Tee also relies on an analogy with the case of *Chantrey Martin v Martin [1953] 2 All ER 691* in which it was stated that an accountancy firm who had prepared documents in the course of an audit owned the copies retained by it as property of the firm. This was, though, in somewhat unusual circumstances and I will have to return to the effects of that case later.
39. To return to Advocate Tee's arguments, put in their logical order: his first submission, therefore, is that many or most of the documents in issue are in the nature of working papers, or "work product", produced by the Respondent, such that they have never become the property of the Applicants, which could be the subject of a claim to possession by the Applicants. This is either at all (in relation to working papers) or at least before they have been paid for (in relation to items the preparation of which on the company's behalf has been expressly or impliedly instructed, for example, financial statements or necessary correspondence). However, if and insofar as that is not correct, and the documents do belong to the Applicants, Advocate Tee submits that the lien is one of a broad and general nature, applying across the board to everything held by the Respondent until all relevant outstanding fees are paid.
40. He submits that there is no exception to such a lien as asserted by Advocate McGuffin, for three reasons. First that has been dealt with by giving financial information sufficient to enable the company's obligations to be met. By this, he is referring to the offer of June 3<sup>rd</sup>, of financial statements. Otherwise, and second, he submits that there is no exception to the principle of lien because it is possible for arrangements to be made to enable the company's obligations to be complied with without infringing the Respondent's prima facie right to exercise a lien. I will come on to the detail of that in a moment. In any event, and third, he submits that many of the items claimed are in the nature of information seeking, and not delivery up of documents, and are thus not a claim to exercise a lien at all.
41. Advocate Tee set out the 38 heads of claimed items, annotating those which he said should be rejected for seeking information rather than delivery of property, those which he said should be rejected because they were the Respondent's "work product" of the kind mentioned above, those which he accepted were prima facie the Applicants' property but which he asserted were subject to a proper claim for lien and were not defeated by Advocate McGuffin's arguments, and those which had already been produced. The last group were the limits as to which it was accepted that the Applicants were entitled to succeed.

### Discussion

42. I can say first that the "only seeking information" argument was accepted by both Advocates to be a matter of formulation rather than of substance. It could and, in fact, would be dealt with by appropriate drafting to direct the particular request towards documents rather than expressing it in terms that seemed more as though it was seeking information. In practice, this could be largely dealt with simply by inserting the phrase "documents relating to" in the relevant description.

43. This leaves the three remaining issues, and I must start with a preliminary observation. It seems to me to be at least theoretically possible that it might become necessary, once general principles are identified, to consider the application of these in relation to each individual category of documents claimed, ie to identify what work the outstanding fees being claimed are actually for, what the particular documents in the category actually are, and to analyse the relationship between those documents and the unremunerated work, on an individual basis. The reason for this is that if the Respondent is entitled only to a “particular” lien, ie one operating discretely in respect of charges for specific pieces of work done, then it would be necessary to examine whether such a lien (or liens if in respect of multiple tasks) was confined to the relevant documents on which work was done and to identify these, or, if it was not so confined, then to determine how widely, in terms of any other documents generally, it should be taken to extend. This problem would not arise at such a level of detail if the Respondent were entitled to a general lien. I am not in a position to carry out any such exercise, of course, because I do not have all the necessary evidence, such as details of the fees comprised in the global sums claimed. Moreover, the proportionality of such an exercise in the context of an application such as this must be doubted. Therefore, I propose to decide the major issues and see how far and what conclusions can be drawn as a result.
44. I have identified the major issues as the following. First, the extent to which the documents are apparently the property of the Applicants at all (that is, the arguments pertaining to Advocate Tee’s second point); second, assuming, or insofar as, the documents are the property of the Applicants, the potential availability to the Respondent of a lien as a matter of law, (that is Advocate McGuffin’s first argument); and third, assuming that a lien can and does exist, the extent to which the operation of that lien is negated or constrained by any public policy considerations arising from statutory obligations of companies (that is Advocate McGuffin’s second argument). I will then consider how the answers to the above issues appear to me to apply to the categories of documents sought. The true logical order of decisions is, I think, that above but it is more convenient for discussion purposes to deal with them in the order in which they were argued, ie, in effect, 2, 3 and 1.
45. An introductory point, though, is: what are the attributes of a lien? I have already touched on this. “Lien” in this context is used in the primary meaning of that term, which is a right to retain possession of the property of another person until accrued claims of the person in possession are satisfied. It is merely a right of detention and it confers no right to realisation of the property. It is recognised under English law that, apart from express contract, it is conferred by the general law founded on recognised common usage. In my judgment, the position in Guernsey law must be similar. The original English law concept arose from the customary usage, and therefore the law, of England. Guernsey law is also founded on customary usage, and therefore law, but in this case, Norman customary law. Any underlying concept of lien will therefore have been recognised and developed for similar practical reasons.
46. Both Advocates agree that Guernsey law does recognise the concept of lien to an extent. However, there is an almost total absence of authority on its application. This arises, I apprehend, out of a historic dearth of reported cases in Guernsey law. I say this because the kind of situation in which one would expect to find a usage in the nature of a lien is so basic to human intercourse, that one would have expected it to come before a court in Guernsey with no less relative frequency than it appears to have done in England. Unlike in Guernsey, in English law there is plenty of learning, mostly from the 19<sup>th</sup> and very early 20<sup>th</sup> centuries, recording the development of the English law of lien. The distinction between a general lien and a particular lien, noted above, is a product of this, being English law’s application of the “custom of the trade” in various instances. There is no apparent existence of any general policy or principle giving rise to this distinction in English law; it appears to have arisen because of the piecemeal development of the law, by individual decisions in different contexts.
47. Halsbury’s Laws of England (5<sup>th</sup> Edition Volume 68) notes as part of the established law, the groups of trades or professions for which either kind of lien has been held to apply. Thus at para. 828 of Vol. 68 it is noted that a general lien has been established in favour of solicitors,

bankers, club trustees, factors, stockbrokers, insurance brokers, possibly warehouse keepers, and oddly, also, calico printers. At para. 845, Halsbury lists the instances in which a particular lien for labour and expenditure on chattels entrusted to the workman has been taken to arise: an accountant upon the books of account for work done before the bankruptcy of the owner; an arbitrator on the award; an architect on plans prepared by him for his charges; an auctioneer upon the goods sold, the deposit and the purchase money for the price for the charges of the sale and his commission; a calico printer on goods in his possession for printing; a coach maker on a carriage for the cost of repairs; a conveyancer upon a draft settled or opinion written by him; a dyer upon goods dyed by him; engineers upon a barge for installing its machinery; a farrier upon a horse cured of disease; a fuller upon cloth dressed by him; a garage proprietor on a car repaired by him; a horse breaker on a horse for the cost of breaking it in; a horse trainer; an insurance broker; a miller; the owner of a stallion upon a mare for the cost of covering; a parliamentary agent upon books and papers in his hands; a printer on copies of a book for his costs of printing it, and then a shipwright and a tailor and a consulting engineer.

48. It is helpful to note the legal reasoning by which the existence of a right of lien became recognised as extending to accountants ‘papers generally in English law, only in 1976. This is in the case of *Woodworth v Conroy* [1976] QB 884. This is a Court of Appeal case where the judgment was delivered by Lawton LJ and he says, starting at the foot of page 889:

*“I can see no reason whatsoever why accountants should not have a lien of some kind. Books of account and other documents are entrusted to them by their clients for work to be done upon and in connection with them often by entering up ledgers and almost always by analysis. Work in connection with books of account often involves corresponding with third parties and making compilations of various kinds. The kind of work they do may be very different from that of a craftsman who is making or repairing a chattel, the kind of work which gives rise to the common law concept of particular liens but since the beginning of the 19<sup>th</sup> century arbitrators, architects, conveyancers and parliamentary agents have been adjudged capable of having particular liens (see Halsbury). Solicitors, bankers, factors, stockbrokers, insurance brokers have long enjoyed the right to general liens. I would adjudge that accountants in the course of doing their ordinary professional work of producing and auditing accounts, advising on financial problems and carrying on negotiations with the Inland Revenue in relation to both taxation and rating have at least a particular lien over any books of account, files and papers which their clients deliver to them and also over any documents which have come into their possession in the course of acting as their clients’ agents in the course of their ordinary professional works. Accountants may enjoy a wider lien than this but I have found it unnecessary for the purposes of this appeal to say more than I have.”*

49. I cite that quotation because it seems to me that it indicates a modern recognition even in English law, that there is something of a blur as to the scope of lien, both as regards what it is for and what it is over. The concept of a particular lien (ie relating to particular charges in respect of individually instructed commissions), may come to be appropriately applied, as this case appears to recognise, as being exercisable over a wide and general range of documents or materials. That is all the more strong a point if, in fact, the work commissioned, and or the particular payment for which the lien is sought, has been of a more general nature than simply a commission to do a particular job. In the *Woodworth* case, the court obviously felt that the distinction between particular and general lien was far from useful, and should not be allowed to get in the way of what it regarded as the appropriate ambit of the accountants’ rights.

50. I accept, as both Advocates agree, that Guernsey law recognises the basic concept of a possessory lien securing liabilities. Whilst I commend Advocate Tee for seeking authority in Terrien, *Commentaires du Droit Civil tant public que privé observé au pays & Duché de Normandie*, I did not find the passage he cited from Book VIII Chapter 1 (p.258) to suggest a

usage in the nature of a lien. Similarly, the express recognition of such a concept in *The Trusts (Guernsey) Law 2007* is not, in my judgment particularly compelling, let alone conclusive, because it occurs in the context of enacting a trust regime borrowed largely from English law principles, and it refers also to a “non-possessory” lien.

51. However, it does seem to me that the following matters point in favour of possessory liens in general being recognised in Guernsey law: first, the Code of Conduct relating to Advocates, at Rule 39 refers to the exercise of such a lien as a matter-of-fact proposition. It seems to me that it is no answer to say that this would be founded in contract because it is invariably the case that professional services are founded on a contract of some description, even if implied, as indicated in the *Capital Fire Insurance* quotation that I have read previously. This drafting to my mind, implies a generally recognised and accepted practice. Second, in the case of *Gaudion v Weardale Ltd [1998] GLJ 61*, the submission that a party had a lien over shares it held was dismissed by the learned Lieutenant Bailiff in that case, not on the basis that no such right was known to law, but on the basis that such a right was not made out on the facts. Third, in the case of *Inalux SA v Old Crown Trust* a decision of Sir de Vic Carey, as Bailiff, (unreported, 16<sup>th</sup> June 2000), the existence of a lien in the nature of a possessory lien in favour of a professional service provider was a matter that was actually raised by the court itself, as if it were the norm. The comment of the court was that it was surprising that the defendant in that case had apparently not sought fit to claim a lien which the learned Bailiff quite obviously thought must exist.
52. The next question, therefore, is whether Guernsey law recognises the right of a corporate services provider to a lien, in principle. In my judgment, it does. The *Inalux* comment which I mentioned above, taking the existence of such a lien as being normal was, interestingly, in favour of a professional who was providing services which, if not corporate services, were trust administration services of a materially indistinguishable quality. (Such was the nature of the services being rendered by Old Crown Trust Limited in that case.) Once again, I accept the comment could have been based on a contract but it appears to me from the way in which it arose in the judgment that that is not likely; the court raised the matter without referring to any contractual term.
53. The reasoning process in *Woodworth v Conroy (above)* to which I have drawn attention shows that the recognition of a lien of a wide general scope for accountants came about because the kind of work being done was analogous to work in fields in which the existence of such a lien was already recognised. It seems to me that a corporate service provider’s work is sufficiently like that of accountants, solicitors and other professionals who deal with the business operations of their clients, as to suggest that a lien of similar scope would be expected to operate in such a case, and ought to be recognised. I am fortified in that view by what I perceive to be a common recognition and acceptance that such a lien over clients’ files is generally taken as being a feature of modern professional services relationships, even though its precise scope may need to be considered carefully, according to principle, in any particular case.
54. I therefore reject Advocate McGuffin’s submission that there is no such recognition in respect of this particular profession. I am satisfied that, in principle, a corporate service provider such as the Respondent is entitled under the law of Guernsey to a lien for its unpaid charges over the property - likely to be papers, records and suchlike material - delivered to it for work to be done upon it, or obtained by it, or (as further mentioned below) created by it, in the sense and to the extent commonly apprehended to be applicable to such professionals. I find the example of the approach of Lawton LJ in *Woodworth* to be persuasive that such a lien would be exercisable over, but only over, property delivered to or obtained by and held by the corporate service provider “for the purpose of carrying out its ordinary professional work” (see *Woodworth v Conroy*).
55. The approach in *Woodworth* produced the result that the accountants in question were held entitled to a lien over held documents generally in respect of fees for the work which they had been commissioned to do, which in that case was the preparation of annual accounts. This was described as being, “at least” a particular lien with the question whether accountants

were, like solicitors, entitled to a general lien being left open. Does this question and distinction have any materiality to the present case?

56. The gives rise to the last point under this head which I need to consider, namely whether Guernsey law recognises the elaborate effects of the distinction between particular and general liens as it has evolved in English law, so as to affect my decision. As already emphasised, in English law the distinction between a general and a particular lien relates to whether the claims which it secures are all outstanding balances generally or only a particular charge claimed for a particularly commissioned piece of work; the distinction does not refer to the extent of the property to which the lien attaches, that being a matter of interpretation of the scope of the actual lien, although it may be a circumstance affecting this. Whilst as a rule a general lien does attach generally to all property of the paying party held by the claiming party, a particular lien has usually (not surprisingly) been held to fasten solely on the chattel which is either improved or produced under the commission for which the fee is claimed. Attempts to extend the application of a particular lien to a wider group of property or chattels have largely failed in English law because the courts have been unwilling to expand its application. The intricate distinctions to which this can give rise are illustrated by certain references in Halsbury. For example, it was held that a printer had a lien on the engravings he made but not on the plates from which they were made (see *Bleadon v Hancock* [1829] 4 C&P). More closely to this case, whilst a conveyancer might have a lien on a draft, he does not have one on all papers (*Hollis v Claridge* [1813] 4 Taunt 407), and he has no lien on the deeds “with and in respect of which he does work” (*Steadman v Hockley* [1846] 15 M&W 553). As noted above, Bowstead and Reynolds states that the lien of an agent is presumptively a particular lien. The furthest extension which English law has admitted in the case of a particular lien has been, in the case of professionals, to allow the principle of the property which is the subject of the commission to be extended to papers as comprising the property “worked on” under the commission, as produced the decision in the *Woodworth* case (above) admitting an accountant’s lien, even if particular, to extend to the broad range of the clients papers, generally.
57. The effects which could arise from the distinction between a general or a particular lien, if applicable in Guernsey law have not been argued in this case. However, in my judgment they should have no application. They have become part of English law as a result of the English approach of developing the law by reporting individual decisions setting precedent. The result has been the development of the law of lien in a piecemeal fashion, and the entrenching of historic distinctions as apparent rules. The basis of Guernsey law derives, though, from Norman law and the approach of the civil law, which is more inclined to recognise principles and leave individual decisions to be determined according to such general principles on their facts. In my judgment, therefore, it is neither appropriate nor necessary to embark here on an analysis resting on English law distinctions originating in decisions of many years ago, the persuasive value of which is limited. Guernsey law does recognise the general principle of a possessory lien arising in favour of an as yet unpaid workman or professional, over documents and personal property of his client, in his possession. The only question for me, for present purposes should be, and is, whether, in accordance with the appropriate application of such a broad principle, a corporate service provider is *prima facie* entitled to a lien over chattels and documents delivered to him, obtained by him or created by him in the course of conducting his professional work, in respect of his outstanding charges generally, ie as claimed in this case. In my judgment, he is, on similar lines to the approach in the *Woodworth* case that I have referred to, and it is unnecessary and even unhelpful to seek to categorise such a lien as “particular” or “general”. I do not think that such a distinction of classification exists in Guernsey law, and it is certainly not necessary to create one. The scope of any lien will depend on what, in any case would appear to be the intention of the parties, express, implied or imputed from their apparent likely expectations and those of the particular “trade”.
58. So then, returning to the three main issues, I have now held in regard to the first that a corporate service provider’s lien could arise in this case as a matter of law. The next question is therefore whether the situation in respect of any relevant documents is outside the

application of this legal principle. This aspect of Advocate McGuffin's first argument refers to his assertion that the documents in question are not, on analysis, held by the Respondent as agent for the companies but they are in fact held, or should be treated as having been held, in effect by TCS as the companies' then director, such that their possession is, in effect, that of an organ of a company itself. The Respondent, he says, formally asserted as much, and cannot re-designate its possession as now being that of an agent of the company in order to bring these documents within the scope of such a lien.

59. Taking the assertion that the documents are factually in the possession of the Respondent, rather than in the possession of TCS, at face value - and I have not been invited to find that that assertion is untrue or is colourable, despite the close connections, physical and structural, of TCS and the Respondent - the real question is whether, on the evidence, the Respondent is holding those materials as part of its function as company administrator or not. The Respondent's lien could only extend to documents and so forth delivered to it or obtained by it in the course of exercising the professional functions for which it claims that payment of its charges is secured by its claimed lien: cp. *Woodworth v Conroy* (above). Delivery of the company's documents and materials to the Respondent by the director of the company, ie TCS, could well be normal and would be quite lawful in order to enable the Respondent's duties to be performed, but the Respondent would then have possession of the documents in its capacity as company administrator and thus as agent of the company even though there was no express agency.
60. The evidence, and the only evidence, which I have about what the functions of the Respondent entail is at the general level of the scope of the administration services specified in the company administration agreement of 2006. It is not easy to compare these directly with the classes of documents claimed in the Applications as the latter are formulated at a more detailed level. It strikes me immediately, though, that insofar as documents are financial in nature and required for the proper compilation of the company's accounts and so forth, then they would be needed by the Respondent in order to carry out functions (iv) and (v) - at least - of the administration agreement, that is: maintenance of books of account and preparation of financial statements. Perhaps more importantly, however, function (vi) includes "safe custody of assets of the company". Assuming for the moment that Advocate McGuffin's basic proposition is correct and these documents do all belong to the company, then their safe custody seems to me to fall within the terms of item (vi). It follows that, in principle, I find that all the documents etc belonging to the company, even if delivered into the hands of the Respondent by its former director, TCS, were lawfully so delivered under the terms of the administration agreement, are held by the Respondent for the purposes of performance of its services under that agreement and are therefore potentially subject to a Respondent's lien for unpaid fees and disbursements.
61. I should add that, on analysis, Advocate McGuffin's proposition that the documents are not held by the Respondent as agent of the company but as tantamount to being held by the company's own director seems to me to depend on a proposition that the Respondent holds the documents, not as agent for the company acting by its director but as agent for that director (ie TCS). Leaving aside any question of the *vires* of the director to deal with the company's documents in that way, such an analysis could only, in my judgment, be sustained on the basis of clear evidence that this was the case as a matter of fact. Such evidence simply does not exist here. In its absence, in my judgment, the *prima facie* position arising simply from the undisputed fact that the documents are held by the Respondent is that they are held on behalf of the company. They are documents which a director would normally control in his capacity as a director on behalf of the company but that there is nothing which suggests that the director could not properly and lawfully consign these materials to the custody of the Respondent for safe keeping on behalf of the company, and there is no evidence supporting any other inference, on present showing. That position is, moreover, consistent with the position initially taken by the Respondent, and I do not regard the concurrent initial assertion that they were not agents of the companies as in any way undermining this. Their agency is a matter of legal analysis.

62. Although I was not directly addressed on the point, I have considered whether it makes any difference that the fees etc being claimed by the Respondent are claimed from the companies, whilst the company administration agreement was entered into between the Respondent and Amir Ltd, and the companies were not parties to it. I do not think it does. I do not intend here to trespass in any way on arguments which arise in the main dispute about whether the fees etc claimed by the Respondent are due and owing as claimed and alleged there. I have, however, considered what I think the position would be if it were being argued that, as the companies were not parties to the agreement, the fees were *prima facie* due from Amir Ltd and not the companies. Would this mean that no lien could be set up against the companies?
63. The principle of lien focuses on the right of a tradesman or professional to retain possession of chattels in respect of which services have been rendered but for which due payment has not been made. If the chattels in fact belong to a third party (“TP”), rather than the person (“A”), who contracted the services in respect of which the lien is claimed by “B”, then, subject to fact specific arguments (eg that TP did not deliver the chattels to A with authority to incur B’s lien: cp *K Chellaram & Sons Ltd v Butlers Warehousing and Distribution* [1978] 2 Lloyd’s Rep 412), then it seems to me that the issue of who ultimately pays any fees of B which the lien secures would be a matter between the other parties, TP and A. This may though, depend on whether a lien creates a right *in rem* or only *in personam*, as to which I emphasise I have heard no argument. However, given the nature of the arrangements here, the apparent intention of the company administration agreement and the manner in which it in fact operated for several years, it is far from clear (though I again emphasise that I make no final finding on this) that the companies do not have liability, at least by implied contract, for the fees etc in question. Even if they did not have such a liability directly to the Respondent, though, I would still, on balance, be of the view that *without* more that point alone would not negate any right of the Respondent to exercise a lien over the companies documents, held by them for the performance of work of benefit to those companies, and for which they have not been paid. In the event, though, this point is, of no material effect on my final conclusions, for reasons to which I now turn.
64. The next issue is, assuming that the Respondent’s lien arises in principle, does it fail in this case on grounds of public policy? I have already outlined Advocate McGuffin’s argument. It is to the effect that there is clear authority that a possessory lien does not arise or will be defeated (a distinction of words rather than substance), where to enforce it would have the effect of breaching a statutory edict as to the way in which a company’s records or papers are to be held or dealt with.
65. Advocate Tee’s answers to this are as follows. As to accounting records, the offer of the material claimed at Category 3 now means that the companies will be able to comply with their obligation to keep accounting records in accordance with section 238 so that, he submits, there is no surviving objection to a lien over the source documents. Advocate McGuffin says this is not the case because: (a) the point is that the company should keep the records at its registered office sufficient to enable its transactions to be understood, and this necessarily requires the source documents; and, in any case (b) the *DTC* case shows that you cannot simply override the statutory obligation as regards source documents by collating their information into another document.
66. In my judgment, Advocate McGuffin’s submission is correct. The statute requires all “accounting records”, in the very wide meaning of that phrase, to be kept at the registered office or where the directors think fit. The Respondent took on its functions in the knowledge that that was the case and this impliedly negatives the exercise of any claimed lien over those materials which would put the company in breach of those obligations. This is particularly because it is a relatively serious, Level 5, criminal offence to be in breach. No lien can therefore be exercised over such documents.
67. Second, as to minutes of directors’ meetings and members’ meetings Advocate Tee submits that there is no requirement for these records to be held at the registered office, as long as they are held in Guernsey. It appears that the former can be held where the directors think fit, and there is no express requirement as to where the latter are held. Availability for inspection, he

says, could be met by his clients giving undertakings to permit this and on that basis he submits the court should uphold the lien. Advocate McGuffin points out that you have to give copies as well. Advocate Tee says his clients can undertake to do that as well. Advocate McGuffin says this is getting unreal. I agree.

68. In my judgment, this convoluted process is getting a long way from the obviously statutorily intended regime, which is that these documents are held *prima facie* at the company's registered office (even if by implication in the case of the minutes of members' meetings), but in any event at a place over which the directors have some control. Moreover, I am not dealing with conditions for a court exercising discretionary remedies or granting an equitable one, but with compliance with statute and the exercise of legal rights. These are not subject to flexibility. It also seems to me that it would be bizarre and unsatisfactory if the Applicants were obliged to depend, in order to comply with the criminal law and not commit an offence, on a third party - even a responsible third party such as the Respondent - complying with an undertaking - even if an undertaking given to the court. All these matters point to there being no lien capable of being exercised in respect of these items either, and I so find.
69. As to information which a resident agent is required to obtain and to know, this is once again to be kept at the registered office, or a place where the director thinks fit. The Respondent's office is not the registered office, nor is it a place where the current director thinks fit and nor can he be forced to think so fit. The records of this information, in my judgment, once they have been properly identified, are therefore also not subject to a lien in conflict with this.
70. Before I move on to how the above applies to the categories of documents listed in Schedule A, I need finally to consider Advocate Tee's third point which is that there is no lien at all - it simply never arises - in respect of property which is the work product of the Respondents, not because no lien can be enforced, but because such product is never the Applicants' property in the first place and thus never capable of being the object of a lien. This is because ownership of it does not lie in the Applicants and never will, or because it does not pass to the Applicants until the Respondent is paid, depending on the nature of the document.
71. I observe that this argument could only apply to some documents in the case, and Advocate Tee's rather liberal attribution of this label in his skeleton argument to various categories of document claimed did not seem to stand up to much scrutiny when examined according to what might be the position in practice, rather than in supposition or merely as a matter of theory. This broad point has, though, caused me some concern and difficulty, first as a matter of fact and, second, as a matter of argument.
72. As regards fact, the only evidence that there is "work product" at all is assertion. I have no evidence that any of the financial materials were actually prepared by the Respondent as opposed to being contracted out, as I would have expected. I have no evidence of what the Respondent actually does in terms of the items of services contracted for under the agreement. The problem, therefore, is to know which categories of claimed documents this argument could apply to and whether this argument would then apply to the whole or to part only. Second, I observe that this argument has nothing to do with the difference between a general and a particular lien already considered, but rests solely on the independent proposition that items which are "work product" remain the property of the producer, at least, in respect of items which the client is paying to obtain, but which have (*ex hypothesi*) not been delivered, until payment in respect of those items is received.
73. In support of his proposition as one of great breadth, Advocate Tee relied on *Chantrey Martin v Martin [1953] 2 All ER 691* to which I have already referred briefly, and must now refer in more detail. This case held that the final accounts of a company client of an accountant and the documents incidental to their preparation were the property of the accountancy firm. The case is relied upon by Advocate Tee for that proposition. However, this decision was in an entirely different context. It was the context of disclosure of documents in an action for wrongful dismissal between an employee of the accountants (Mr Martin) and the firm itself (Chantry Martin) in which the accounts themselves were in issue as a matter of evidence. Their contents were material to allegations in the action as to the competence of the employee

and the real reasons for his dismissal. It was held that the accounts and the papers, but in that case almost certainly copies of the original papers, were the employer's property, and therefore were plainly discoverable. The case said nothing about the position of the original papers as between the accountant firm and its client except to the extent of considering the matter of confidentiality, although doing so against the accepted proposition that the documents in question were the property of the accountant firm. I do not therefore find that case of assistance. Here there is a direct dispute as to ownership between the service provider and client with the service provider *asserting* ownership. In *Chantry Martin* the client was not a party, and the dispute was between the service provider and the dismissed employee, with the service provider *denying* ownership.

74. I therefore reject Advocate Tee's proposition at the level of affecting the general basis of the order I should make today. However, I am satisfied that in principle there *may* be papers in the nature of working papers, internal notes and *aide memoire* documents which are the property of the Respondent even if they were produced in the course of carrying out its services for the companies, and of which it retains ownership. Those could not be the subject of any lien, on basic principle.
75. However, the question whether any identified item "produced" by the Respondent (and by this I mean actually physically produced by its own in-house processes, and not procured from external sources,) such as, possibly, a particular set of accounts, should be regarded as working papers or as "work product", the actual ownership of which could only be withheld from the client until payment for that particular item of work was received, seems to me to be a possibly difficult question, and it is not one which I am now in a position to decide. It would depend on detailed evidence as to exactly what is claimed to fit into that description and all the circumstances surrounding how its creation was effectively (directly or indirectly) instructed, and how it was produced, as well as evidence of how it was being charged for, and whether compositely with other work or separately and individually. This is an exercise which has not been gone into in this case and would require extensive evidence which it would, in my judgment, be disproportionate to embark on at this juncture.
76. Fortunately, though, I think it is also probably unnecessary, because I am satisfied that the answer to this point is that any argument that such "work product" as would become the property of the client upon payment for it cannot be the subject of any lien because property in it thus remains currently with the Respondent still could not, in any event, override Advocate McGuffin's second argument about public policy, in respect of those documents. That is because, in my judgment, such policy considerations form one of the circumstances of the commission undertaken by the Respondent, under which such material was produced, and consequently the Respondent cannot assert any continuing ownership of such material (just as I have also found it could not assert any lien) if the effects are or would be to prevent the companies from complying with the stipulations of statute. Put another way, property in those items would, in effect, pass to the companies, it seems to me, at the point where they were, in fact, prepared, for the following reasons.
77. Standing back, on any view, even where "work product" is produced for reward, complying with public policy is part of what the Respondent was being paid for. It includes its undertaking to maintain statutory records and filings and to maintain books of account etc. In my judgment, the Respondent was being paid to keep the company's affairs in order under statute, apart from conducting any transactions, etc, and the fact that this general function is the basis of what their charges are for must negative the implication of any lien arising, it seems to me, even in relation to work product. Such an argument could in any event apply only where the Respondents have themselves produced something. Financial statements are the only thing suggested, apart from some fanciful suggestions from me that perhaps a template of documents or contracts could be claimed to be theirs. I have mentioned various descriptions of documents above, but at the moment there is no evidence that the Respondent did produce any such documents, although, as indicated, I do not rule out of account that they *may* have done so.

78. I must make clear that my reasons for holding that the “work product” argument does not assist the Respondent to resist a claim for production of statutorily maintainable record documents which it has produced, even though it claims that it has not yet been paid, arises from the broad nature of the responsibilities undertaken by the Respondent and for which it is claiming payment. In other words, it is fact specific to the kind of situation in this case. I am not to be taken as implying that this argument would prevail in other contexts, for example to prevent an accountant who had been engaged to prepare a company’s accounts from withholding their production until he was paid, just because those accounts were required to be filed by statute. That would, on the face of it, be quite a different situation, the crucial point being that here the Respondent has been engaged, in effect, to ensure the companies’ compliance with company obligations, not just to produce accounts.

#### Conclusion and result

79. I turn, against that background, to the fourth question, which is: what order should I make? I have held the argument of public policy prevails in favour of the Applicants, but that still leaves the possibility of the Respondent being entitled to claim and exercise a lien in respect of the rest of property claimed, ie insofar as the documents do not fall within the ambit of the public policy.
80. The general effect seems to me to be, in summary, first, there can be no lien nor proprietary right for the Respondent to retain any documents, whether originally validly passed to the Respondent by the relevant company, ie by its director (even if that was TCS) or obtained by it, or created by it, insofar as such documents fall under the four categories that Advocate McGuffin cited above. I also remind myself that accounting records are a term that is to be very widely construed. Second, insofar as there are any documents in Advocate McGuffin’s list which do not fall within those classifications, they *would* be subject to a lien in the hands of the Respondents as regards the relevant company, in each case until the claims against that company are satisfied, although, in accordance with the usual position, if the relevant sums were put into court those further documents would be released as well. Third, the points above are subject to the general qualification that a professional, including a corporate service provider, is entitled to retain working papers of its own (ie such matters as true working papers, internal notes, attendance notes and similar documents) because those are always, and remain, the property of the corporate service provider. There are, I think, unlikely to be many of these and, as indicated, they would still have to fall outside the category of accounting records and so forth as mentioned initially. Any actual determination would, though, be dependent on the facts.
81. The problem in this case is that the categories claimed are framed more like a request for disclosure of documents than a list identifying specific documents claimed to be subject to a lien. The following is therefore a provisional assessment and I will make an order intended to cater for any differences which may arise between the parties on consideration of individual documents.
82. The following categories are, to my mind, plainly within the first principle above, ie that there can be no lien which contravenes the requirements of the public policy exemplified by the requirements of the Companies Law. These are item (1) and part or possibly the whole of item (2). (This rests on the resident agent argument and therefore it may be framed too widely. I note also that the information can be obtained apparently from the Guernsey Financial Services Commission in any event.) Item (3) has been conceded.
83. Item (4), “management accounts insofar as these were created before the Production Date” - this and then items (5) to (7), which are similar, fall into the category of documents in respect of which a lien cannot be claimed because they are accounting records. I should add, though, that the obligation to deliver up does not oblige the Respondent to *create* any such documents as at the “Production Date”, or whatever date the order is complied with, if they do not exist already. That deals with those items.

84. Item (8) is tax computations for each of the accounting periods. They seem to me to be plainly accounting records. (9) is detailing any outstanding tax obligations or liabilities. Once again, if they exist it seems to me they would be deliverable but if they do not, they do not have to be created. Items (10), (11) and (12) also appear to me to be potentially within the scope of accounting records as documents that are required to understand or explain transactions. I think the broad test is: are these documents that an auditor of the company would require and expect to look at in order to be able to consider the content of financial statements, understand them properly and see they have been properly compiled and dealt with?
85. Item (13) strikes me as being questionable, at least in part, because I do not see at the moment that bank mandates or mandate documents, would fall within the definition of accounting records. It seems to me that the question of whether any banking customer agreements are accounting records is a matter that would need to be considered directly. Item (14) and (15) do appear to me to be accounting records. Item (16) would also potentially be accounting records, although I do not like the use of the word “evidencing” which smacks of an application for discovery. It seems to me that the point simply has to be that they either contain the obligation or they contain a note of the obligation. Once again, it is a question of whether these would be source documents for the preparation of financial statements.
86. (17) to (21) have been conceded already. (22) and (23) quite plainly fall within the requirement to deliver up because they are board minutes and shareholders’ minutes, directly the subject of statutory obligations. Item (24) being a shareholders’ obligation is once again one of those documents that do not seem to me to qualify because I am not satisfied that, by that definition, they actually qualify as accounting records. However, that would rather depend on the content of a particular document itself, so for the moment I will not include (24) but subject to that qualification. As regards the further general matters: asset information, at item (25), indeed, items (25) – (27) appear to me to require further consideration as to whether they do, in fact, qualify as “accounting records” in the sense which I have indicated. If so, they are deliverable. If not, I cannot see at the moment that they are deliverable because I cannot see that they fall under any other category that requires delivery up.
87. The general categories then: item (28), once again I do not like “evidencing” but subject to that, documentation regarding all material trading exposures and positions at the Production Date would be deliverable, it seems to me, subject to the point that they must exist already. Similarly, item (29), which appears plainly to be a document evidencing assets and liabilities, appears to be within the description of an accounting record as it relates to matters that would be on a balance sheet. With some hesitation I think that item (30) would probably be included as an accounting record. Item (31) regarding joint ventures, is again deliverable only insofar as it is an accounting record. Item (32), I will not include as it requires looking at the particular group structure chart and group organisation charts to consider who prepared them and whether they are, in fact, accounting records, a matter I cannot judge at this stage. Item (33) will probably be deliverable in that it is likely to be an accounting record. Item (34) appears to me to fall within the definition of accounting records and the remaining items, (35), (36), (37) and (38), would be disclosable dependent once again on whether they are, in fact, accounting records or not, although this looks less likely.
88. The Respondent, it seems to me, should therefore disclose the documents that I have indicated, but insofar as it elects to withhold any items on the grounds that they are not an “accounting record”, these items that they have available should be listed and the reason for asserting that they are not an accounting record should be explained. That, I think, is the principle for the way forward in this matter.
89. That, I think, concludes all the matters I have to deal with, but for completeness I should mention that there originally arose a point about electronic documents as to which the Respondents relied on clause 13(2) of the administration agreement to assert that, in fact, the property in all information recorded electronically specifically remained its property. This issue was not pursued in argument. I think Advocate McGuffin questioned at the time in

correspondence how this could be relied on if the Respondents were not asserting a contractual lien and that the companies were not party to the relevant agreement. I do not accept that this is an objection. If the basis on which the Respondents do business is that the electronic data all remains their property, then it seems to me that the companies can probably only take the benefit of their services pursuant to that agreement on those terms. This is really, though, an issue of property and nothing to do with a lien as such. However, since, in the event, nothing really was made of it and it does not appear particularly relevant, I do not need to make any decision about it.

90. I should also mention that despite the very broad nature of the application which originally referred to “any” documents “including” the 38 specific categories, the matter has only been argued in respect to the very comprehensive (it has to be said) scope of the particular categories. Any order I make will therefore relate only to those. That concludes this judgment.

**Her Honour Hazel Marshall QC, Lieutenant Bailiff**

**Decision handed down: 10<sup>th</sup> June 2016**

**Judgment approved: 4<sup>th</sup> August 2016**