

Application for Privacy order to be extended to the Court of appeal and various disputes including whether the Trust was properly and lawfully established; the meaning of the terms of the Trust deed; who was the true settlor of the Trust; whether the Trusts have been properly and lawfully dissolved; if not, whether the Appellant is an appointor of the Trust; who are the proper beneficiaries of the Trusts; whether the respondent has properly exercised control over the trusts; whether property has been improperly transferred between the two; and which assets fall within the ownership of which trust.

[2024]GCA61

**IN THE COURT OF APPEAL OF GUERNSEY
ON APPEAL FROM THE ROYAL COURT OF GUERNSEY
(ORDINARY DIVISION)**

Civil Appeal No 581

Before:

**Lord Anderson of Ipswich KBE KC, President
Helen Mountfield KC
Jeremy Storey KC**

IN THE MATTER OF L TRUSTS

**Advocate N. Robison for the Appellant and Fifth
and Sixth Respondents
Advocate G. Dawes for the First Respondent
Advocate R. Breckon for the Second, Third and
Eighth to Tenth Respondents**

Mountfield JA:

This is the judgment of the Court.

Preliminary matter

1. This hearing was listed as being held in camera. At the outset of the hearing of this application, we asked the advocates for the parties for an explanation and justification of this. In the Royal Court, by virtue of a consent order dated 29 September 2023, the application was heard in private. This order was made following an unopposed application made by the Appellant (the Applicant below) to the Royal Court. The order was varied by an order dated 20 October 2023,

so that the applications against the Respondents were placed *inscrite*, and the Appellant and the Second, Third, Eighth and Ninth Respondents were permitted to disclose any documents with the application within Civil Action 2492 (enforcement proceedings being brought by HSBC against those parties in relation to a judgment debt), whilst a privacy order remains in place in those proceedings.

2. We had no application before us to continue the privacy order made in relation to the Royal Court proceedings in the appeal proceedings before our court. The default position is one of open justice, so that matters before the courts of Guernsey are normally held in open court. The test for holding a hearing in private is strict necessity, pursuant to Practice Direction No. 2 of 2000, and see also the decision of the Bailiff *In the Matter of the K Trust [2020] GCA090*.
3. It follows that a hearing should not be held in private unless there has been an application to do so, supported by sufficient evidence. When we drew this matter to his attention, Advocate Robison acting for the Appellant made an oral application to renew the privacy order, and drew our attention to an affidavit which had been lodged in support of the application made to the Royal Court, setting out in particular the position of the minor parties, and the risk of commercial harm to the Appellant's business, whose business premises and business may be threatened by some potential outcomes of the proceedings (and destabilised) if the fact of the existence of this dispute were to come into the public domain.
4. This application to continue the order below was not opposed, and so we agreed to extend the order made on 29 September 2023 as amended on 20 October 2023, and to anonymise the judgment upon hand-down, upon receipt of a formal application and receipt of a draft consent order.
5. However, we draw attention to the fact that the presumption of open justice is an important one, and that applications for privacy orders in the Court of Appeal are not automatic where proceedings have been heard in private in the Court below. Such applications must be made, and evidence must be adduced to support the submission so as to enable this Court to establish that the legal test of necessity has been made out in relation to matters which are to be raised on appeal.

Introduction and issues in the appeal

6. This appeal arises against the background of a complex series of disputes about the operation of two family trusts settled in 2008 – the M Trust and the N Trust (collectively “The L Trusts”). The L Trusts were established to hold various properties associated with, and for the benefit of, various members of the L family – as further described below. Concept Fiduciaries Limited (“Concept”, the First Respondent in the present action), was the trustee of both the L Trusts. On 1 March 2017, the Second and Third Respondents, as the stated settlors of the trusts, purported to terminate them using reserved powers, in circumstances which are under dispute, and to apply the proceeds of the reversion for their own benefit. However, Concept remains the trustee either of the two L Trusts, or of the bare trusts on which the assets formerly held in the two L Trusts continue to be held.
7. Unhappily, a number of disputes have arisen. The issues in dispute are many and various. They go to whether the M Trust was properly and lawfully established; the meaning of the terms of the M Trust deed; who was the true settlor of the M Trust; whether the M Trust and N Trust have been properly and lawfully dissolved; if not, whether the Appellant is an appointor of the

M Trust; who are the proper beneficiaries of the M and N Trusts (or the bare trusts which result from their dissolution); whether Concept has properly exercised control over the trusts; whether property has been improperly transferred between the two; and which assets fall within the ownership of which trust.

8. These substantive disputes are the subject of proceedings in Civil Action 2214, which were started by A (the Appellant in the current action) as long ago as 2019, and which we refer to in this judgment as “the Main Proceedings”. We understand that there is now an application by A to amend his pleadings in the Main Proceedings. The parties to the Main Proceedings are Concept, and B and C (the Appellant’s father and stepmother, who are the Second and Third Respondents in the present action). B now lacks capacity and is represented by C as his Guardian. A, Concept and C do not agree as to whether these proceedings have been properly and expeditiously pursued, but they are in any event still on foot. We understand that there were delays after B lost capacity and again when one of his Guardians unfortunately deceased. We also understand that attempts to resolve this long-standing family dispute through mediation have so far at least come to nothing.
9. For completeness, the Fourth to Seventh Respondents to this application are other members of the L family who may or may not have a beneficial interest in the M Trust (D, A’s brother; A’s minor children, E and F; and G, D’s son). The Eighth and Ninth Respondents, J Ltd and P Ltd are holding companies of various properties held within the M Trust. The M Trust holds 100% of the shares in J Ltd and P Ltd. The Tenth Respondent, Q Ltd is a holding company which holds property within the N Trust. The N Trust owns 100% of the shares in Q Ltd.
10. It is necessary to say a little more about R House, and the proceeds of the sale of R House, which form the basis of the present appeal. R House is a UK-based property. It was not part of the original M Trust settlement, but it was purchased in 2009 by J Ltd, at least partly funded by a loan from HSBC. At some point in 2017, the legal ownership of R House was transferred from J Ltd to Q Ltd – a sale the propriety of which A disputes, though he does not deny that the transfer of legal ownership took place. On 31 January 2023, R House was sold for £1,242,295. A says that the intended purpose of the sale was to discharge a debt owed by B and C, and by J Ltd and P Ltd, to HSBC, and which has led to HSBC bringing proceedings against them (“the HSBC proceedings”) and which has resulted in a judgment debt against them. (We return to the HSBC proceedings and the judgment debt below).
11. The HSBC loan was secured by charges against two properties owned by companies within the M Trust. These were Unit 1 – which is legally owned by J Ltd, and from which A’s business, S Ltd, operates, and a house (“the House”) legally held by P Ltd, which is A’s family home which he shared with his children.
12. The HSBC loan to J Ltd and P Ltd was not repaid in accordance with its terms, and HSBC brought proceedings to enforce repayment of loans against those two companies, and against B and C as guarantors of the loan. The HSBC proceedings resulted in a settlement and a judgment debt, but this has not yet been fully discharged and is now the subject of enforcement proceedings. Although the HSBC loan was secured against A’s home, the House, and his business premises at Unit 1, A is not a party to the HSBC proceedings. A is understandably anxious to ensure that Concept should apply the R House proceeds to settle the HSBC judgment

debt. His concern, which all parties agree is understandable in human terms, is that he stands to lose his home and his business premises to satisfy a judgment debt to which he is not a party.

13. The R House sale proceeds are not mentioned in the Main Proceedings, but they are connected with them in the following way. In the Main Proceedings, A challenges the propriety of the creation and dissolution of the M Trust, and the propriety of the transfer of the legal title of R House from J Ltd to Q Ltd. So, although in submissions before us the Respondents correctly pointed out that the fact of the transfer of the legal title to R House was not an issue in the Main Proceedings, an issue in the Main Proceedings is whether the appointors' decision to terminate the M Trust was a lawful one, and whether their decision to transfer the title from J Ltd to Q Ltd was lawfully effected. A does not seek to reverse that transaction in the Main Proceedings, but he does seek damages or an equitable remedy in relation to the ostensible transfer of the beneficial interest in R House from the beneficiaries of the M Trust to the beneficiaries of the N Trust.
14. Concept, as trustee of the L Trusts or their successor bare trusts, is caught in the middle of this family dispute. On 17 October 2019, it sought and obtained a freezing injunction in the Main Proceedings, which prohibits disposition of assets of either of the L Trusts without agreement of the parties to the Main Proceedings or further order, unless and until the underlying issues have been settled.
15. In due course, the injunction was varied by consent so as to allow R House to be put up for sale by auction. (The reason such a variation was required is because R House was within the legal ownership of Q Ltd, and so an asset of the N Trust, but the beneficial ownership is disputed and may lie within the M Trust).
16. It is part of A's case that the reason the parties agreed to put R House up for sale by auction was so as to apply the proceeds of sale to extinguishing the HSBC judgment debt. We were shown various correspondence which suggests that this may, at the time, have been the intention of the parties. However, the Appellant did not seek to rely upon any binding agreement that the R House sale should take place only on that basis.
17. Whilst it must be common ground that the N Trust or its successor is the legal owner of the R House sale proceeds, the question of which trust is the beneficial owner of the sale proceeds, and who are the beneficiaries of that trust, will fall to be determined in the Main Proceedings. Pending the resolution of those proceedings, the R House sale proceeds are held by Concept, and the freezing injunction prevents them from dispersing them without agreement or a court order.
18. Both parties agree that Q Ltd was the legal owner of R House at the time of its disposition. However, A says that as an asset of Q Ltd, the R House proceeds of sale fall within the assets of the bare trust which holds the assets of the M Trust; C says that the sale proceeds, legally owned by Q Ltd, are an asset of either the N Trust or the bare trust which replaced it. A says that it is unfair for the debts which are indisputably owed by C, B, J Ltd and P Ltd to be left unpaid with the effect that HSBC will enforce its securities against properties in the M Trust, and which are his home and his business premises.

19. The application against which this is an appeal was A's application of 26 September 2023 to ask the Royal Court to direct Concept to pay the R House sale proceeds to HSBC in order to meet the judgment debt owed to HSBC.
20. The reason C opposes this application is that she says that it is in effect an application for an order to direct a payment from the assets of one trust (the N Trust or its successor) to another (the M Trust or its successor), while the beneficial ownership of the assets of those trusts is still in dispute in the Main Proceedings. She says that A could not establish a legal basis for such a transfer without establishing that the revocation of the M Trust was ineffective, that he remains an appointor of the M Trust with power to revoke, that the transfer of real estate to B and C in 2017 was unlawful and should be rescinded, and that he should not be treated as a hostile beneficiary by virtue of bringing the Main Proceedings – all of which are in dispute in the Main Proceedings. She submits that to use the assets of one trust to shore up the assets of another is not legally permissible, certainly not in an application brought outside the Main Proceedings. In effect, she says that A was seeking by this application to obtain a remedy which he could not obtain in the Main Proceedings, and thereby to circumvent them.
21. In the application before the Royal Court, A had originally submitted that there was an agreement between the parties that the R House sale proceeds should be paid to HSBC, but that aspect of the application was abandoned before the Royal Court (judgment paragraph 26) and we agree with the Respondents that no basis has been put before us to revive it now. Advocate Robison on behalf of A did not seek to do so but put the correspondence which preceded the R House sale before us for context, and to make the submission that until recently, C had accepted that application of the R House sale proceeds to fulfilling the HSBC judgment debt was in the interests of all parties to the Main Proceedings. C's evidence was that she was concerned that the application of the R House debt to pay off debts secured against properties the beneficial ownership of which was in doubt might mean she had inadequate money to cover her day-to-day expenses (which include care costs for B) without selling her own home.
22. The human cost of these proceedings for all the natural persons involved in them is not in doubt. However, it is the role of this court to determine the issues of law before us.
23. The proceedings were heard with a degree of expedition, because HSBC is now taking active steps to enforce its judgment debt, and A contended that if the R House proceeds were not used to satisfy the debt, HSBC would enforce its security. This would mean the sale of his home and business, which would cause him lasting and unnecessary detriment, and (he said) diminution of the assets of both trusts. He says that there is a route through to satisfying the judgment debt, in a way which would best serve his interests, and the interests of both trusts (whoever is the ultimate beneficiary of them). He says that there is no possible downside to this to B, C or the N Trust, because applying the HSBC sale proceeds to meeting the judgment debt against them will serve their interests also. Accordingly, he submits that no reasonable trustee could fail to take such a step.
24. On the hearing of this application, Concept submitted that it could not properly exercise its discretion to apply the R House proceeds in this way, a submission supported by C. Concept also submitted that it could not properly distribute the R House sale proceeds until it had established what tax liabilities, if any, might be owed to the UK tax authorities in respect of a

number of properties held in both trusts. It was not clear to Concept that either trust was solvent. Finally, though Concept did not put this at the centre of its submissions, it was owed considerable sums by way of outstanding fees and costs.

25. On 26 February 2024, the Lieutenant Bailiff heard this application. She gave judgment *ex tempore* on that date and reduced her reasons to writing in a judgment dated 26 April 2024, handed down on 5 June 2024. The Lieutenant Bailiff refused A the relief which he sought, but granted him permission to appeal, and it is this appeal which gives rise to the present judgment.
26. The Lieutenant Bailiff was asked to exercise the Court’s discretion under section 69 of Trusts (Guernsey) Law 2007 (“the Trusts Law”) which gives the Royal Court power to supervise the exercise of a trustee’s functions in relation to trust property. A section 69 order can be made on the application of a beneficiary of a trust or any other person (with the leave of the Royal Court). It was common ground that the Lieutenant Bailiff had the power to make such an order, and that she should only exercise it on a supervisory basis if she considered the trustee’s decision was one which no reasonable trustee could have taken.
27. However, by this appeal A submits that the Lieutenant Bailiff erred in law when she held that Concept’s decision to refuse to release the R House sale proceeds to meet the HSBC judgment debt was one which fell within the range of decisions open to a reasonable trustee.
28. A’s case, set out in his Grounds of Appeal and elaborated in his written submissions, is that the Lieutenant Bailiff erred:
 - a. By failing to take ‘proper account’ of relevant matters set out in paragraph 24 of the Notice of Appeal and in failing to find that Concept’s decision was a breach of fiduciary duty;
 - b. By accepting the submission that the L Trusts might have UK tax liabilities in the absence of materially probative evidence to that effect, or evidence of Concept having taken UK tax advice as to the existence or amount of such liabilities;
 - c. In finding that the Concept decision to withhold the R House sale proceeds was within the range of reasonable decisions which it could have taken; a decision described in paragraph 27 of the Notice of Appeal as ‘perverse’.
29. We develop the legal principles a little later in this judgment, but there does not appear to be a dispute between the parties as to the correct legal approach. The parties are agreed that a court will not restrain or compel trustees in exercise of a discretionary power provided it is (as it is put in *Lewin on Trusts Vol II 20th Ed* at paragraphs 30-099 and following) “... informed, bona fide and uninfluenced by improper motives”.
30. In short, the Appellant’s grounds of appeal rely on a double perversity test. He must establish that the Lieutenant Bailiff could not, without perversity, have concluded that Concept’s decision not to pay the HSBC debt from the R House sale proceeds was one which no reasonable trustee could have reached, taking into account all considerations which they were obliged rationally to regard as relevant ones, and not taking into account any considerations which they were obliged rationally to regard as irrelevant.

31. It follows that the issue for this court on this appeal is whether the Appellant has persuaded us that Concept did not take into account the necessarily irrelevant or fail to take into account the necessarily relevant, and that the Lieutenant Bailiff erred in law in failing to identify such considerations.
32. We also add that we were informed at the Court of Appeal hearing on 11 July 2024 of a number of factual developments since the Royal Court hearing. However, while Concept accepted that if circumstances were to change substantially from those as they appeared on the date of the Royal Court hearing, a fresh application could be made to the court as to the proper exercise of their discretion as trustee in those circumstances, the parties accepted that the task for us was to examine whether the Lieutenant Bailiff had erred in law in her approach to the facts as they were presented to her on 26 February 2024.
33. The Appellant accepted that the Lieutenant Bailiff had correctly summarised the material facts in her judgment but submitted that she had misapplied the law to the facts before her.

The applicable legal principles

34. The first issue is Concept's duty as a trustee.
35. Section 23 of the Trusts Law provides that, subject to the terms of any particular trust and other provisions of the Trust Law, a trustee shall:
 - (a) Ensure that the trust property is held by or vested in him or otherwise under his control; and
 - (b) Preserve and enhance, so far as is reasonable, the value of the trust property.
36. Section 27 of the Trusts Law requires a trustee to keep trust property separate from both his own property and "separately identifiable from any other property of which he is trustee". That means that Concept is under a statutory duty to keep separate the assets of the M Trust and the N Trust (or the bare trusts which succeed them), notwithstanding that they are both L Trusts and that they were settled on the same day.
37. The second relevant legal issue is the role of the Royal Court in determining an application. This power is set out in section 26 of the Trusts Law, which permits the court to direct a trustee in the exercise of their discretion. As noted above, this is a supervisory jurisdiction. In short, the Royal Court can only intervene if the trustee has acted in a way which no reasonable trustee could have acted taking into account all relevant considerations. It is not a question of whether the Royal Court considers that there were other reasonable routes, or even better routes, open to the trustee. The principles as to the application of this discretion were correctly set out by the Royal Court, and agreed by the parties. We do not repeat them here.
38. The third is the role of the Court of Appeal on hearing an appeal. An appeal in this context is not a complete re-hearing, and certainly not a hearing on any factual developments which have taken place since the first instance hearing. It is only if the Royal Court has erred in law in its approach that this Court will overturn its decision. So, we have to be persuaded of more than the fact that the Lieutenant Bailiff could have determined the case differently, or placed different weight on different considerations. We have to be persuaded that her own decision was in error,

either in taking into account irrelevant considerations or failing to take into account relevant ones, or because it was perverse.

39. Finally, there is the question of whether it was procedurally proper for this application to have been brought outside the Main Proceedings. Although, as Concept pointed out to us, the ownership of R House is not mentioned in the Main Proceedings, the legality of the operation of the trusts is in dispute, and so we are prepared to accept that the underlying questions of fact as to the beneficial ownership of the R House sale proceeds is ultimately likely to be resolved in those proceedings.

Discussion

Duties of Concept as a 'trustee'

40. At the heart of A's case is a submission that Concept is acting irrationally as a trustee of "the L Trusts", because it is acting in a way which will have the effect of diminishing the assets of the trusts taken together, to the detriment of all the beneficiaries, whoever they may be. On the appeal before us, he submits that the Royal Court acted perversely in failing to recognise and correct this.
41. In our judgment, however, the Lieutenant Bailiff was correct to recognise that declining to release the R House sale proceeds to meet the HSBC judgment debt was a course rationally open to Concept – indeed, it may even have been the only lawful course open to them, when there were such serious outstanding disputes as to which property fell within which of the two L Trusts (or their successors), and as to who were the beneficiaries of each of them.
42. The fundamental flaw in A's submission is to fail to recognise that Concept is legally obliged, by virtue of section 27 of the Trusts Law, to keep the property of the two trusts separate. The freezing injunction made in the Main Proceedings appears to be in service of that obligation, while there are such substantial disputes outstanding as to the current status of each of the two trusts, who are their beneficiaries, and which properties are assets of which trust.
43. As we read it, section 27 is in absolute terms, and so Concept can have no lawful regard to the matters which have been brought into contention by A and indeed by C, as to what the consequences may be for their homes and wealth if the application is or is not allowed.
44. At the appeal hearing, Advocate Robison submitted that this point was not relevant, because of the principle of subrogation. He said that Concept's overarching duty was to preserve the value of the assets in the trusts for which it was trustee, and that the freezing injunction was made in service of that obligation. He said that Concept was acting irrationally in failing to apply the proceeds of the R House sale to extinguish the HSBC debt (and lifting the threat of enforcement of the charges over Unit 1 and the House) because this was self-evidently the best course of action in order to protect the overall value of both trusts, whoever the beneficial owners were. He said that if the effect of this was to use the proceeds of an asset legally owned by Q Ltd and ultimately held to be in the beneficial ownership of the beneficiaries of the N Trust or its successor (ie B and C); or of the bare trust which succeeded the M Trust (ie B and C), it was obviously in their interests to clear this debt. But if, as he contended, the M Trust and/or its dissolution should be undone, and he, as the main beneficial owner of the assets ostensibly held

within it was A, this made no difference to Q Ltd's interests, because the charges which HSBC currently holds over Unit 1 and the House would be subrogated, by operation of law, to Q Ltd.

45. Advocate Robison said that this proposition was based on the judgment of Lord Hoffmann in *Banque Financiere de la Cite SA v Parc (Battersea) Ltd* [1999] 1 AC 221 and was so obvious that he had not put this case in the bundles. He said it was so obvious that it was for Concept to advance its case against the proposition if it wished to oppose it. However, Advocate Dawes on behalf of Concept said that it was far from obvious that subrogation or some other remedy could fully protect the interests of the beneficiaries of the N Trust or its successor, and that we had been shown no Guernsey authority which applied the principles of subrogation in this jurisdiction.
46. We remind ourselves that this was not a blessing application: nor had the trustee surrendered its jurisdiction to the Royal Court and asked it to exercise its discretion. The question for the Royal Court was whether the conclusion which Concept had reached was one which no reasonable trustee could have reached. We consider that it was rational for the trustee to be very chary of any disposal of trust assets the beneficial ownership of which was in dispute in the Main Proceedings.
47. In those circumstances, the Lieutenant Bailiff was right to hold that she did not have enough information before her to determine this application in favour of making an order, and that she could not acquire such information without determination of the substantive issues in the Main Proceedings.
48. That is enough to dispose of the application, but in deference to the submissions which were advanced before us by advocates for the parties, we make brief observations on the other submissions made.

Whether the Lieutenant Bailiff erred in holding that Concept had not acted irrationally or perversely in its exercise of discretion; the role of the Court of Appeal in determining this issue

49. The first limb of this appeal was that the Lieutenant Bailiff had failed to take "proper account" of eight factors which were said to be material. In the hearing before us, only five of those were pursued: those set out in paragraph 24 f-h were said to go only to the context in which the discretion was exercised.
50. We observe that the only issue is whether the Lieutenant Bailiff failed to take into account a factor which she could not have properly regarded as immaterial: if it was a consideration which either she or Concept could have taken into account (but equally could have decided to be irrelevant) then any failure to do so was not a mistake of law. We also observe, in relation to the phrase "proper account", that the weight to which both the trustee and the Court ascribe to any particular material consideration is a matter for them.
51. We do not think it can properly be said that the Lieutenant Bailiff failed to take into account the duty on the trustee to preserve the value of the assets of both trusts of which it was a trustee to the best of its ability, having regard always to the freezing order.

52. We also think that the considerations which are set out in paragraphs 24(b)-(h) of the Notice of Appeal were all ones which were drawn to the Lieutenant Bailiff's attention, and which were recorded in her account of the submissions made on behalf of A. It is hard to say, therefore, that she failed to take them into account.
53. She concluded, and we judge rationally concluded, that she was not convinced that the decision that it was not appropriate to pay the net proceeds of the R House sale, presently held in the N Trust by way of Q Ltd, over to HSBC in satisfaction of a liability of the M Trust was one which was outside the discretion of a reasonable trustee. She declined to find that the only reasonable course a trustee could have taken was to use the assets of the N Trust to make a payment to HSBC (ie to benefit the M Trust and its beneficiaries) even though the background to and true beneficial interest in that trust were in dispute. Accordingly, she concluded – and again we consider rationally concluded – that this was not an application she should be seeking to decide on its merits, having regard to the fact that she was exercising a supervisory jurisdiction. Having regard to that test, we do not think that the Lieutenant Bailiff erred in failing to seek to balance, for herself, the relative disadvantages which might have been suffered (or not suffered) by the two different trusts or their beneficiaries.
54. In relation to Ground 2 of the Appeal, A submits that the Lieutenant Bailiff wrongly took into account Concept's evidence that both the trusts might have as yet unascertained UK tax liabilities. A submitted that Concept had failed to produce any evidence of any such liabilities which in any event he said would have had no priority over the HSBC debt. Concept submitted that the reason it did not have information about the potential tax liabilities of the various holding companies within the L Trusts was that C, in her capacity as a director of these companies, and A in his capacity as a director of J Ltd had not taken timely steps to provide it with information as to the tax liabilities of the companies. So it could not decide whether the N Trust even had sufficient money itself to fulfil any obligations which it might have (but was not proved to have) to any other person. At the hearing before us, Advocate Robison said that any UK tax liabilities to HMRC must by now be time-barred (though we do not think this is something of which we could have been satisfied, in relation to a 2023 sale of property, without sight of Q Ltd accounts).
55. If, contrary to our judgment, Concept had had a discretion to exercise as to whether to pay N Trust assets over to the M Trust, so as to avoid the need for a sale of property held in the M Trust at a potential undervalue and diminution of the value of "the assets held by Concept" overall, we would not think that the extent of Q Ltd's liabilities to HMRC and its overall solvency were necessarily irrelevant considerations to which neither they nor the Lieutenant Bailiff should have taken into account. Indeed, the Lieutenant Bailiff said that if this had been the only issue, she might have adjourned the proceedings to enable this further information to be obtained – proof in itself that she did address the relevance of this issue in an open-minded way.
56. However, the overarching problem with this aspect of the grounds of appeal was to assume that Concept was under a duty – or even had a power - to look at what was in the best interests of (or likely to best preserve) "the value of the assets held by Concept" as one singular entity. Concept held some assets for the M Trust, or the beneficiaries of its successor bare trust, and some assets for the N Trust, or the beneficiaries of its successor bare trust. These may or may not have been the same persons. Concept was under a statutory duty to keep those separate by virtue of section 27 of the Trusts Law. Which assets were held in which trust, and for whose benefit, was a matter of dispute. In those circumstances, it could not lawfully have disposed of assets which might arguably have been to the detriment of the assets one trust to the benefit of

the assets of another without having an authoritative view as to which assets were held by which trust – whether by Royal Court determination or settlement.

57. In our view, it was not irrational for the trustees not to decide to transfer property from the N Trust to meet a liability of the M Trust. Indeed, it may well have been unlawful for them to do so until the Main Proceedings were determined or settled.
58. For these reasons, the Lieutenant Bailiff’s conclusion that the course chosen by Concept was not one which no reasonable trustee could reach was not perverse.

Whether this application should have been brought within the main proceedings

59. We were invited by the Respondents to find that it was an abuse of process for this application to have been brought on a freestanding basis rather than within the Main Proceedings. Advocate Robison submitted for A that he needed to bring a separate application because some of the Respondents to this application (notably his brother, his brother’s son and his own children) were not parties to the Main Proceedings. Advocate Dawes submitted that they could have been joined to those proceedings if necessary.
60. We do not need to determine this point, but we do find that on the facts, bringing a separate application was an ineffectual course to take, because the Royal Court could not, in exercise of its supervisory jurisdiction, reach the determination the Appellant asked it to reach without resolution of the underlying factual disputes which form the substance of the Main Proceedings and which fall to be determined in them.
61. For these reasons, we dismiss the appeal. Submissions on costs are to be lodged within 14 days of this judgment being handed down, to be assessed if not agreed.