

Application seeking to establish pension scheme assets and to secure ownership.

[2019]GRC009

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

**IN THE MATTER OF SECTION 5 OF THE PUBLIC TRUSTEE (BAILIWICK OF
GUERNSEY) LAW, 2002**

**AND IN THE MATTER OF SECTION 69 OF THE TRUSTS (GUERNSEY) LAW, 2007 (AS
AMENDED) ("Trusts Law")**

**AND IN THE MATTER OF THE INTERIM EXECUTIVES GROUP OF PENSION
SCHEMES**

BETWEEN:

THE PUBLIC TRUSTEE

Applicant

AND

(1) RED RIVER PROPERTIES LIMITED (BVI company no. 1486250)

(2) IXG ALBION LIMITED (Alderney company no. 1759)

(3) WARWICKSHIRE HOLDINGS INC. (Seychelles company no. 012317)

(4) SHERBORNE CORPORATE SERVICES LIMITED (Seychelles company no. 012277)

(5) KENILWORTH CONSULTANTS INC. (Seychelles company no. 012316)

(6) ROGER PAUL MEWIS

(7) SCS ADMINISTRATION LIMITED (English company no. 09824780)

Respondents

Judgment handed down: 13 March 2019

Before: Sir Richard Collas, Bailiff

**Counsel for the Applicant: Advocate Simon Davies
The Respondents did not appear and were unrepresented**

Cases, Texts and Materials referred to in Judgment:

Sargent & Others v The Public Trustee of the Bailiwick of Guernsey, (Unreported, Royal Court 11 May 2018 Judgment 22/2018)

Dicey, Morris and Collins on The Conflicts of Law 15th Edition at 9-025 to 9-027

Donohue v Armco [2001] UKHL 64

Carlyle Capital Corporation Limited v Conway 23rd March 2012

The Trusts (Guernsey) Law, 2007, section 69

Public Trustee (Bailiwick of Guernsey) Law, 2002, section 15

Introduction

1. The Public Trustee (“Public Trustee” and “the Applicant”) has been appointed by the Royal Court (by Order of the Royal Court dated 29th March 2017) as the sole trustee of The Interim Executives (Guernsey) Limited Occupational Pension Scheme (“the IXG Scheme”). He is seeking to establish the assets that belong to the IXG Scheme and to secure the ownership of those assets for the benefit of the IXG Scheme.
2. By Act of Court dated 27th September 2017, the former trustees of the IXG Scheme were ordered to surrender all trust property to the Public Trustee by 30th November 2017. They have not done so. The Public Trustee has served notices under section 15(1) of the Public Trustee (Bailiwick of Guernsey) Law, 2002 requiring information to be provided to him which is reasonably required for the performance of his functions. The notices have not been complied with. One such notice was served on the Sixth Respondent.
3. The present application started with an application dated 3rd August 2018 and was amended on 21st August 2018 (“the Application”). The Public Trustee seeks a declaration that the property known as Timber Yard, Park Lane, Kidderminster (“the Property”) is beneficially owned as an asset of the IXG Scheme. The registered title holders of the Property are Red River Properties Limited (“Red River” and “the First Respondent”) and IXG Albion Limited (“IXG Albion” and “the Second Respondent”). The Public Trustee claims that Red River owns a 37% interest and IXG Albion owns a 63% interest in the Property and that both of those interests are held on trust for the IXG Scheme.
4. The Respondents (who did not appear at the hearing) deny that the Property is an asset of the IXG Scheme. They contend (i) that Red River and IXG Albion owned their respective interests beneficially; and (ii) that by a transfer dated 16th December 2016 (“the December 2016 Transfer”) they conveyed the Property to Warwickshire Holdings Inc. (“Warwickshire” and “the Third Respondent”) for nil consideration.
5. The Public Trustee brought the Application seeking to prove that the December 2016 Transfer is invalid and/or ineffective and that the Property remains an asset of the IXG Scheme. The main objective of the Application is to obtain Orders enabling the Public Trustee to be vested with ownership of the property.

The Parties

6. The Public Trustee holds a statutory office under the Public Trustee (Bailiwick of Guernsey) Law, 2002. Catherine Rowe was the Public Trustee from 1st June 2014 until 15th May 2018 when she was succeeded by Luis Gonzalez. Section 5 of the Public Trustee (Bailiwick of Guernsey) Law, 2002 confers wide ancillary powers on the Public Trustee and it is pursuant to those powers that the Application has been brought, as well as pursuant to section 69 of The Trusts (Guernsey) Law 2007, as amended (“the Trusts Law”).

7. The First Respondent, Red River, is a company registered in the British Virgin Islands which was struck off the BVI Register of Companies on 7th December 2016. It has not been reinstated. At the request of the Applicant and without opposition from the Respondents, I have given leave to admit into evidence affidavits sworn by Brian Stephen Andrew Lacy, a Legal Practitioner of the Eastern Caribbean Supreme Court (Virgin Islands), advising that notwithstanding that the Company has been struck off the BVI Register of Companies, section 215(3) of the BVI Business Companies Act 2004 provides that:

“The fact that the company is struck off the Register does not prevent –

- (a) the company from incurring liabilities; or*
(b) any creditor from making a claim against the company and pursuing the claim through to judgement or execution; and does not affect the liability of any of its members, directors, officers or agents.”

Mr Lacy opined that in the absence of any provision under BVI Law which would suggest that a struck off company cannot be served with legal proceedings and that because service is an essential element of bringing and enforcing a claim, which rights are expressly preserved by section 215(3) of the 2004 Law, Red River could lawfully be served with the Application. I accepted the evidence of Mr Lacy and was satisfied that Red River had been properly served with the Application. Red River has not participated in these proceedings in any way.

8. The Second Respondent, IXG Albion, is a company registered in Alderney. The Company is not in good standing and is only held on the Alderney register at the request of the Public Trustee. It has no resident agent.
9. The Third Respondent, Warwickshire, is a Company registered in the Seychelles and is the purported transferee of the Property under the December 2016 Transfer.
10. The Fourth Respondent, Sherborne, and the Fifth Respondent, Kenilworth, are both registered in the Seychelles. They were appointed as Trustees of the IXG Scheme on 1st December 2010 and were replaced as Trustees when the Royal Court appointed the Public Trustee. The single share of IXG Albion is held by Kenilworth.
11. The Seventh Respondent, SCS Administration Limited (“SCSA”) is a company registered in England.
12. The Sixth Respondent is Mr Roger Mewis. He and his brother, Mr Vaughan Mewis, founded the IXG Scheme. The Public Trustee contends that Mr Roger Mewis controls the management and administration of the former trustees of the IXG Scheme. He led evidence to show connections between Mr Roger Mewis and each of the various corporate entities involved.
- 12.1. Mr Roger Mewis purports to write as a director of IXG Services Limited which he describes as the “communications conduit” for the First to Fifth Respondents.
- 12.2. The Public Trustee contends that neither he nor his legal advisers have ever received any communication from the First to Fifth Respondents that does not appear to have been written by Mr Roger Mewis.
- 12.3. Documents have been submitted which have been signed by Mr Vaughan Mewis and by Robert Peter Hawkins (“Mr Hawkins”), which bear very close resemblance to the content and style of similar letters written by Mr Roger Mewis and in some instances they have identical content.

- 12.4. The sole director of IXG Albion is Imperial Xeon Group Limited, a Company registered in Cyprus, of which the Sixth Respondent, Mr Roger Mewis and his brother, Mr Vaughan Mewis, are the directors.
- 12.5. As I have said, the single share of IXG Albion is held by the Fifth Respondent, Kenilworth. Mr Roger Mewis and Mr Vaughan Mewis are believed to be authorised signatories for both Kenilworth and Sherborne.
- 12.6. Mr Roger Mewis and Mr Vaughan Mewis are authorised signatories for Warwickshire.
- 12.7. The sole director of the Seventh Respondent is Mr Roger Mewis who owns 50% and his brother, Mr Vaughan Mewis, owns the other half of the company.

In light of that evidence, I accept the Public Trustee's submission that Mr Roger Mewis is the controlling mind of the First to Fifth Respondents and operates and manages those companies. For that reason, I am satisfied that he is a proper party to the Application.

Service of the Application and Associated Documents

13. By Act of Court dated 17th August 2018, I granted leave to serve each of the Respondents out of the jurisdiction at the several addresses set out in that Act of Court. The same Act of Court made provision for further documents to be served in connection with the Application at Mr Roger Mewis' e-mail address. Whilst some objection has been expressed in correspondence to service in that manner and to the involvement of the parties in the proceedings, there has been no application to set aside the Order of Service on any of the Respondents. Communications sent by them shows that Service has been effected. Given the involvement of each of the Respondents in the matters to which the Application relates, which I have briefly summarized above, I am satisfied that each of them is a necessary and proper party to the Application.

The Hearing of the Application

14. None of the Respondents appeared and none of them were represented at the hearing before me on 23rd January 2019. The Court received letters from the Third to Seventh Respondents explaining their non-attendance. Sherborne and Kenilworth sent identical letters explaining that the Public Trustee had unjustly withheld funds that they allege were due to each company and accordingly the companies were unable to attend the hearing. Warwickshire gave a similar reason for its non-attendance, specifically referring to the sum of £57,750 which it said the Public Trustee had unlawfully instructed Quantock Property Management Limited ("Quantock") to withhold. That sum is an amount of rent to which I refer later in this judgment. SCSA wrote to say that it does not understand how the Public Trustee deems it to owe money to the IXG Scheme and it cannot possibly be involved in the proceedings. Mr Roger Mewis also wrote protesting that the Public Trustee had refused to repay monies owed to him. He added that he objected to what he described as a vendetta perpetrated by the office of the Public Trustee against him. Specifically, he objected to the Order sought against him requiring him to procure that the other Respondents properly comply with any Orders of the Court.
15. Notwithstanding their non-attendance, having being satisfied that the Respondents had been properly served and were aware of the proceedings, I ordered the hearing of the Application to proceed in their absence.

The Documents

16. I have before me the following documents filed on behalf of the Applicant:

- 16.1. five affidavits from the Public Trustee numbered (1), (3), (4), (5) and (6) (his second affidavit was not relevant to the substantive hearing of the Application);
 - 16.2. an affidavit from Mr Lacy to which I referred above containing his opinion on the legal status of Red River;
 - 16.3. two affidavits filed by Edward Birrell, an Associate of the Public Trustee's English Solicitors, Charles Russell Speechlys LLP;
 - 16.4. a written advice and an addendum thereto from Fenner Moeran QC of Wilberforce Chambers advising on a matter of English law which I describe later;
 - 16.5. a skeleton argument filed by Advocate Davies on behalf of the Public Trustee; and
 - 16.6. a copy of the speaking note from which Advocate Davies addressed me at the hearing.
17. The Respondents filed the following:
- 17.1 Mr Vaughan Mewis swore two affidavits on behalf of Warwickshire;
 - 17.2 Mr Hawkins swore an affidavit on behalf of Sherborne, the exhibits to which included Sherborne's response to the Applicant's statement within the first affidavit of the Public Trustee (an identical document is in the first affidavit of Mr Vaughan Mewis); and
 - 17.3. a skeleton argument from the Third, Fourth and Fifth Respondents.

The First, Second, Sixth and Seventh Respondents did not file any evidence.

The IXG Scheme

18. The Public Trustee produced evidence explaining the purpose of the IXG Scheme and the assets held by it in order to show that prior to the date of the December 2016 Transfer, the Property was held by Red River and IXG Albion as an asset of the IXG Scheme.
19. The Royal Court has previously considered the IXG Scheme in proceedings brought by other members of the IXG Scheme. The details of it were summarized by the Deputy Bailiff in his judgment in Sargent & Others v The Public Trustee of the Bailiwick of Guernsey, (Unreported, Royal Court 11 May 2018 Judgment 22/2018):

“18. *The Scheme was established on 6 June 2006. The Scheme has been approved under section 150 of the Income Tax (Guernsey) Law, 1975, as amended. It was set up as a qualifying recognised overseas pension scheme (“QROPS”). The Principal Employer is Interim Executives (Guernsey) Limited. A complete replacement of the governing provisions was undertaken by the Second Trust Instrument and Rules dated 11 February 2008. I will cover the provisions in detail in due course. Minor amendments to that instrument were made on 19 May 2008 and 22 March 2010 but they are of no consequence to the Plaintiffs' claim. At all these times, the trustee of the Scheme was Century Trustees Limited, with an address in Alderney. St Anne's Trustees Limited replaced the original trustee on 27 May 2010 and was then itself replaced by Guinness Mahon Trust Company and the two Former Trustees on 27 September 2010. Guinness Mahon Trust Company resigned on 1 December 2010, leaving the two Former Trustees, both companies registered in the Seychelles, and which were not regulated, as the*

trustees until their removal by Court order on 29 March 2017. The Administrator was originally Century Trustees Limited. I gather it is now Sherborne Corporate Services Limited, although any powers to act in that capacity have been suspended by this Court's order. Although there is no provision for such a person, IXG Services Limited, a company registered in Cyprus, acted as the Scheme Manager when the Former Trustees were the trustees of the Scheme. Its powers, such as they were, are also suspended by order of the Court."

(Whilst that passage is a direct quote from the judgment, Mr Mewis takes issue with the comment that there was no provision for the appointment of a Scheme Manager. He says it was a requirement of the relevant UK QROPS legislation applicable at the time. The issue is not material to this judgment; I merely note Mr Mewis' comment.)

20. The membership and benefits of the IXG Scheme are set out in the "Second Trust Instrument and Rules" dated the 11th February 2008. Rule 4.3 provides for benefits to be calculated by reference to a member's "*individual members' account*" ("IMA"). An IMA comprises the total contributions by way of voluntary contributions, transfer values, investment yields and accretions received in respect of a member. Rule 3(2)(a) provides that assets may be contributed in specie as well as in the payment of monies.

Ownership of the Property prior to December 2016 – the Applicant's case

21. The history of the ownership of the Property begins in 1994. Albert Roy Powis (now deceased) ("Mr Powis") and his business partner, Derek McCluskey ("Mr McCluskey") purchased a company known as FW Morgan Limited and as part of the purchase acquired the Property. In 2002, Mr Powis and Mr McCluskey sold the shares in FW Morgan Limited but retained their shared interest in the Property and entered into a lease of the Property with Jewson Limited (later St Gobain PLC) around that time. Both Mr Powis and Mr McCluskey held the property as part of their Self-Invested Personal Pensions ("SIPP"). Mr Powis had a 63% interest and Mr McCluskey's 37 % interest in the Property was acquired and held by Red River.
22. Mr Powis and Mr McCluskey later agreed to split their portfolio of property investments between them with Mr Powis becoming the owner of the entire interest in the Property. He agreed to purchase Red River. In order to do so, he used funds from the Powis Family Care Fees Funding Trust, a trust of which he was a beneficiary and of which Continental Trust Company Limited ("Continental") was the Trustee. It was agreed that Mr McCluskey retain a 37% interest overage of the Property – that is, a share of the uplift of its value in case of a future sale for development.
23. Mr Powis became a member of the IXG Scheme in 2009. Immediately prior to then the registered owners of the Property were: (i) Mr Powis and A J Bell (PP) Trustees Limited as Trustees of Mr Powis's SIPP and (ii) Red River with Mr McCluskey's interest in the overage protected as a restriction on title.
24. On 26th August 2009, AJ Bell (PP) Trustees Limited, wrote to Mr Roger Mewis at IXG Services Limited describing the proposed transfer of Mr Powis's SIPP to Century Trustees Limited ("Century"), which was at the time, the Trustee of the IXG Scheme. The letter reads:

"I can confirm that the assets to be transferred are as follows:

Cash - £95,000

Property – 63% of Park Lane, Saw Mills, Kidderminster, Worcestershire, DY11 6TG

Portfolio – Ascentric Portfolio"

25. Acceptance of the asset was confirmed in the reply from IXG Services Limited dated 2nd September 2009 signed by Mr Roger Mewis as director. The letter included the following statement:

“3. Custodian

In accordance with the Trust Instrument, a nominee corporate body acts as asset custodian and, in the case of Mr Powis, this is:

*IXG Albion Limited
Century House
12 Victoria Street
Alderney
Channel Islands
GY9 3UF*

Would you kindly advise your solicitors that the transfer of the 63% interest in the Park Lane Property into the Scheme should be assigned to IXG Albion Limited in the Deed of Assignment.”

26. IXG Albion was incorporated on the 4th September 2009. Much of the information about what happened at this time was supplied to the Public Trustee by Andrew Haxton (“Mr Haxton”), the former financial adviser to Mr Powis. He explained that Mr Powis was a life-long fan of the football team West Bromwich Albion and it was for that reason IXG Albion was given its name. At the date of its incorporation, the sole shareholder of IXG Albion was Century. The Public Trustee inferred that Century incorporated IXG Albion to act as a corporate custodian for the sole purpose of holding Mr Powis’s SIPP’s interest in the property on behalf of the IXG Scheme. I agree that is an inference to be drawn from the contemporaneous documents.
27. On or around 16th September 2009, Mr Powis and A J Bell (PP) Trustees Limited as Trustees of Mr Powis’s SIPP, executed a Deed of Transfer, transferring their 63% interest in the Property to IXG Albion. The execution of the necessary documents was approved by the directors of IXG Albion and recorded in the minutes of a board meeting held in Alderney on 17th September 2009 at 12.30 pm.
28. Arrangements for the sale of Red River were handled by Mr Haxton on behalf of Mr Powis and were concluded by an agreement dated 28th October 2009 between Continental and Century whereby Century “*as trustees of the IXG Scheme for A R Powis*” agreed to purchase the entire issued share capital of Red River from Continental for £10. Century thereby became the owner of the other 37% of the Property.
29. On 29th October 2009, Mr Roger Mewis acting on behalf of IXG Services Limited wrote a letter to Mr Powis headed “*Re: IXG Pension Scheme*”. The letter began: “*This is to advise you that A J Bell Management Limited have completed the transfer your (sic) UK pension assets in the AR Powis SIPP into the Interim Executives Group of companies pension scheme*”.
30. The letter set out the current value of his IMA including “*property value £658,350.00*”. The letter advised that “*If any property is purchased, including your own residence, whether as a reversionary interest or outright purchase, the interest in any property is held in an Alderney company where the sole shareholder is the Trustee, the company acts within the Pension Scheme as a nominee corporate custodian*”. The reference to a Pensions Scheme undoubtedly refers to the IXG Scheme. The Public Trustee understands the reference to “*a nominee corporate custodian*”, to be a reference to IXG Albion incorporated as a nominee corporate custodian to hold the Property as an asset of the IXG Scheme, or more particularly, Mr Powis’s IMA within the IXG Scheme. The letter also advised that Andrew Haxton and Co Limited, Mr Haxton’s

firm, had been “appointed as an advisor by the Trustee, by way of a Professional Financial Advisor Agreement, so that Andrew Haxton and Co Limited may consult with you as to your investment preferences before making investment recommendations to the Trustee”.

31. Thus, by the end of October 2009, the entire interest in the Property was held as an asset of the IXG Scheme. 63% was owned directly by IXG Albion Limited and the remaining 37% held by the IXG Scheme.
32. On 27th September 2010, Sherborne and Kenilworth became the Trustees of the IXG Scheme together with another trust company which was removed shortly thereafter on 1st December 2010.
33. Further evidence that the Property was held as an asset of the IXG Scheme is provided inter alia in a letter from Mr Haxton to IXG Services Limited dated 8th April 2013. The subject of the letter was Mr Powis’s IMA in the IXG Scheme. His summary of the value of the Plan included the Property (net of loans) at £909,033. The letter advised that the Property at Kidderminster was in the last five years of its lease before a break clause. He made mention of the development potential of the site and included a reference to Jewsons as the tenant.
34. The IXG Scheme’s ownership of the Property is also set out in a further letter from Mr Haxton to IXG Services Limited dated 17th December 2013 in which he advised that Mr Powis had recently been diagnosed with lung cancer. The letter stated inter alia:

“The IXG Scheme directly owned 63% of the Kidderminster Timber Yard. The balance of the ownership is held by Red River Properties Limited. The IXG Scheme owned directly or indirectly 100% of the Property.

The total rental income from the Property is £115,500 per annum and the rent is attributed in proportion being £72,765 (63%) and £18,191.25 (37%). You are familiar with the thought that this Property has considerable development potential.

Red River Properties Limited raised the funds to purchase the 37% share of the property from a Powis Family Trust which is connected to the member.

The 37% interest was purchased independently on an ‘arm’s length valuation’ from the SIPP of a former co-director of the original employing company.

Red River originally had an initial loan of £345,000 on which interest has also accrued. The rate of interest is 4%.

The member would now like “family” Trustees in the future to be independent of each other wherever possible. He would like the IXG Trustees to consider repaying the loans to Red River from the AR Powis Trust. This loan repayment can be funded from selling investments from within the ascetric IXG portfolio. This would leave a balance portfolio value of circa £250K after the loan has been repaid.

It would seem that it may be possible, after completion of the loan, that Red River could then be wound up going forward and may save potential overseas “landlord/withholding tax”. It would also remove an additional tier of Trustee administration.

I would be pleased if the Trustees would give guidance as to whether they would be prepared to consider the above proposition and any additional information that they may require before the request is made formally.

I look forward to hearing from the Trustees.”

35. On 22nd December 2013, five days after that letter was written, Mr Powis died of lung cancer.
36. The Public Trustee exhibited to his first affidavit a number of documents headed “statement of account – Roy Powis” prepared by IXG Services Limited on behalf of the then Trustees dating from 2013 to February 2017 showing all the assets, including the Property, together with income, expenses and the cash balance within Mr Powis’s IMA.
37. Evidence that Mr Roger Mewis agreed that was the position is contained in an email from him dated 1st November 2016 at 12:22 addressed to Paul Buckle, then of Walkers Guernsey, a firm of Advocates. Mr Roger Mewis’s email was expressed to be written “*For and on behalf of IXG Albion Limited and Red River Properties Limited*”. In the email he wrote, “*What does exist, both in Guernsey trust law and the Trust Instrument, is that the ownership of the Kidderminster Land (“the Land”) is vested entirely in the Trustees*”.

Ownership of the Property prior to December 2016 – the Respondents’ case

38. In the skeleton argument of the Third, Fourth and Fifth Respondents, they contend that the Property was not an asset of the IXG Scheme. Instead, it was legally and beneficially owned by Red River and IXG Albion and the assets that were held for the IXG Scheme were loans.
39. In making that submission, they rely upon an agreement dated 28th October 2009 whereby Century purchased the shareholding in Red River for £10. The agreement states that “*the Company legally and beneficially owns the assets of the Company in accordance with the information supplied*”. As to the 63% interest in the Property, minutes of the board of directors of IXG Albion dated 17 September 2009 state the “*under the terms of the documents, the 63% interest in the land and property would be transferred into the ownership of IXG Albion Limited*”. The year-end accounts for IXG Albion as at 31 May 2010 showed fixed assets of £662,389 which, in a note to the accounts was explained: “*The company has a 63% interest in certain Land and Buildings at Park lane, Kidderminster*”. The accounts were prepared by a sister company of Century and are relied upon by the Respondents who say that the accounts would not have contained a false statement of fact. Similarly, the 31 July 2013 accounts for Red River show fixed assets of £558,331 and an explanatory note: “*Jewson’s Timber Yard Park Lane, Kidderminster – (37% interest)*”.
40. That is said to be irrefutable documentary evidence that IXG Albion owned the property beneficially and undermines the Applicant’s submission that the Property comprised an asset of the IXG Scheme. The Fourth and Fifth Respondents confirm in their skeleton argument that they were issued with one share each of Red River on 19th February 2015 in their capacity as trustees of the IXG Scheme. In that capacity, they had no objection to the transfer of the Property to Warwickshire because the property was owned beneficially as a company asset. The assets they held for the IXG Scheme were loans.

Ownership of the Property prior to December 2016 – my findings

41. The onus lies on the Public Trustee to prove on the balance of probabilities that the Property was an asset of the IXG Scheme prior to December 2016. He has adduced a large body of evidence, including contemporaneous documents to support his case. I have carefully considered whether the evidence relied upon by the Third to Fifth Respondents defeats his arguments.
42. Contrary to the Respondents’ submission, I am satisfied that their claim that clause 4(b) of the agreement dated 28 October 2009 to sell the shares in Red River from The Continental Trust Company Ltd (“Continental”) to Century shows that Red River owns its assets legally and beneficially is consistent with the Public Trustee’s case. That is because the opening paragraph of

the agreement states that Continental entered into the agreement as “Trustee of the Powis Family Care Fees Funding Trust” and Century did so as “Trustees of the IXG Scheme”. The signature block at the end of the agreement repeats the same and adds that Century was signing as “Trustee of the IXG Scheme for A R Powis” i.e. it accepted the shares of Red River for Mr Powis’ IMA.

43. The Respondents’ claim that IXG Albion owned 63% of the Property other than for the IXG Scheme is contrary to many of the surrounding contemporaneous documents. The Public Trustee has also shown that as a matter of English pension law, IXG Albion could not have acquired the asset simpliciter. That is the conclusion of the advice from Fenner Moeran QC of Wilberforce Chambers. He advised that under provisions of the Finance Act 2004, a SIPP is an HMRC registered pension scheme which can only make “authorised payments” or it may incur major tax charges of up to 55% of the value of the transfer. The document of transfer recorded that the transfer was for nil consideration so, Mr Moeran concluded, either the trustees were transferring the Property to a recipient in a way which gave their beneficiary (Mr Powis) some sort of interest in it, or they were simply giving away trust property in plain breach of trust. The latter was clearly not the case so the only conclusion to be drawn is that the transfer was made from the SIPP to another registered pension scheme. The IXG Scheme had, at the time, been granted qualified recognized overseas pension scheme status by HMRC. I accept Mr Moeran’s advice that the conclusion to be drawn therefore is that the transfer to IXG Albion Limited was as nominee for the IXG Scheme.
44. The May 2010 year-end accounts of IXG Albion make no mention of the IXG Scheme but that is inconclusive. The accounts have not been audited. They are said to be financial statements showing the income and expenditure for the year and a balance sheet. The note relied upon by the Respondents that refers to the Property refers to the purchase. As I have said, it was purchased in a trustee capacity and the accounts do not suggest that there has been any change in the capacity in which the interest is held. The note to the accounts is not false.
45. The minutes of the board of directors of IXG Albion of 17th September 2009 which were approved by Babbé, Advocates, recorded that the 63% interest was being transferred into the company. That is correct. There was no absolute need for the minute to stipulate that the company was acquiring the interest in a trustee capacity. It is not inconsistent with IXG Albion holding that interest on trust for the IXG Scheme.
46. The documents relied upon by the Public Trustee such as Mr Roger Mewis’ letter of 29 October 2009 and the annual statements from IXG Services Ltd to Mr Powis are compelling evidence of the ownership of the Property. I agree with the Public Trustee’s submission that the Respondents were quoting selectively from the documents on which they rely. When those documents are viewed in their entirety and in the context of the other contemporaneous documents and correspondence, the evidence is more than sufficient to prove, on the balance of probabilities, that the Property, in its entirety, had been acquired as an asset of the IXG Scheme and that the then Trustees had recognized it as such.

The Purported Transfer in 2016

47. Taking the subsequent events in chronological order, the first event of note is that on 7th December 2016, Red River was struck off the BVI Company Register for non-payment of fees as published in the Virgin Islands’ Official Gazette on that day.
48. Notwithstanding that Red River had been struck off, nine days later, on 16th December 2016, a Form TR1 was purportedly executed between Red River and IXG Albion of the one part and Warwickshire of the other part. A TR1 is a document produced by the Land Registry to record “the transfer of the whole of a registered title”. The signatures on behalf of Red River are Mr Vaughan Mewis and Maria Bach, described in the document as authorised signatories of Red

River. The TR1 states that it was signed as a deed on behalf of IXG Albion by an authorised signatory; the signature appears to be that of Mr Roger Mewis. It was signed on behalf of Warwickshire by Andreas Petrou, the sole director of Warwickshire. The property to which the Form related was described as “Timber Yard, Park Lane, Kidderminster, DY11 6TG”. The consideration was stated to be not for money or anything that has monetary value.

49. The TR1 has not been presented to the Land Registry. The explanation given by Warwickshire’s lawyers is that Mr McCluskey did not give his consent. His consent is a necessary prerequisite because of the restriction on title that protects his overage interest.
50. In addition to the fact that it has not been presented to the Land Registry, the Public Trustee asserts that the TR1 has not been validly executed by Red River because that company had been struck off prior to the date on which it was purportedly executed.
51. A further issue is that the TR1 has not been validly executed by IXG Albion. Section 20(5) of The Companies (Alderney) Law, 1994 requires an agreement executed on behalf of an Alderney Company to be signed either by two directors or by one director and the Company Secretary. I did not require expert evidence as to Alderney law because Alderney is a jurisdiction within the Bailiwick of Guernsey and the Royal Court has jurisdiction, including appellate jurisdiction, in respect of matters arising in that Island.
52. The Public Trustee’s primary submission is that the TR1 is void both because Red River had been struck off before it purported to execute the document and because under The Companies (Alderney) Law, Mr Roger Mewis had no authority to sign the TR1 on behalf of IXG Albion.
53. The Public Trustee’s second submission is that even if the TR1 were effective, it would not have operated to transfer ownership of the Property out of the IXG Scheme when it was expressed to be for nil consideration. Any transfer of a valuable property for nil consideration would have been a breach of trust. Mr Roger Mewis was aware of the transaction as evidenced by his signature on behalf of IXG Albion. His knowledge can also be imputed to Warwickshire on whose behalf he has been acting, for example when communicating with the First Tier Property Tribunal in respect of proceedings before that Tribunal which were stayed pending the outcome of this Application. It can therefore be readily inferred that Warwickshire would have had notice of the breach of trust at the time the TR1 was purportedly signed. If it were a valid document, it would give rise to a constructive trust under Section 77 of The Trust Law, whereby Warwickshire would hold the Property and any income derived from it as trustee of the IXG Scheme.
54. As a further submission, the Public Trustee contends that the purported transfers from Red River and IXG Albion were in a position of conflict because on his analysis this is a transfer (or even if it is a sale) by a trustee to itself, albeit in another corporate form.
55. The Public Trustee has found no express declaration of trust by IXG Albion. If there is no express declaration of trust, the Property would be held under a constructive trust, whether governed by English law or Guernsey law. A constructive trust avoids the requirements of Section 53(1)(a) of the Law of Property Act 1925 pursuant to Section 53(2). Under Guernsey law, a constructive trust may arise in respect of non-Guernsey real property under Section 6 of the Trust Law either by conduct or in any other manner whatsoever.
56. Whichever way the Public Trustee looks at it, his conclusion is that the Property is held for and on behalf of the Scheme.

The 2016 Transfer - the Respondents’ Position

57. The Respondents' position is that the Property was owned, both legally and beneficially by Red River and IXG Albion. Title to the Property was transferred by those companies to Warwickshire by virtue of the unregistered transfer dated the 16th December 2016 and/or by an agreement of the same date governed by the laws of the Republic of Cyprus which had the effect of transferring the legal and beneficial ownership to Warwickshire.
58. That is the position the Respondents have adopted both before the First Tier Property Tribunal and in the skeleton argument submitted for the Third, Fourth and Fifth Respondents in connection with these proceedings.
59. The Cyprus agreement is claimed to have been made between Red River and IXG Albion as "seller" and Warwickshire as "buyer". The purchase consideration expressed in the Agreement is "£nil". It bears the signatures of Mr Vaughan Mewis whose signature is followed by the letters "SCS" and Maria Bach whose signature is followed by the signature "KCI" on behalf of the sellers. The Respondents contend that she signed as authorised signatory of the corporate director of IXG Albion although the initials "KCI" after her name indicate that she thought she was signing on behalf of Kenilworth, that is to say in relation to Red River albeit that company had, at that date, been struck off. They have not addressed the Applicant's contention that the signatures did not comply with the requirements of Section 20(4) of The Companies (Alderney) Law 1994 requiring signature by a director and the company secretary or two directors expressed to be on behalf of the company. The agreement bears a signature on behalf of the buyer. The Respondents state that they were unaware that Red River had been struck off at that date and will address that "technicality" by arranging to have the company reinstated in the BVI. They state that because the Agreement is expressed to be governed by the law of Cyprus, the Royal Court of Guernsey has no jurisdiction in the matter.

The 2016 Transfer – the Applicant's Response

60. The deficiencies in the execution of the documents, particularly by IXG Albion, which did not validly execute either the Cyprus Agreement or the TR1 in accordance with the requirements of Alderney Law and the purported execution of those documents by Red River after it had been struck off are not mere technicalities that can be overlooked. They are issues that go to the heart of the validity of the documents. Furthermore, the purported transfer for 'nil' consideration would constitute a 'gift' under common law principles. The Respondents have not adduced evidence of Cyprus law to show that it would constitute a valid contract under the law of Cyprus. The Public Trustee therefore relies upon the presumption that the law of contract of the foreign jurisdiction is the same as the law of the forum (see *Dicey, Morris and Collins The Conflict of Laws 15th Edition* at 9-025 to 9-027). The purported reliance upon the exclusive jurisdiction clause in the Cyprus Agreement does not assist. An exclusive jurisdiction clause is applied (by injunction) only against the contracting parties (if there is a contract) (see Donohue v Armco [2001] UKHL 64 applied by the Guernsey Court of Appeal in Carlyle Capital Corporation Limited v Conway 23rd March 2012). In any event, Advocate Davies contends that any challenge to the jurisdiction of the Royal Court on that ground should have been taken when the proceedings were first issued, not in a skeleton argument during the course of the proceedings.
61. Advocate Davies dismisses the Respondents' contention that the motivation for the purported transfer was to streamline the ownership of the Property at the request of the First and Second Respondents. That assertion, he says, seems to be predicated on the fundamental misunderstanding as to the beneficial ownership of the Property in light of the way in which the companies and their shareholdings had devolved. Other than acting in plain breach of fiduciary duty or breach of trust, there could have been no other valid purpose for the purported transfer. The beneficial ownership of the Property cannot have changed.

62. Even if there were a valid transfer to Warwickshire it would have been a breach of duty or breach of trust of which Warwickshire had knowledge, Warwickshire was a knowing recipient in view of the connection between the individuals concerned and Mr Roger Mewis's position with regard to Warwickshire. Warwickshire would therefore be liable to account for the Property as constructive trustee of what it has received. See *Lewin* at 42-025; 41-025 to 41-026 and section 77 of The Trust Law.
63. Advocate Davies asked me to note that the Respondents have failed to comply with a Court Order of 9th January 2019 requiring them to submit any documentary and other evidence including minutes that they may wish to rely upon in support of their case.

The 2016 Transfer – my Decision

64. I agree with the Public Trustee that the defects in the signatures mean that the TR1 has not been validly executed because Red River had been struck off the BVI register and IXG Albion had not complied with the requirements of Alderney law. Hence, there was no transfer of ownership in 2016. I also agree that the document written under Cypriot law was not validly executed.
65. If that were wrong, and the defects are mere technicalities that could be corrected, I accept the Public Trustee's secondary submission that a transfer of the property for nil consideration would be a breach of trust of which Warwickshire had knowledge and as a knowing recipient would hold the Property on trust for the trustees of the IXG Scheme.
66. Whichever way it is looked at, the Property remained an asset of the IXG Scheme after the events of 2016. The Respondents' suggestion that the assets of the IXG Scheme are limited to loan accounts is not borne out by any of the contemporaneous documents and is easily refuted.
67. I note that the Respondents have failed to comply with the earlier Order of the Deputy Bailiff requiring that all Trust Property be surrendered to the Public Trustee and are in breach of that Order.

Rental Income

68. For a period of time, rental income from the commercial tenancy of the Property was credited to Mr Powis' IMA. However, the final rental payments in respect of the Property that were paid by Isca Legal who instructed Jewsons to pay the last instalment of rent to SCS Administration, have not been received as assets of the IXG Scheme. Quantock still hold 2 quarters' rent totalling £57,750. Mr Roger Mewis in June 2017 directed the former tenant to make rent payments to the Seventh Respondent. The final rent payment was made to the Seventh Respondent. The Seventh Respondent has not paid it over.
69. The Respondents' skeleton argument submits that because the Seventh Respondent has never been associated with the IXG Scheme and the fact that it is a UK company, the Royal Court has no power to grant the relief sought against the Seventh Respondent. The Respondents rely upon the validity of the 2016 Transfer but that cannot be maintained in light of my findings above.
70. It follows from the findings I have made as to the ownership of the Property that rental income should also have been received by the IXG Scheme and hence it is appropriate to order that the rent so far not received should be paid over, together with any interest accrued thereon.

The Relief Sought by the Applicant and Enforcement

71. I had asked Advocate Davies to explain how it was proposed to enforce any order that I might be persuaded to make as I did not want the Court to be acting in vain.

72. The IXG Scheme is governed by the law of Guernsey and is subject to the jurisdiction of the Royal Court by virtue of clause 1.2 of the trust instrument. It is my understanding that the Respondents do not deny that the shares in Red River and IXG Albion are assets of the IXG Scheme. Even if that were denied, the findings I have made on the evidence establish that they are assets of the IXG Scheme.
73. The Application seeks declarations as to the assets of the IXG Scheme and Orders that assets be transferred to the Public Trustee pursuant to section 69 of the Trusts Law. That section provides, inter alia, for the Court to make orders in respect of “*the execution, administration or enforcement of a trust*” (section 69 (1)(a)(i)) and “*any trust property, including an order as to the vesting, preservation, application, distribution, surrender or recovery thereof*” (section 69 (1)(a)(iv)). If such orders were not to be complied with the Court has the power to make orders enabling another person to take the necessary actions under section 70 of the Trusts Law and/or section 14 of the Public Trustee Law.
74. Those two sections provide:

“70. If a person does not comply with an order of the Royal Court under this Law requiring him to do anything, the Royal Court may, on such terms and conditions as it thinks fit, order that the thing be done by another person, nominated for the purpose by the court, at the expense of the person in default (or otherwise as the court directs), and a thing so done has effect in all respects as if done by the person in default”.

“14. (1) If on the application of the Public Trustee the Court is satisfied that –

- (a) There is a reasonable likelihood that a person will contravene any duty, requirement, restriction or prohibition imposed by, or any other provision of, any enactment or rule of law –*
 - (i) Concerning any trust in respect of which the Public Trustee is appointed to act as trustee, or*
 - (ii) In respect of which the Public Trustee has functions or which those functions touch or concern, or*
- (b) a person may have been guilty of such a contravention and there is reasonable likelihood that the contravention will continue or be repeated,*

the Court may grant an injunction restraining the contravention and requiring that person to do or not do any thing.

(2) An injunction under subsection (1) may be granted on such terms and conditions, and may include such incidental, consequential or supplementary provision, as the Court thinks fit.”

75. Regarding enforcement, Advocate Davies submitted that in relation to the shares in IXG Albion, there is no issue because the company is registered in Alderney which is within the Bailiwick. As for the shares in Red River and orders relating to the transfer of the Property, the order must be *in personam* over the Respondents (Dicey, Morris and Collins at 14R-054). The former trustees, Sherborne and Kenilworth have participated in these proceedings so the Court may make orders *in personam* against them. Jurisdiction in respect of Red River is established by it being an asset of the IXG Scheme which under its terms is governed by Guernsey law, as I have said. Orders requiring the delivery up of assets belonging to a Guernsey trust operate *in personam* and are clearly within the jurisdiction of the Guernsey courts. It also has to be borne in

mind, Advocate Davies says, that Sherborne and Kenilworth have previously been ordered to deliver up the shares in Red River and have failed to do so.

76. The relief claimed in the Application is set out in nine paragraphs.
77. The first paragraph seeks declarations that (i) the beneficial interest in the Property is held pursuant to the IXG Scheme and (ii) rental payments paid to Quantock in respect of the Property constitute income of the IXG Scheme.
78. The Respondents object, in their skeleton argument, to the making of those declarations on the basis that the documentary evidence on which they rely demonstrates that the Property is a company asset and not an asset of the IXG Scheme. I have rejected that submission for the reasons given above. They also state that the Royal Court cannot make declarations in respect of non-Guernsey companies. I also reject that submission because the Royal Court has jurisdiction in respect of a Guernsey trust such as the IXG Scheme. Furthermore, the Respondents have submitted to the jurisdiction.
79. I am therefore persuaded that, having made the findings set out above, it is appropriate to make the declarations sought in the first paragraph of the Application.
80. The second paragraph of the relief claimed is an application for a declaration that the purported transfer of the Property to the Third Respondent dated 16 December 2016 was ineffective or void. The Respondents' contention is that because the agreement was governed by Cypriot law, the Royal Court has no jurisdiction. I reject that submission for the reasons given earlier in this judgment.
81. The third paragraph seeks a declaration that the shares in the First and/or Second Respondents are held pursuant to the trusts of the IXG Scheme. The Respondents' objection to it is that because the shares in the First and Second Respondents were held by non-Guernsey entities, the Court does not have jurisdiction to make a determination with regard to the shares. I reject that submission for the reasons given by Advocate Davies namely that they are assets of a Guernsey trust and, in any event, the Respondents concerned have submitted to the jurisdiction.
82. The fourth paragraph seeks an order that the Property be transferred to the Public Trustee and that the Respondents take the steps required to give effect to the transfer and to register it with Her Majesty's Land Registry. Again, the Respondents objection is that the Guernsey court has no jurisdiction because the entities involved are non- Guernsey entities. I reject that submission for the reason I have given above.
83. The fifth paragraph seeks an order that the shares in the First and Second Respondents be transferred to the Public Trustee as trustee of the IXG Scheme, either further to, or as an alternative to, the order sought in the fourth paragraph. Again the Respondents object on the ground that these are non-Guernsey entities and again I reject their submission, for the same reasons.
84. The sixth paragraph would apply if any one of the Respondents fails to take any steps necessary to give effect to the earlier orders and would authorise the Public Trustee or such other person as the Court may direct to do whatever is required. The Respondents' objection is again the same, that the Court does not have the necessary powers. I disagree. The Court does have the necessary powers and I could make the order under section 14 of the Public Trustee Law or section 70 of the Trusts Law. However, I consider it to be premature to make the order as I feel the Respondents must be given the opportunity to comply first. Also, until I know which orders have not been carried out and the assets involved, I cannot make a decision as to whether the

Public Trustee is best placed to do what is necessary or someone else should be appointed. I will adjourn paragraph 6.

85. The seventh and eighth paragraphs seek the payment of the rent received by the Seventh Respondent together with any interest received on such sum to the Public Trustee. The Respondents' objections are that the Seventh Respondent has no involvement with the IXG Scheme and that the Court does not have the requisite powers for the reasons given above. I reject both contentions: first, I have found as a fact that the rent is income of the IXG Scheme; and the Court does have jurisdiction for the reasons I have given.
86. As for timescales, I order that any actions that are to be taken by any of the Respondents are to be completed within fourteen days of the handing down of this judgment.

Costs

87. When I circulated this judgment to the parties in draft, I said that my provisional view is that having regard to how these proceedings have been conducted, the Respondents should be ordered jointly and severally to pay the Applicant's costs on a full indemnity basis but if any of the Respondents wish to contest an order in those terms, they must make application within fourteen days. Advocate Davies has reminded me that in an Act of Court dated 23 January 2019, I ordered that the costs of the application to which it related be paid by the Third, Fourth, Fifth and Sixth Respondents on the indemnity basis unless they were to apply within seven days of the Order being served on them to vary it to an order on the recoverable basis only. No such application has been made so the Order in paragraph 9 of that judgment stands.
88. I will now order that the costs of the Application (as defined herein) other than those costs which were subject to the Order of 23 January 2019 be paid by all the Respondents, jointly and severally, unless they shall serve on the Applicant and lodge with the Court on or before 27 March 2019 i.e. within fourteen days of the handing down of this judgment an application to vary this costs Order.