

The Plaintiff, Romanian Eagle Land 2 Limited seeks an order that the Defendant, The LLP Property PCC Limited, releases and discloses to it all the documents formerly forming part of the assets of one of its cells, the Romanian Eagle Land Fund (“the Fund”). Application dismissed, what is pleaded by way of relief does not constitute the Fund’s assets or documents that are already part of the Plaintiff’s property.

trial. The pandemic and the resulting travel restrictions will inevitably have had an impact on progress of the case.

3. As well as pleading multiple *exceptions de forme* and raising an *exception de fond*, the Defendant, represented by a director, Robert Guest, tabled its Defences on 21 March 2019, in which it admits that a Circular dated 3 September 2013 was sent to the shareholders of the cell which is the Fund. It offered a proposal to minimise costs to investors and make changes to legal and management structures. As such, the intention of this Circular was to notify shareholders of the Proposal, to seek approval for the Proposal and put shareholders on notice that the passing of an Ordinary Resolution to that effect would bind all the shareholders of the Fund. The Defendant denies that there could be a contract with a third party, such as the Plaintiff, arising from circulating internally to the Fund this Circular.
4. The Plaintiff’s Réplique is dated 5 April 2019. In further particularising the agreement on which the Plaintiff relies, it states that the agreement was made on 27 September 2013 and was between the Defendant on behalf of the Fund, the Plaintiff and the shareholders of the Fund. The individuals acting on behalf of the Defendant were its directors, Adrian Howe, Nicholas Hanna and Robert Guest, and the individuals acting on behalf of the Plaintiff were its directors, Robert Guest, John Rawicz-Szczerbo, Simon Pearce-Hughes and Edward Russell. The agreement was evidenced by the proposals set out in the Circular “*and the subsequent conduct*” of the parties to it “*who put those proposals into effect.*” Nothing in the agreement indicates that the term “assets” should be given a restricted meaning, so it would include any documents belonging to the Fund. Appendix 1 offers examples of the documents required (which seems to extend to written verification or information as well):

“1. What amounts were paid, and on what dates, to acquire the shares in Vama Veche Land Holding Company Limited (which is owned 68% by REL2 and which owns 100% of Factum Impex SRL) and to whom were the payments made?”

2. What amounts were paid, and on what dates, to acquire the shares in Conect Invest SRL and to whom were the payments made?

3. What amounts were paid and on what dates, to acquire the shares in Factum Sud Est SRL and to whom were the payments made?

4. What amounts were paid, and on what dates, in connection with the abortive investment in Snipe Invest SRL and to whom were the payments made?

5. What amounts were paid, and on what dates, to Edward Russell, Simon Pearce-Hughes, Neinheiser Limited and Homes in Romania (UK) Limited in addition to payments falling under items 1 to 4 above?

6. The party to whom, and on what date, the amount of Euros 540,000, which was payable by PDC Nord Imob SRL for the land at 2 Mai, was paid?

7. Documents concerning [sic] the investment of funds to enable PDC Nord Imob SRL to buy fragmented farmland, why that land was left in the ownership of Andrei Pacurar and why neither RELF1 nor the Board of RELF 2 in the period 2013 to 2015 took action to oblige Mr Pacurar to hand over the land.

8. Bank statements of the LLA Property PCC Limited relating to RELF/REL 2 and payments made from RELF shareholder funds.

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9. *Board Minutes from the LLP Property PCC Limited for the period between 3 December 2009 and 4 November 2011*

10. *an assignment of receivables owed to RELF 1, such as the GBP 108,500 owed by Simon Pearce-Hughes/Homes in Romania.*

11. *Documents concerning the ownership of shares in Vama Veche Land Holding Company Limited – for which RELF2 had already made payments to Homes in Romania in 2010.*

12. *A transfer of all documents relating to Rivatec and the subsidiaries (for accounting and tax and general business purposes to understand the circumstances in which certain transactions occurred).”*

5. In accordance with the direction given in 2019, the hearing took place before me, sitting unaccompanied by Jurats, on 12 October 2021. Evidence was called by the Plaintiff from one witness, Philippa Walker, who is a director of the Plaintiff. The Defendant’s representative, Mr Guest, chose not to call any evidence, but cross-examined Ms Walker and made submissions. At the conclusion of the hearing, I reserved judgment. I apologise to the parties for the length of time it has taken me to get around to handing down this judgment.

Facts

6. Most of what follows is taken from the documents before the Court. The evidence of Ms Walker appeared to me largely to be taken from the documentary record, even if it appears to be incomplete. In particular, she confirmed that she had no direct knowledge of what might have been discussed by those involved at the material time in 2013.

7. The Defendant was incorporated as a protected cell company in 2007. One of the cells it established was the Fund. Mr Guest has been a director of the Defendant throughout. The two Guernsey-based directors on incorporation were from Fortis and subsequently from Intertrust, as it became known but the individuals changed over time. By 2013, those local directors were Mr Howe and Mr Hannah. Ms Walker was a shareholder in the Fund, although her interest was held through a SIPP. The Fund owned Rivatec Limited, a company registered in Cyprus in early 2008, through which shares in Romanian subsidiaries were held. The Fund’s land advisers, or consultants, were Simon Pearce-Hughes and Edward Russell, both of whom were involved with a company known as Homes in Romania (UK) Limited. The Investment Memorandum of the Fund produced by Mr Guest explains that the Fund will own Romanian companies and each such special purchase vehicle will own and purchase properties in Romania and further that:

“Homes in Romania (UK) Limited (known as “the Land Adviser”) will act as the property adviser to the Fund. It is owned by Simon Pearce-Hughes. Simon Pearce-Hughes works closely with Edward Russell who is retained by the Land Adviser as consultant to provide a wide range of advisory services. The land Adviser who will liaise closely with the Administrator and directors of the Company acting for and on behalf of the Fund. Each proposed property acquisition or disposal will be assessed by the board of the Company acting for and on behalf of the Fund which will approve each transaction.”

8. Although Ms Walker is one of three current directors of the Plaintiff, she did not produce the documents relating to its incorporation, but Mr Guest did ask for them (and some other material)

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to be added to the bundle. It appears that the Plaintiff was authorised to be incorporated on 2 September 2013. Mr Pearce-Hughes was the sole subscriber to the memorandum of association, which is dated 30 August 2013. The application to register the Plaintiff was made electronically on 30 August 2013 by Mr Pearce-Hughes. Mr Guest was to be the company secretary and the four directors were to be Mr Guest, Mr Pearce-Hughes, Mr Rawicz-Szczerbo and Mr Russell, whose address was given as being in Bucharest. A single share of €1 was issued to Mr Pearce-Hughes.

9. A board meeting of the Defendant was held on 3 September 2013 by telephone. It was attended by Mr Guest and Mr Hannah. The minute records that there was discussion about a draft of the Circular, noting that “*the board had previously considered the scheme set out in the Proposal at previous meetings and that the entire board was strongly in favour of the Proposal.*” Paragraph 7 states:

“In essence, it was proposed that in order to save running costs, the assets of [the Fund] would be transferred to a newly formed private limited company incorporated in England and that the shares of such company be issued to the existing shareholders of [the Fund] on 30th September 2013. Furthermore, it was proposed that the shares of [the Fund] shall be redeemed on 30th September 2013 for no further consideration. It was noted that the reasons for the Proposal were set out in the circular and had previously been approved by the board.”

The board duly resolved that “*the draft circular be approved subject to incorporation of all the amendments proposed by Babbé in its note of advice, such last minute minor amendments as might be suggested by Simon Pearce-Hughes of Homes in Romania (UK) Limited (the property adviser to [the Fund]), and any other minor corrections or amendments as the secretary and/or Robert Guest may determine shall be necessary*”. It was further resolved that the secretary and/or Mr Guest “*be instructed to despatch the circular to shareholders of the Company with the audited accounts of the Company without delay.*”

10. The Circular dated 3 September 2013 gave notice of a Class Meeting of holders of shares in the Fund at noon on 27 September 2013. The Proposal set out in the Circular was for the following series of steps relating to the Fund:

- “(1) one ordinary share of one euro in the capital of Romanian Eagle Land 2 Limited (“REL F 2”) (being the entire issued share capital in REL F 2) shall be transferred to the Fund in consideration of the costs of incorporating such entity;*
- (2) the entire issued share capital of Rivatec Limited (an intermediary holding company incorporated in the Republic of Cyprus which is currently directly owned by the Fund) shall be transferred to REL F 2 and the loan agreement between the Fund and Rivatec Limited shall be novated to REL F 2 (in order that the benefit of the loan made to Rivatec Limited shall be transferred to REL F 2);*
- (3) the remaining assets of the Fund including but not limited to any cash be transferred to REL F 2 after due provision for any liabilities of the Fund;*
- (4) in consideration of the transfer of the assets of the Fund, REL F 2 shall issue 5,365,875 ordinary shares of one Euro each to the Fund;*

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- (5) *the ordinary shares of RELF 2 shall be transferred by the Fund to the Shareholders in the Fund on a pro rata basis in proportion to their existing holdings in the Fund*
- (6) *the shares of the Fund shall be redeemed for no consideration by the Company and the cell shall be wound up;*
- (7) *the assets of Rivatec Limited shall be transferred to RELF 2 and Rivatec Limited shall be wound up;*
- (8) *the assets of the Romanian subsidiaries of Rivatec Limited shall be transferred to RELF 2 and such companies shall be wound up.”*

11. The reasons for putting this Proposal were explained as being:

“The Fund was intended as a medium-term investment and was due to expire three years from the date of listing of the Shares of the Fund on the CISX. Due to a worldwide banking crisis and a collapse in the economy of Romania, property prices and the liquidity of the property market in Romania were seriously affected. Shareholders in the Fund subsequently voted to extend the life of the Fund pending a market recovery.”

It explained that it cost a lot to maintain a complicated holding structure. It had cost €113,161 in the year to September 2012 and, as at 28 August 2013, the Fund had cash of €185,067.

The rationale for the Proposal was:

- *reduce annual running costs;*
- *avoid the situation where the Fund runs out of cash in the short term to meet its running costs and has to be liquidated (leading to an attempted rapid sale of assets at very low prices);*
- *conserve cash resources to provide sufficient time to arrange sale of the properties in Romania where many believe prices and liquidity to be improving;*
- *enable Simon Pearce-Hughes and Edward Russell of the Investment Adviser to sell the property assets in an orderly manner as directors of RELF 2; and*
- *manage the property assets with a view to paying back Shareholders in the Fund the amount invested and possibly a profit.”*

12. The Class Meeting was duly held at noon on 27 September 2013. Mr Howe chaired the meeting and held proxies representing 3,214,874 shares, being 59.91% of the shares, so the quorum required was satisfied. It was resolved that *“the Proposal set out, defined and described in the Circular ... be unanimously accepted and approved and that the Directors of the Company be and are hereby authorised and instructed to take all necessary steps to implement and give effect to the Proposal and further that the Company be and is hereby authorised to complete and sign the transfer of shares in RELF 2 to Shareholders in the Fund from the Effective Date and to redeem shares in the Fund for nil consideration.”*

13. Steps were taken by Intertrust to de-list shares in the Fund from the Channel Islands Stock Exchange in October 2013.

14. A board meeting of the Defendant took place on 15 October 2013. Mr Hannah, Mr Howe and Mr Guest participated and *inter alia* Mr Russell was in attendance by telephone. A copy of the

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share register of the Plaintiff was put before the meeting, showing it was wholly owned by the Fund. Discussion took place about the Fund completing a stock transfer form to transfer the shares of Rivatec Limited to the Plaintiff and it was resolved that the transfer be executed with effect from 30 September 2013 and forwarded to Rivatec Limited. The meeting also considered a draft Novation Deed relating to the loans by the Fund to Rivatec Limited and it was resolved to execute it with effect from 30 September 2013 and to approve a letter from the Defendant to Rivatec Limited. There was discussion about transferring the cash of the Fund, with a representative of Intertrust expressing concern that monies might need to be retained for the final audit of the Fund, so it was resolved to transfer an appropriate amount once the estimate for what this would cost had been given.

15. The stock transfer forms show the date 30 September 2013. The transfer of the single share in the Plaintiff to the Fund shows that the original holder of that share was indeed Mr Pearce-Hughes. The Deed of Novation of the loan with Rivatec Limited is dated 4 November 2013, although the novation date is given as 30 September 2013. On behalf of the Plaintiff, it was executed by Mr Guest and Mr Pearce-Hughes.
16. A further board meeting of the Defendant took place on 3 March 2014. So far as the Fund was concerned, the minute records that the meeting dealt with the Proposal recorded in the Circular. 5,365,878 shares in the Plaintiff had been issued to the Fund in consideration of the transfer of all the assets of the Fund. Assets needed to be transferred to the Plaintiff as a priority. Mr Guest confirmed that the shares in Rivatec Limited had been transferred, the director had resigned and he, Mr Pearce-Hughes and Mr Russell had been appointed as directors, although steps still needed to be taken to confirm that with the Companies Registry in Cyprus. Reference is also made to the transfer of shares in Vama Veche Land Holding Company by the Fund to the Plaintiff. Apparently the Fund had received insufficient shares in this entity, which owned shares in Factum Impex, a Romanian company holding a plot of land in Vama Veche, and an officer at Intertrust had been trying to rectify matters for at least two years. Mr Pearce-Hughes was requested to assist as a matter of urgency. The meeting resolved to transfer the shares the Fund had received in the Plaintiff to the Fund’s shareholders on a pro rata basis. The meeting also approved the redemption of shares in the Fund and to notify the Guernsey Financial Services Commission (“the GFSC”) that the Fund cell was due to be closed, subject to the transfer of shares in the Vama Veche entity to the Plaintiff together with any remaining assets of the Fund.
17. A board meeting of the Plaintiff took place on 18 June 2015. It was attended by Mr Guest and Mr Rawicz-Szczerbo. Mr Pearce-Hughes and Mr Russell were absent. The minute of the meeting paints a picture of a divided board, something that was confirmed by Ms Walker and also in Mr Guest’s submissions. Reference is made to resistance by Mr Russell to compile a register of property assets held in Romania. Mr Guest’s assistant had attempted to use information to compile such a list but it had been difficult. Mr Russell claimed that SC Property Advisors, an entity in which he had a 60% interest, with Mr Pacurar holding the remaining 40%, had had a contract with the Defendant and had a similar agreement made orally by him representing both sides of the bargain with the Plaintiff, where payment had not been made. The directors present disagreed and resolved that no such contract existed and that action should be taken against Mr Russell, Mr Pacurar and SC Property Advisors to recover records, although a payment of €8,400 could be made if the records were produced as full and final settlement of all claims. Mr Russell was suspended from his duties as a director of the Plaintiff. Mr Guest was to undertake the administration of the Plaintiff and its subsidiaries. He reported that the Plaintiff “*had received grossly inadequate books and records concerning Vama Veche Land*

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Holding Company”, of which Mr Pearce-Hughes had been the sole voting shareholder and director, and that money had been loaned to that entity to pursue action against its former accountant, which had been struck out and so the entity should be funded to apply to set aside that order. In respect of Rivatec Limited, it was liable to be struck off for not filing annual returns, but the Plaintiff had no need of that company and so no further action would be taken.

18. A further board meeting of the Plaintiff took place on 25 June 2015. There is a transcript of the discussion, which took place through a conferencing call. Mr Guest, Mr Rawicz-Szczerbo and Mr Russell attended as directors, with five shareholders invited to attend, one of whom was Ms Walker. It is apparent from what was said that there had been an earlier meeting at which the shareholders voted to keep Mr Russell on the Plaintiff’s board. However, this lengthy meeting, lasting over two hours, appears from the transcript to have been a heated one. Further, it is apparent that there were two factions operating, some investors supporting Mr Russell and others Mr Guest and Mr Rawicz-Szczerbo. Mr Russell repeatedly referred to his desire for there to be an EGM at which a motion to remove Mr Guest and Mr Rawicz-Szczerbo could be voted on. The alternative would be to remove him and Mr Pearce-Hughes. Mr Guest and Mr Rawicz-Szczerbo voted for three of the investors present to join the board, although they would have preferred to have more, but others attending were reluctant to volunteer. There were discussions about the absence of information about the assets held by the Plaintiff. Mr Rawicz-Szczerbo repeatedly stated that he and others were not managing the Fund, because Intertrust carried out the administration so they did not have management accounts or bank statements. He also seems to think that the GFSC had been responsible for appointing directors to the Defendant on the basis that Intertrust is a regulated trust company administrator. Mr Guest threatened to sue Mr Russell for breach of fiduciary duty.
19. In August 2015, Mr Guest prepared a handover note, numbered 2, and provided it to Ms Walker, which dealt with the accounts of the Fund to 30 September 2013 and of the Plaintiff for its first year to 30 September 2014. After setting out a commentary on the documents apparently appended, but not seen by the Court, Mr Guest’s conclusion includes:

“John Rawicz-Szczerbo and I failed as directors of [the Plaintiff] to arrange for a comprehensive register of the fixed assets of [the Plaintiff] to be compiled. All of the key records are held in Romania primarily under the effective control of Edward Russell and he was entirely uncooperative. We also failed to obtain full information about VVLHC from Simon Pearce-Hughes and Barry Currell. ...

We have cold feet about the value of the fixed assets of [the Fund] as at 30 September 2013. Information has been deliberately withheld from the board of [the Plaintiff] by Edward Russell and Simon Pearce-Hughes and they appear to have told Barry Currell, the accountant to VVLHC, not to hand over information. This conduct is not merely a breach of directors’ fiduciary duties. It also raises suspicions over the conduct of Edward Russell and Simon Pearce-Hughes. We are wondering whether the accounts of [the Fund] should be restated so that at least investors as a whole are made aware of the possibility that they have lost most of their investment. The closing position of [the Fund] should in theory be matched by the opening position of [the Plaintiff]. However, the board of [the Plaintiff] can decide to take a more prudent view than the board of [the Defendant]. In respect of the 2013 accounts of [the Defendant], I am wondering whether Price Bailey reconciled the records from Romania with the information from Intertrust. I am aware that Price Bailey are concerned about the 2014 accounts of [the Plaintiff] and whether they show a true and fair view. The

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evidence deficit applied equally to the closing accounts of [the Fund] and to the opening accounts of [the Plaintiff]. I strongly recommend that the board seeks advice from an independent chartered accountant.”

20. As part of the handover, on 12 August 2015, Ms Walker offered to collect materials from Mr Guest which are described as being documents relating to the Fund. He indicated later the same day that there were three boxes available. He further raised a number of issues about what land might actually be owned by the Plaintiff, querying whether Mr Russell or Mr Pearce-Hughes had provided any answers. Ms Walker duly collected the boxes and sent a message to Mr Guest explaining she understood there was more to come, “*particularly [the Fund] and [the Plaintiff] bank statements*”. She also enquired why Mr Guest had removed monies from the Plaintiff’s bank accounts. Other exchanges at that time between the two enabled Mr Guest to offer some explanation as to what he considered may have happened when the Fund invested in Romanian companies and he expressed his concern at the manner in which he understood Ms Walker had spoken to his assistant when the boxes were collected, which Ms Walker denied had been the case.
21. Things appear to have gone quiet for several years, until another director of the Plaintiff, Nicola Blount, contacted Intertrust in July 2018 asking for bank statements of the Defendant for 2008-2013 and any supporting documents to enable them to “*put together an audit trail of payments made on behalf of [the Plaintiff] by [the Defendant]*”. She was informed that Intertrust did not make payments on behalf of the Plaintiff and a lot of records in respect of the Fund had been passed to Mr Guest when the Plaintiff was incorporated, so he may be able to help. Ms Blount renewed her request for bank statements relating to the Fund and was told that the Plaintiff did not have the legal capacity, as a separate entity, to ask for those bank statements. When this response was relayed to Ms Walker, she pointed out that what the Plaintiff was seeking was bank statements from the Defendant from 2008 to 2013 “*so we can track payments made by [the Defendant] to Rivatec or Neinheiser or Homes in Romania or ER or Property Advisers SRL or SPH during the first 5 – 6 years*”, and so asked Ms Blount to try again.
22. Ms Blount sent a further request in August 2018 to Intertrust, explaining that information was sought about how the investments of €5.5 million in the Fund had been spent. Properties were to be sold in Romania by the Plaintiff and the shareholders wanted to be able to get their money back in the most tax-efficient manner. She made the request as the second largest shareholder in the Fund and in the Plaintiff and as a director of the Plaintiff. She appreciated there may be costs involved and they would pay for them. Intertrust’s response was:

“As you are no doubt aware, the Romanian Eagle Land Fund, a cell of The LLP Property PCC Limited, ceased to exist and shares of an intermediate holding company in Cyprus (holding in turn shares in Romanian property companies) were transferred to Romanian Eagle Land 2 Limited. Under the Memorandum and Articles of the PCC, former shareholders of a former cell are not entitled to bank statements of the PCC.”

There were further exchanges, but the position remained the same with Intertrust pointing to the restrictions of the terms by which a member of the Fund was entitled to information. Ms Blount even highlighted the terms of the Circular explaining that in her view the reference to “*the remaining assets of the Fund*” covered bank statements. She also raised four specific issues:

- “1. Euros 540,000 was payable for the land a 2 Mai, which was acquired by PDC Nord Imob SRL. These funds were not received by PDC Nord Imob SRL, even

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though they were documented as a loan and we are looking for you to explain who exactly did receive those funds and on what date.

2. *It is unclear what was the total amount, which was paid for the shares in Vama Veche Land Holding Company Limited and to whom payment was made – we believe that part was paid to Simon Pearce-Hughes and part to Homes in Romania. Again please provide a breakdown of payments made and the dates and recipients of the funds advanced, together with supporting evidence of those payments and the payment dates.*
 3. *Some documents handed over by Robert Guest suggest that Edward Russell received payments in 2008 for the sale of the shares in Factum Sud Est and Conect Invest SRL, whilst other documents indicate that payment was made in 2009 to Neinheiser Limited, a company based in Cyprus. Again we would be grateful to receive from you a list of payments made to Edward Russell and to Neinheiser Limited and the dates of those payments, together with supporting evidence of those payments and the payment dates.*
 4. *Loans were advanced to Simon Pearce-Hughes or Homes in Romania by the LLC Property PCC Limited, which were written off in the closing accounts of RELF, so that they did not appear in the opening accounts of REL2. We need details of the dates on which these loans were made, the amounts and the amounts repaid and the dates thereof.”*
23. In September 2018, Mr Rawicz-Szczerbo put forward an offer to Ms Blount, open for seven days, to sell the core of the Defendant to the Plaintiff, with completion around the end of the year when the remaining cell was expected to be closed, and on terms that meant no action could be taken against him, Mr Guest or others he named. It is apparent that this offer was not accepted.
24. Ms Blount renewed her engagement with Intertrust with a set of specific questions posed on behalf of one of the largest shareholders in the Plaintiff. She was again told that Intertrust’s position remained the same. Ms Blount referred to advice the Plaintiff had received that the Plaintiff was entitled to all the Fund’s property, including its documents. The request was repeated to hand over all the Fund’s documents, including its bank statements, otherwise legal action might follow. Intertrust requested a copy of the advice the Plaintiff had received. It does not appear that it was provided.
25. Once proceedings were commenced by the Plaintiff, there have been exchanges about the possibility of conducting a mediation. However, on 4 June 2020, without admitting liability, the Defendant made an open offer of settlement to the Plaintiff. This offer referred to copies of documents held by Intertrust in respect of the Fund. The main element of the offer was that “[the Plaintiff] would make a payment of £3,000 as a contribution towards [the Defendant’s] legal fees, hotel and travel costs connected with the initial court hearing, copying and postage costs (including but not limited to the costs of copying the file of documents provided by Intertrust and posting it to you by registered post) to a bank account that we shall designate following acceptance of this offer”. The rest of the offer concerned the detail, which required the money to be paid before the documents would be despatched to the Plaintiff, but receipt of the documents should then be given. The offer was stated to be “in full and final settlement of the claim made by the Plaintiff against the Defendant, which would then be withdrawn within

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seven days of receipt of the bundles with no order as to costs. The offer was stated to be open for acceptance for a period of seven days.

26. On behalf of the Plaintiff, Ms Blount replied by e-mail on 10 June 2020 asking Mr Guest to provide a list of the documents to which he was referring in sufficient detail to enable the Plaintiff to know what it would be receiving. There was also a suggestion that nothing would be paid because the Plaintiff was entitled to these documents. Mr Guest’s reply the next day explained that, when he had been a director of the Plaintiff, he had felt that many documents were missing but had been told by Intertrust that it relied on the administrators and auditors of the intermediate holding company in Cyprus and so did not have documents. He was disappointed that the Defendant’s open offer had not been accepted because it covered all the documents that Intertrust retained, even though the contract the Defendant had with Intertrust had ended some years earlier. It was the best that the Defendant could do and, whatever the Court decided, there would be nothing more that could be provided to the Plaintiff.
27. During the course of her oral evidence, Ms Walker said a number of strange things. First of all, when questioned by Mr Guest, she stated that she was not aware that the Plaintiff had been incorporated online on the evening of 2 September 2013. She accepted that there were no minutes of any meeting of the Plaintiff following its incorporation in the Court’s bundle. She also accepted that the Circular does not look like a formal contract. She stated that she was not saying there was a contract with anyone, but was referring to an agreement of shareholders, of which she had been one. She also accepted that Mr Russell and Mr Pearce-Hughes had been continually refusing to hand over documents relating to the Romanian subsidiaries, which were still in existence because they had not been wound up. The Plaintiff had not accepted the open offer because it needed to know what it would be receiving. She believed Intertrust would cooperate if the Defendant’s approval were forthcoming.

The parties’ cases

28. On behalf of the Plaintiff, Advocate Barnes maintained that there was a contractual obligation on the Defendant to hand over to the Plaintiff the documents that the latter says it needs. The “assets” of the Fund in the Cause as amended includes all information held that relates to the Fund. The Circular offers evidence of what must have been agreed and the steps subsequently taken to give effect to the proposal shows that the parties understood what the obligations being accepted were. The contract can be found partly in writing and partly through conduct. Once the shareholders of the Fund had agreed the proposal in the Circular, the parties then gave effect to that decision through the steps they took. He submitted that a company cannot function without information. He suggested that it frequently arises that companies are engaged in contractual activity without recording it at a board meeting, but that does not affect the performance of what has been agreed.
29. On behalf of the Defendant, Mr Guest submitted that the issue was whether any contractual obligation arose between the parties and, if so, whether there had been a breach capable of being enforced. He referred to the split board of the Plaintiff in the time after its incorporation, demonstrating the difficulties encountered in getting documents, which in turn meant there could be no obligation on the Defendant (or the Fund) to provide them. He suggested the Circular could not be viewed as an offer to the Plaintiff. He noted that the Plaintiff had not adduced any evidence of a decision to enter into any contract with the Defendant. In any event, items such as board minutes and bank statements are personal to the entity and do not fall within what can be regarded as its assets. He gave as an example if another entity purchased the assets of a holiday business that it would not receive the business’s personal statements. He suggested

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that the Defendant’s open offer had been a generous one because the Defendant had managed to obtain from Intertrust some further material, which had not been an easy task and there was no more that could be obtained, making these proceedings nugatory.

Discussion

30. I have reminded myself that the burden lies on the Plaintiff to prove the case it has pleaded to the civil standard of a balance of probabilities. It is not necessary for the Defendant to disprove the Plaintiff’s case. The Plaintiff’s case is based on there being an agreement between the Plaintiff and the Defendant that the assets of the Fund, being a cell of the Defendant, be transferred to the Plaintiff, where it is asserted that the assets include the Fund’s documents, including its bank statements. In its Réplique, the Plaintiff has pleaded that the contract on which it relies was between the Defendant on behalf of the Fund, the Plaintiff and the shareholders of the Fund and that it was evidenced by the Circular and the subsequent conduct of the parties. The contract is said to be governed by Guernsey law. In particular, there is nothing in the agreement reached that requires “assets” to be given a restricted meaning.
31. I find it surprising that Advocate Barnes has not referred to any authority to support the arguments he makes. It is as if this is all so obvious that there is no need even to refer to the legislation relating to protected cell companies. However, I also find it surprising that Mr Guest, who is a qualified lawyer in another jurisdiction, has not appreciated that it is possible to infer from what was in the Circular that I understand he drafted before it was considered by local Advocates that there must have been some agreement between those responsible for the two entities otherwise the steps set out therein could not have been proposed to the shareholders of the Fund. This is not a case in which one is looking to identify what offer was made by the Defendant to the Plaintiff capable of being accepted (or the other way round), but rather a set of circumstances where the directing minds of the two companies must have been discussing a solution to what was perceived to be an unnecessarily complicated, and so expensive, structure for the Fund. However, there has been no direct evidence as to who was discussing what at the time.
32. It was unhelpful for the Defendant not to call any witnesses at all. I accept that there is no obligation to adduce oral evidence, but it has left me having to piece together what appears to have happened at the material time. Equally, I found it surprising that the Plaintiff’s witness, being its director Ms Walker, gave evidence that appeared to be contrary to the case pleaded on the Plaintiff’s behalf. She was clear that the Plaintiff was not saying there was a contract between the parties but an agreement between the shareholders. If there is no contract capable of being enforced, the Plaintiff’s case largely disappears. Advocate Barnes seemed prepared to concede that a declaration would be sufficient, because it would enable the Plaintiff to deal with Intertrust, but the difficulty is that the declaration could only be about the legal entitlement of the Plaintiff to the documents. As such, I am not persuaded that I can properly regard the declaratory relief sought as a direct alternative to the enforceability of some agreement between the parties.
33. As a result of what I can only describe as these deficiencies in the parties’ approaches, I have resorted to some basic analysis of the position in September 2013. In doing so, I have done my best to consider what I am able to infer must have occurred as a means of trying to see if the agreement on which the Plaintiff relies can be proved by it.
34. Protected cell companies are dealt with in Part XXVII of the Companies (Guernsey) Law, 2008, as amended. Some of the applicable principles are explained in simple terms in the Fund’s

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Investment Memorandum. Only certain types of company can be incorporated as a protected cell company (“PCC”) and GFSC consent is required. The fact that the Defendant was incorporated means that such consent must have been forthcoming. As regards the status of a PCC, section 441 provides:

- “(1) *A protected cell company is a single legal person.*
- (2) *The creation by a protected cell company of a cell does not create, in respect of that cell, a legal person separate from the company.*”

That is an important principle because it means that only the Defendant can contract and the Fund, as a cell, has no separate legal capacity. When cells are created by a PCC, the purpose of doing so is to segregate and protect cellular and core assets as provided in Part XXVII (section 442). The core is the PCC excluding its cells (section 443).

35. In respect of any cell (and this must have been done in respect of the Fund), a PCC can create and issue “*cell shares*”, where the proceeds of the issue of such cell shares become “*cell share capital*” and that cell share capital is comprised in the cellular assets attributable to the cell in respect of which the shares were issued (section 444(1)). A “*cellular dividend*” may be paid in respect of cell shares (section 444(3)). The directors of a PCC have a duty to keep cellular assets separate and separately identifiable from core assets and, where the PCC has created more than one cell, to keep each collection of cellular assets separate and separately identifiable from each other (section 445(2)). There is an important definition in section 445(4):

- “*The assets attributable to a cell of a protected company comprise –*
- (a) *assets represented by the proceeds of cell share capital and reserves attributable to the cell, and*
 - (b) *all other assets attributable to the cell.*”

By subsection (7), the reference to “*reserves*” is stated to include “*retained earnings, capital reserves and share premiums*”. By way of further explanation, section 454(2) provides: “*Income, receipts and other property or rights of or acquired by a protected cell company not otherwise attributable to any cell shall be applied to and comprised in the company’s core assets.*”

36. In respect of liabilities and creditors, section 451 provides:

- “(1) *Subject to the provisions of subsection (2), and to the terms of any recourse agreement, where any liability arises which is attributable to a particular cell of a protected cell company –*
- (a) *the cellular assets attributable to that cell are liable, and*
- (b) *the liability is not a liability of any protected assets.*
- (2) *In the case of loss or damage which is suffered by a particular cell of a protected cell company and which is caused by fraud perpetrated by or upon the core or another cell, the loss or damage is the liability solely of the company’s core assets or (as the case may be) that other cell’s assets, without prejudice to any liability of any person other than the company.*
- (3) *Any liability not attributable to a particular cell of a protected cell company is the liability of the company’s core assets.*

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(4) *Notwithstanding the above provisions of this section liabilities under subsection (1)(a) of the cellular assets attributable to a particular cell of a protected cell company shall abate rateably until the value of the aggregate liabilities equals the value of those assets: but the provisions of this subsection do not apply in any situation where there is a recourse agreement or where any of the liabilities of the company’s cellular assets arises from fraud as is referred to in subsection (2).*

(5) *This section has extra-territorial application.”*

The term “*protected assets*” is defined in section 446, para. (a) of which provides that it means “*any cellular assets attributable to any cell of the protected cell company in respect of a liability not attributable to that cell*”. Although reference is also made to recourse agreements (as defined in section 447), it is common ground that there is no recourse agreement engaged in the present case.

37. Although I doubt that section 451 is directly relevant to the parties’ dispute, I have mentioned it to put into context how liabilities of a cell, such as the Fund, are addressed. Further, by section 453(1):

“In the event of any dispute as to –

- (a) *whether any right is in respect of a particular cell,*
- (b) *whether any creditor is a creditor in respect of a particular cell,*
- (c) *whether any liability is attributable to a particular cell,*
- (d) *the amount to which any liability is limited,*

the Court, on the application of the protected cell company, and without prejudice to any other right or remedy of any person, may issue a declaration in respect of the matter in dispute.”

Although the Defendant has not made any such application to the Court (and the alternative relief sought by the Plaintiff is not engaged here), if it had wished to seek clarification as to whether the Fund was obliged to hand across what it is that the Plaintiff seeks, I think it is arguable that this provision would enable it to have done so.

38. The final provision from Part XXVII to which I will refer is section 457:

(1) *It is lawful, subject to the provisions of subsection (3), for the cellular assets attributable to any cell of a protected cell company, but not the core assets of a protected cell company, to be transferred to another person, wherever resident or incorporated, and whether or not a protected cell company.*

(2) *A transfer pursuant to subsection (1) of cellular assets attributable to a cell of a protected cell company does not of itself entitle creditors of that company to have recourse to the assets of the person to whom the cellular assets were transferred.*

(3) *No transfer of the cellular assets attributable to a cell of a protected cell company may be made except under the authority of, and in accordance with the terms and conditions of, an order of the Court under this section (a “cell transfer order”).*

(4) *The Court shall not make a cell transfer order in relation to a cell of a protected cell company –*

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(a) *unless it is satisfied –*

(i) *that the creditors of the company entitled to have recourse to the cellular assets attributable to the cell consent to the transfer, or*

(ii) *that those creditors would not be unfairly prejudiced by the transfer, and*

(b) *without hearing the representations of the Commission thereon.*

(5) *The Court, on hearing an application for a cell transfer order –*

(a) *may make an interim order or adjourn the hearing, conditionally or unconditionally,*

(b) *may dispense with any of the requirements of subsection (4)(a).*

(6) *The Court may attach such conditions as it thinks fit to a cell transfer order, including conditions as to the discharging of claims of creditors entitled to have recourse to the cellular assets attributable to the cell in relation to which the order is sought.*

(7) *The Court may make a cell transfer order in relation to a cell of a protected cell company notwithstanding that –*

(a) *a liquidator has been appointed to act in respect of the company or the company has passed a resolution for voluntary winding up,*

(b) *a receivership order has been made in respect of the cell or any other cell of the company,*

(c) *an administration order has been made in respect of the cell, the company or any other cell thereof.*

(8) *The provisions of this section are without prejudice to any power of a protected cell company lawfully to make payments or transfers from the cellular assets attributable to any cell in the company to a person entitled, in conformity with the provisions of this Part, to have recourse to those cellular assets.*

(9) *For the avoidance of doubt, a protected cell company does not require a cell transfer order to invest, and change investment of, cellular assets or otherwise to make payments or transfers from cellular assets in the ordinary course of the company’s business.”*

39. It is apparent that the Defendant did not seek to avail itself of section 457 of the 2008 Law. There are obvious reasons why the safeguards contained in section 457 are desirable. Because the Defendant did not seek a cell transfer order, it is only now that the issues relating to the terms of the agreement reached are surfacing. This is because the Defendant chose instead to sell the cellular assets of the cell which comprised the Fund to a newly incorporated entity, the Plaintiff, outside of this statutory regime. This may well not have been in the ordinary course of the Defendant’s business. However, because neither party has suggested that non-compliance with section 457 amounts to a bar to what took place, for the purposes of this judgment, I am proceeding on the basis that what took place in 2013 was an option open to the parties.

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40. Before the Circular was sent by the Defendant to all its shareholders, but of particular interest to those with cell shares in the Fund, there must have been some level of agreement between the directors of the Defendant and those who would become the directing minds of the Plaintiff. The Defendant could not have acted unilaterally. The best evidence of what terms had been discussed are the steps set out in the Circular. However, it is not the Plaintiff’s case that the Circular itself amounts to a contract, but rather that, conditional upon the shareholders in the Fund voting in favour of the Proposal contained therein, the parties would then give effect to the terms that must have been discussed.
41. One of the difficulties for the Plaintiff is that it only came into existence on 2 September 2013. The discussions that had been taking place, and those discussions appear to me to have involved Mr Pearce-Hughes and Mr Guest, and probably also Mr Rawicz-Szczerbo and Mr Russell, all of whom had agreed to become directors of the newly-incorporated Plaintiff, and must also have involved Mr Howe and Mr Hannah on behalf of the Defendant as well, otherwise it could not have recorded on 3 September that this had been discussed previously, must, I infer, have considered the steps then described in the Circular.
42. By way of example, there must have been some discussion about setting up the Plaintiff as a separate entity and that this would be done as an expense of the Fund. There must also have been some discussion that the Plaintiff would issue a single share, enabling the entire issued share capital in the Plaintiff to be acquired by the Defendant. I am satisfied that this is apparent from the first step described in the Circular. One of the assets of the Fund at that time was a loan made to Rivatec Limited, which was an entity also owned by the Fund. Although it is not entirely clear, it seems quite possible that the assets of the Fund falling within section 445(4)(b) of the 2008 Law would be this shareholding in Rivatec Limited and the amount due under the loan made to it, unless the cash referred to in the third element in the Circular would be regarded as reserves, falling within para. (a). For each such asset, it must be one or the other because this is the extent of the definition of cellular assets found in the 2008 Law. In order to collapse the complicated structure of the Fund, the intention of those who would direct the Plaintiff was that whatever Rivatec Limited held as its assets would then be transferred to the Plaintiff, enabling Rivatec Limited to be wound up (as explained in the seventh item referred to in the Circular). Similarly, the assets of the Romanian subsidiaries would also be passed up the new structure to be held by the Plaintiff directly, enabling those subsidiaries to be wound up (as explained in the eighth item referred to in the Circular). However, these aspects will have engaged those with responsibility for those entities, rather than directly engaging the Defendant, with its directors having responsibility under the Law for the Fund. This suggests to me that those involved, including no doubt Mr Pearce-Hughes and Mr Russell, had discussed how all the steps to simplify the structure would be accomplished before the Defendant could set them out in the Circular.
43. Of more direct interest is what the Defendant appears to have been agreeing to do alongside dealing with Rivatec Limited. The fourth item referred to in the Circular follows from the Defendant (as the only entity capable of doing so), transferring the remaining assets of the Fund to the Plaintiff. In return for receiving the assets of the Fund, including the Fund’s interest in Rivatec Limited, the Plaintiff was to issue 5,365,875 ordinary shares to the Fund. Following receipt of these shares from the Plaintiff, the Fund was then to transfer to each of the shareholders in the Fund those shares pro rata to each shareholder’s existing holding in the Fund (as explained in the fifth item referred to in the Circular). Further, the Defendant would then redeem the shares in the Fund for no consideration, effectively because each shareholder had a corresponding number of shares in the Plaintiff (as explained in the sixth item referred to

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in the Circular). These were the key steps to be undertaken as between the Defendant and the Plaintiff.

44. I am satisfied that the steps set out in the Circular show that there must have been discussions with those who would become directors of the Plaintiff even before the application to incorporate the Plaintiff was made. What was set out in the Circular sought the agreement of a majority of those who held shares in the Fund. In other words, performance of the steps set out was conditional on the voting at the Class Meeting convened for 27 September 2013. I consider that the Circular shows the effect of those discussions. Even if the discussions took place before the Plaintiff was incorporated, I am further satisfied that it can be said that the Plaintiff proceeded to enter into a new contract on those same terms so far as it extended to acts involving the Defendant once it had been incorporated. For example, Mr Pearce-Hughes transferred the single share he held in the Plaintiff to the Fund, so that it became a cellular asset. This is consistent with the first item referred to in the Circular. I am prepared to infer that this demonstrates that the Plaintiff and the Defendant had a contract on terms that included that performance being undertaken. Similarly, it is apparent that the 5,365,878 shares that were to be issued to the Fund had been issued by the Plaintiff. None of this would have happened if there was not some agreement between the two parties. Whilst it would have been best for the Plaintiff’s board to have met and formally agreed the terms of its contract with the Defendant (and also with others, such as Rivatec Limited), I do not regard the absence of such a minute as fatal to the existence of a contract on these terms.
45. It follows, therefore, that I am persuaded on behalf of the Plaintiff that there was a contract between it and the Defendant, where the terms of what was agreed before the Circular was sent to the Fund’s shareholders related to what was described in the Circular. Accordingly, the Defendant’s opposition based on there being no contract as pleaded in the Cause as amended is rejected. The real question relates to what the terms of that contract were. The fact that there has been no evidence adduced from anyone who took part in the contract negotiations means that those terms also fall to be inferred from the documents and the actions taken.
46. I take the view that the Plaintiff’s case rests on the interpretation to be given to the third item referred to in the Circular: “*the remaining assets of the Fund including but not limited to any cash be transferred to [the Plaintiff] after due provision for any liabilities of the Fund*”. Bearing in mind that the fourth item relating to the issue of shares to the Fund by the Plaintiff is stated to be in consideration of the transfer of the assets of the Fund, and the Defendant’s board meeting on 3 March 2014 addressed the need to transfer assets to the Plaintiff as a priority, it is unclear to me whether it can be said that all the assets of the Fund had been transferred. However, the Plaintiff probably should not have issued the shares to the Fund until it was satisfied that the assets it was expecting to receive from the Defendant had been transferred. I consider that I can infer from it issuing these shares to the Fund, and which then became cellular assets, that it was satisfied that the Defendant’s performance of its part of the bargain had been carried out.
47. One of the difficulties is that what was troubling those present at that board meeting relates to a Romanian subsidiary. I am not persuaded that that was an issue to concern the directors of the Defendant. What the Defendant had promised to do was to transfer to the Plaintiff the shares in Rivatec Limited and then novate the loan made by the Fund to that company to the Plaintiff. That aspect of the contract had already been performed. What happened below Rivatec Limited was a matter for those who were responsible for Rivatec Limited. In the minute of that meeting, there is reference to the director of Rivatec Limited having resigned and been

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replaced by Mr Guest, Mr Pearce-Hughes and Mr Russell as directors. However, Rivatec Limited is a separate entity from the Defendant and the shareholding in it had been transferred by the Defendant to the Plaintiff, as shown by the minute of the board meeting of the Defendant held on 15 October 2013. In other words, by this time, Rivatec Limited was already owned by the Plaintiff and the subsidiaries of Rivatec Limited were also within the structure under the Plaintiff rather than remaining with the Defendant.

48. At the board meeting of the Defendant held on 15 October 2013, the question of how much of the Fund’s cash to transfer to the Plaintiff was discussed. The board resolved to transfer to the Plaintiff an appropriate amount of cash after liaising with Intertrust in respect of what monies should be retained for anticipated fees and those of the auditors. I think it is significant that there was no discussion about any other assets of the Fund. Accordingly, I take the view that it was recognised that the cash fell within the term “*assets*” in that third item in the Circular, but there was no suggestion that other information, including the documents, were also assets of the Fund.
49. Having regard to the various provisions in Part XXVII of the 2008 Law, I have reached the conclusion that what the Plaintiff seeks to obtain from the Defendant in this action falls outside what would properly be regarded as part of the assets of the Fund. The documents that are sought may well be property, but I am not persuaded that they are covered by any term of a contract between the parties relating to assets. I would expect the Fund’s assets to be capable of appearing on the balance sheet showing what the cellular assets of the Fund were. I have noted that the Plaintiff has not produced any document showing what was included in the Fund’s financial statements in 2013, although this was clearly something about which there was a lot of discussion at the meeting held on 25 June 2015 and which has been transcribed. The document in question also appears to have been one of the appendices to the handover note numbered 2 provided by Mr Guest, but that has not been put before the Court. However, I doubt that there would have been any entry relating to documents of the type in the Appendix to the Plaintiff’s Réplique. Indeed, those questions largely relate to historical matters where the Plaintiff’s current directors appear not to have a clear idea as to what happened before the Proposal described in the Circular. I am not satisfied that the documents, including the bank statements, can be said to be something that has a monetary value in the same way that other things usually described as assets would have. Further, in order to satisfy the solvency test found in section 527 of the 2008, one element is that the value of a company’s assets is greater than the value of its liabilities and, when that is translated into a receivership order in respect of a cell of a protected cell company, section 459(1)(a) refers to “*the cellular assets attributable to a particular cell of the company ... are or are likely to be insufficient to discharge the claims of creditors in respect of that cell*”. As a result, when the term “*remaining assets of the Fund*” is included in that third item, I disagree with Advocate Barnes that it inevitably follows that it covers the documents now sought. Indeed, in my judgment, these documents are not the Fund’s assets.
50. I also regard it as significant that assets and liabilities are frequently used together, both in the Law and as found in that third item in the Circular. I take the view that this is consistent with the manner in which the provisions, such as section 451, of the 2008 Law operate. Because these documents have no monetary value as such, they could not be used as a means of making due provision for any liabilities of the Fund. I am not persuaded that they can properly be regarded as cellular assets. Further, what it appears the Defendant was agreeing to transfer to the Plaintiff strikes me as being the remaining assets of the Fund which must have been of a type that could be realised to meet any liabilities. Although this point was not developed in any

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particular way, I also think it is arguable that the distinction between cellular assets and core assets might even mean that the documents of the type now sought by the Plaintiff are actually core assets in accordance with section 454(2). If, as I have found, the documents themselves are not assets, but rather property, and recognising that there is a single legal entity, any bank account, even one, in accordance with section 445(2), complying with the duty of the directors of the Defendant to keep the cellular assets attributable to the Fund separate from core assets and from any other cell’s assets, ought, I imagine, to be in the name of the Defendant, rather than in the name of any of its cells. As such, although I do not have to decide that issue and so leave it open, the bank statements from which the answers might be gleaned appear to me to be documents of the Defendant rather than assets of the Fund. Either way, they are not caught by the terms of the contract on which the Plaintiff relies.

51. I do accept the submission of Advocate Barnes that a company needs information to be able to operate, but that does not automatically mean that that information has to be supplied in this context by the Defendant if it falls outside what the Fund could agree to transfer. I also believe that there was an information deficit following the incorporation of the Plaintiff. What it was acquiring from the Defendant seems to be the Fund’s assets, which for these purposes appears to be Rivatec Limited, the benefit of the loan to that company and the cash held once liabilities of the Fund had been settled. The four directors between them should have had ample information as to what was being acquired by the Plaintiff against what had happened in the past. Although the Guernsey-based directors of the Defendant were no longer playing any role, Mr Guest continued to be a director of both parties for a while. Further, once the transfer of the ownership of Rivatec Limited was effected, I think it was in the hands of the directors of the Plaintiff to obtain information directly from those who were directors of Rivatec Limited about the assets held within that company. Seeking at this late stage to rely upon the terms of a contract with the Defendant seems to me to be misconceived.
52. For these reasons, I am not minded to construe the word “*assets*” as it features in the contract between the Plaintiff and the Defendant (that I am satisfied existed in September 2013) as broadly as Advocate Barnes submits I should. I consider that the assets of a cell of a protected cell company are not to be viewed in the same way as, for example, if there were a transfer of a trusteeship, where the assets as well as the documents relevant to the trust, which might extend to bank statements, are provided to the incoming trustee. I wonder if that principle is being relied on more by the Plaintiff, perhaps as a result of the Defendant seemingly acting on behalf of its cells, rather than concentrating on the statutory provisions under which cells and the core of a protected cell company operate. When set against that regime, I do not find that the documents, or information, if that is what some of it is, can be brought within the assets of the Fund to which the contract relates. It follows that I cannot grant the primary relief sought by the Plaintiff, and that also has an impact on the alternative relief sought by way of a declaration.
53. In the absence of any enforceable entitlement on the part of the Plaintiff to require the Defendant to release and disclose to the Plaintiff all the documents formerly forming part of the assets of the Fund, I do not feel that I can declare that the documents are the Plaintiff’s property. I note here the distinction between the documents being part of the assets and being confined to property. However, those documents could only be the Plaintiff’s property if there was some arrangement by which it had been agreed that the documents should be passed to the Plaintiff. The closest that such an arrangement existed was the open offer made by Mr Guest on 4 June 2020. The terms of that offer were not acceptable to the Plaintiff’s directors. With the benefit of hindsight, those directors may now regret a missed opportunity to acquire what Mr Guest has obtained from Intertrust, at least through engaging with a view to further

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negotiations. The consequence is that, rather than there being any basis from which to grant the declaration the Plaintiff seeks, the best I can do is to suggest that the parties might wish to re-engage with a view to reaching an agreement for what the Plaintiff wants to obtain, on whatever terms.

54. The documents (or information) listed in the Appendix to the Plaintiff’s Réplique, or as summarised in the correspondence from Ms Blount, are not, in my opinion, the property of the Plaintiff. Those materials remain the property of the Defendant, but some or all of them might be passed to the Plaintiff if the parties can reach some agreement outside of this action.

Conclusion

55. I have set out the reasons why I am dismissing the Plaintiff’s action. In short, what is pleaded by way of relief does not constitute the Fund’s assets or documents that are already part of the Plaintiff’s property. Whilst there was a contract between the parties in 2013, contrary to the Defendant’s primary case, I have not been persuaded that its terms covered documents because I have decided that those documents are not assets and, although the documents in question might be material the Plaintiff’s directors would like to be able to consider, there is no basis on which they can be declared as already its property.

56. As regards the costs of the action, I will do no more than reserve them, leaving the parties to seek to agree what the order should be, which might form part of the ongoing negotiations between them, always recognising that a costs order frequently follows the event. If agreement cannot be reached, then either party (although it is more likely to be the Defendant) can make an application for costs by liaising with the Greffe to ascertain a suitable time at which to do so.