

**IN THE ROYAL COURT OF GUERNSEY
(ORDINARY DIVISION)
Civil No. 2608**

IN THE MATTER OF THE TRUSTS (GUERNSEY) LAW, 2007

AND

IN THE MATTER OF THE B TRUST

Before: Fionnuala A Connolly, Judge of the Royal Court

Judgment handed down: 14 January 2025

Counsel for the Applicant: Advocate A Horsbrugh-Porter

Cases, texts and legislation referred to:

The Trusts (Guernsey) Law, 2007 (as amended)

Royal Court Civil Rules, 2007

Practice Direction No.2 of 2000

Civil Procedure Rules 1998 (England and Wales)

IFS Investments Limited v Manor Park (Guernsey) Limited [2003-04] GLR 77

Jersey Evening Post v Al Thani 2002 JLR 542

T Limited (in the matter of the A Limited Funded Unapproved Retirement Benefits Scheme and the Employee Benefit Trust), Guernsey judgment [2017 GLR Note 7 and Unreported 21/2017]

In the matter of the L Trusts [2024] GCA61

Salem and Salem v Sequent (CI) Limited, Guernsey Global Trust Limited, Sequent (Guernsey) Limited and Sequent Services Limited [2024] GCA 064

Alpha Development Limited v Barclays Wealth Trustees (Guernsey) Limited Unreported [11/2015]

Robin Fuller and Adam Ian Hayden Tattersall and Patrick Barry Moroney v Guernsey Financial Services Commission [2024] GCA 083

In the matter of the K Trust [2020] GCA 080

Oak Trust (Guernsey) Limited v Stewart and others [2024] GRC 043

J U D G M E N T

Introduction

1. An application for a privacy order has been made in this case. For reasons set out later in the judgment, the privacy application has been granted. Accordingly, the following references shall apply: the Trust shall be referred to as “the B Trust” and the Settlor and the Beneficiary shall be referred to as “S” and “B” respectively.

2. The Applicant is New Street Trust Limited (“NSTL”), the trustee of the B Trust. By these applications, the Applicant seeks a privacy order (the privacy application) and declaratory relief relating to the Trust instrument, pursuant to Section 69 of the Trusts (Guernsey) Law 2007 (as amended) (the substantive application). The applications are supported by the sole living beneficiary of the B Trust. In short compass, the substantive application relates to a discrete issue on the construction of the Trust instrument.
3. Advocate Horsbrugh-Porter appeared on behalf of the Applicant. The applications are supported by an affidavit of Ms Nicola McGall, a Director of NSTL, sworn on 5 September 2024. There are two skeleton arguments on behalf of the Applicant dated 16 October 2024 and 27 November 2024, respectively. I am grateful to Advocate Horsbrugh-Porter for his submissions. I have considered all of the evidence and the legal arguments.

Procedural Background

4. The applications came before the Court *in camera* on 13 September 2024.
5. The Applicant helpfully furnished to the Court the following correspondence received by his office:
 - (a) by letter dated 12 September 2024, Ms Dyke M. Arboneaux, a **Class B Protector**, confirmed that she does not intend to apply to be joined to the proceedings. She stated:

“In my capacity as a Class B Protector of the Trust, I fully support the application. As the Trustee is aware, my view is that the plain meaning of the relevant provisions of the Trust Instrument is as described in the paragraph numbered 6 of the First Affidavit of Ms Nicola McGall.”
 - (b) by letter dated 12 September 2024, Charles Russell Speechlys LLP Solicitors, of 5 Fleet Place, London EC4M 7RD, advised that their client, St Andrew Trustees Limited (SATL), in its capacity as a **Class B Protector** of the B Trust, does not intend to apply to be joined to the proceedings. The letter advised:

“As the Trustee has been advised previously, SATL’s position is that the correct interpretation of the relevant provisions of the Trust instrument is as set out at paragraph 6 of the First Affidavit of Nicola McGall.”
 - (c) by letter dated 17 September 2024, Collas Crill LLP advised that their client, **B**, does not wish to be joined as a party to the application and that she fully supports the relief sought therein.
 - (d) by email dated 19 September 2024, Mourant Advocates advised that their client, the **A Protector**, does not wish to be joined to the application.
6. On 25 October 2024, the Court acceded to an application on behalf of the Applicant that the applications be considered on the papers.

The Applications

7. The applications before the Court are these:
 - (a) pursuant to Rule 50 of the Royal Court Civil Rules, 2007 (RCCR) and/or the inherent jurisdiction of the Court the Applicant seeks declarations and/or orders that (“the privacy application”):

- (i) all hearings in relation to the privacy application and the substantive application are heard in private; that the Court file is sealed; and
 - (ii) that any written judgment or Act of Court in these proceedings is redacted of all information that could identify the Beneficiary or the Settlor of the Trust.
- (b) pursuant to Section 69 of the Trusts (Guernsey) Law, 2007, as amended and/or the inherent jurisdiction of the Court, the Applicant seeks the following declarations (“the substantive application”):
- (i) that the terms of the Trust instrument (whether under clause 48.1 of the Trust instrument or otherwise) do not impose a requirement on the Applicant to obtain the consent of the Board of Protectors before the Applicant can terminate the services of an investment manager to whom discretionary investment management authority has been delegated by the Applicant and that the termination of such delegation does not require, as a condition precedent, the appointment of a new investment manager;
 - (ii) that the terms of the Trust Instrument, do not impose any requirement for the Applicant to obtain the consent of the Board of Protectors prior to the Applicant terminating the appointment of a custodian which has been engaged by the Applicant;
 - (iii) that the terms of the Trust Instrument (whether under clause 48.1 or otherwise) do not impose a requirement on the GP to obtain the consent of the Board of Protectors before the GP can terminate the services of an investment manager to whom discretionary investment management authority has been delegated by the GP and that the termination of such delegation does not require, as a condition precedent, the appointment of a new investment manager;
 - (iv) that the terms of the Trust Instrument, do not impose any requirement for the GP to obtain the consent of the Board of Protectors prior to the GP terminating the appointment of a custodian which has been engaged by the GP.

Factual Background

8. The salient facts and events may be summarised as follows.
9. The B Trust was created by means of a settlement instrument dated 4 February 2015 (as subsequently amended by a Deed of Variation on 15 December 2021) between S, the Trust Corporation of the Channel Islands Limited as the original trustee and Mr François Voss, Mr Peter Krummenacher and Mr Agostino Ferrazzini as protectors.
10. The B Trust is, and at all times has been, governed by the laws of Guernsey.
11. The B Trust is private in nature and was established as a result of familial disharmony. The valuations of the assets held within the Trust fluctuate, however the current estimate is that approximately at least GBP 250 million is ultimately held within the Trust.
12. S was the life tenant of the B Trust until her death on 13 December 2021 (Clause 6.1 of the Trust instrument).
13. B is the granddaughter of S. She is now the life tenant of the B Trust (Clause 7 of the Trust instrument) and as such is entitled to all income realised by the B Trust. B is the only living beneficiary. The class of Discretionary Beneficiaries are B and children of B and remoter issue of B (Clause 1.8 of the Trust instrument). B does not presently have children or remoter issue.

14. B is a United States citizen but is resident and deemed domiciled in the United Kingdom for United Kingdom tax purposes.
15. The B Trust has two classes of Protectors, namely the Class A Protectors and the Class B Protectors. The Class A Protectors were appointed by S under the terms of the Trust instrument. The Class B Protectors were appointed by B. Together, they are required to act as a single board of Protectors.
16. The current Class A Protectors are Mr Krummenacher and Mr Ferrazzini. The current Class B Protectors are Ms Dyke Arboneaux and St Andrews Trustees Limited.
17. The Trustee holds on upon and subject to the trusts of the Trust:
 - (i) a 100% shareholding in B Settlement SICAV-SIF (“the SICAV”), a Luxembourg law SICAV; and
 - (ii) a 100% shareholding in B Settlement GP Limited, a Guernsey law limited company (“the GP”).
18. Further, the Trustee is the sole limited partner in B Settlement L.P., a Guernsey law limited partnership (“the Partnership”) of which the GP is the general partner. The investments in the trust fund are held through both the Partnership and the SICAV.
19. In 2017, Copernicus Wealth Management and Services SA (“Copernicus”) was appointed to solely manage funds held by the SICAV and the Partnership and to co-manage other funds held by those entities alongside Dreyfus Sons & Co Ltd, Banquiers (“Dreyfus”). Further, Dreyfus provides banking services to the Partnership.
20. Thus, the present investment managers appointed by the SICAV and the Partnership to manage the assets held by SICAV and the Partnership are Copernicus and Dreyfus.
21. Following the death of S, the trustee took extensive tax advice and concluded that the SICAV was no longer required and that all of the trust fund could be held through the Partnership going forward. The Trustee is now trying to reorganise the structure of the underlying investments. The proposal which the trustee is presently implementing (**the Proposal**) is as follows:
 - (i) the Trustee intends to transfer the units in the SICAV to the Partnership;
 - (ii) a request would then be made by the Trustee to the GP to liquidate the SICAV, so that the underlying investments currently held by the SICAV would be transferred in specie to the Partnership and become held directly by the Partnership;
 - (iii) the Partnership would then appoint investment managers to manage all of the underlying investments which would belong to it beneficially.
22. As part of the Proposal, Copernicus and Dreyfus as the present investment managers will have their services terminated and new investment managers will be appointed by the Partnership. Dreyfus will also have its role as custodian terminated and a new custodian will be appointed by the Partnership.
23. By letter dated 23 October 2023, Ogier on behalf of The Partnership wrote to both Copernicus and Dreyfus to terminate their services with immediate effect. To date, Copernicus and Dreyfus have refused to accept the termination of their services by the GP. It is because of the refusal by both Copernicus and Dreyfus that the substantive application has been brought before the Court.

24. In her sworn affidavit, Ms McGall refers to and exhibits written advice on the Trustee's proposal to reorganise the structure of the underlying investments provided to the Applicant by Mr Richard Wilson KC of the Bar of England and Wales.
25. In written advice dated 28 July 2023, Mr Wilson KC identifies the following issues for his consideration: whether the Trustee can implement the Proposal and also remove the existing investment managers without having to obtain the consent of the Protectors; and whether there is any restriction on the ability of the GP's ability to change the present investment managers at the instigation of the Trustee. In his opinion, Mr Wilson KC advised that the terms of the Trust Instrument do not require the Trustee to obtain Protector Consent in order to carry out the Proposal.
26. Mr Wilson KC addresses the specific question that is relevant for the purpose of the present application:

"20. I am also asked whether the Trustee can remove the present investment managers (through the SICAV) without Protector Consent. Again, the answer is that it can, for two reasons.

21. Firstly, as I understand the position, the investment manager is managing investments owned by the SICAV and is therefore appointed by that entity. Accordingly, the requirement for Protector consent simply does not apply as the termination of the agreement with the investment manager would not involve the exercise by the Trustee of its powers under the Trust.

22. Secondly, even if the Trustee were exercising a power under the Trust to terminate an agreement with the investment manager, nothing in the Trust provides that they are required to obtain consent to do so: clause 48.1 applies in respect of an appointment to an investment manager, not the termination of an agreement an arrangement that has already been entered into."

27. The Applicant shared Mr Wilson KC's advice with Mourant Ozanne and Babbé by letters dated 11 November 2023 and 2 February 2024 respectively.
28. Mourant Ozanne shared with the Applicant the written advice they received from Mr Nicholas Le Poidevin KC of the Bar of England and Wales.
29. Mr Le Poidevin KC disagreed with Mr Wilson KC's advice. He referred to the definition of "Trust Fund" as defined at paragraph 1.19 of the Trust instrument. He opined as follows:

"My view is the term "Trust Fund" in clause 48.1 of the trust instrument extends not only to investments held by the Trustee direct but also to investments held by the Partnership or the SICAV. Hence Protector Consent is required for the appointment of an investment manager, whether of the assets already held by the Partnership or those transferred to it from the SICAV."

Mr Le Poidevin KC disagreed with Mr Wilson's opinion that the appointment of a new investment manager by the GP falls outside the requirement of the Protector Consent imposed by clause 48 on the basis that Mr Wilson's conclusion does not take account of the extended definition of the Trust Fund. Mr Le Poidevin KC does not opine on the termination of the services nor in respect of the appointment and termination of custody services.

30. In her sworn affidavit, Ms McGall avers that whereas the advice she has received from Leading Counsel and from Ogier is that the terms of the Trust Instrument are clear that there is no

requirement for the consent of the Board of Protectors to the termination of the services of investment managers and/or custodians, this position has not been accepted by Copernicus and Dreyfus and as such the Applicant has been left with no choice but to bring these proceedings.

31. From October 2023, the Applicant entered into correspondence with Copernicus and Dreyfus as the current investment managers and with the Class A Protectors. The relevant correspondence is referred to and exhibited to Ms McGall's affidavit.
32. By letter dated 9 February 2024 Babbé, on behalf of Copernicus and Dreyfus, wrote to Ogier and stated that "termination is an incidence of appointment" and that applying Ogier's interpretation,

"if consent were required for appointment but were not required for termination, then the assets of the Trust could be left unmanaged (with all the attendant risks) if, for example, a unilateral decision were made by the Trustee (or its agent/s) if, for example a unilateral decision were made by the Trustee (or its agent/s) to terminate an existing investment manager, but the Board of Protectors were unable to unanimously agree on the identity of a successor. Such a scenario cannot sensibly be said to have been the intention of the Settlor; and nor (we expect) would the Trustee (or its insurers) agree to such an arrangement noting that the Trustee would be left massively exposed as a result (i.e. because the reasonableness of its decision to terminate would entirely turn on whether the Board of Protectors thereafter promptly agreed on an appropriate successor)."

The Privacy Application

Legal Principles on Privacy

33. Practice Direction No. 2 of 2000 provides that the general principle will be that all sittings of the Royal Court will be open to members of the public save for, *inter alia*, any case in which the Counsel or a party to the proceedings can satisfy the Court that proceedings should be held *in camera*.
34. Part 39 of the Civil Procedure Rules 1998 in England and Wales, which is persuasive in Guernsey, is entitled "Miscellaneous Provisions relating to Hearings". Rule 39.2(1) provides that the "general rule is that a hearing is to be in public". Rule 39.2(3) provides for the circumstances in which a hearing, or any part of it, may be in private. This includes where the hearing 'involves confidential information (including information relating to financial matters) and publicity would damage that confidentiality' (Rule 39.2(3)(c)).
35. In *IFS Investments Limited v Manor Park (Guernsey) Limited* [2003-04] GLR 77, Lieutenant Bailiff Day observed that the "*principle of open justice has not yet found statutory expression*". The relevant extracts from the judgment on the law on privacy are these:
 - (a) Lieutenant Bailiff Day reinforced the leading English case of *Scott (or se. Morgan) v Scott* [1913] AC 417 at 437-483: *'While the broad principle is that the Courts of this country must, as between the parties, administer justice in public, this principle is subject to apparent exceptions...It may often be necessary, in order to ascertain its primary object, that the Court should exclude the public...the burden lies on those seeking to displace its application in the particular case to make out that the ordinary rule must as of necessity be superseded by this paramount consideration'* (paragraph 17).
 - (b) The burden is on the Applicant *'to the normal civil standard that it would be right in the circumstances of [the] case to grant [the] application'* (paragraph 30)...*'the true test must*

be whether justice can only be served in this case if the...application is heard in private' (paragraph 31).

- (c) Lieutenant Bailiff Day explicitly recognised at paragraph 16 of his judgment that the Royal Court does conduct certain trust hearings in private: *'there are a number of matters in which the Royal Court, in the exercise of its inherent jurisdiction, conducts hearings in private: for example, cases concerning children or incapables, matrimonial or trust matters, and ex parte injunction application* (emphasis added). By way of example, *Public Trustee v Cooper* Category 2 applications are commonly heard in private.
- (d) The Judge provided a precis of the nine matters which guide the general approach upheld in the case of *Kaim Todner* [1999] QB 966 at 975-978 *'there is an immense variety of situations in which it is appropriate to restrict the general rule. These situations very much depend on their individual circumstances'* (paragraph 21(3)).
- (e) The Judge observed that *'Legal principle required that justice must be done in public, but that where justice itself would be thus frustrated, privacy should prevail, but only to the extent necessary'* (paragraph 24).

36. In *Jersey Evening Post v Al Thani*, 2002 JLR 542, the Royal Court of Jersey considered the issues around when to sit in public or in private in trust matters and observed how an offshore jurisdiction may require a greater need for privacy. The Court held that:

"the courts in this jurisdiction have accorded a greater importance to the need to respect confidentiality of private trusts than has been the case elsewhere... When hostile litigation is being conducted it must naturally be conducted in public in the ordinary course of events, but when the court is sitting administratively or is exercising a quasi-parental jurisdiction to protect the beneficiaries of a trust, a court should generally sit in private".

37. This principle, that in relation to administrative trust applications the court should generally sit in private, has been accepted in Guernsey in *T Limited (in the matter of the A Limited Funded Unapproved Retirement Benefits Scheme and the Employee Benefit Trust)*, Guernsey judgment [2017 GLR Note 7 and Unreported 21/2017]. At paragraph 5 of the judgment, Deputy Bailiff McMahan (as he then was) recognised that an exception to the principle of open justice is *'where the proceedings invoke the supervisory jurisdiction of the Court in trust cases'*.

38. The Court of Appeal of Guernsey considered privacy orders in three recent cases. In *In the matter of the L Trusts* [2024] GCA61, the Court held at paragraphs 2 and 3:

"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].

It follows that a hearing should not be held in private unless there has been an application to do so, supported by sufficient evidence....."

39. In *Salem and Salem v Sequent (CI) Limited, Guernsey Global Trust Limited, Sequent (Guernsey) Limited and Sequent Services Limited* [2024] GCA 064, the Court of Appeal of Guernsey confirmed that the test to be applied by the Royal Court as to whether to derogate from the general presumption that all aspects of a case are to be held in public is one of "strict necessity". The Court endorsed the following extract from *Alpha Development Limited v*

Barclays Wealth Trustees (Guernsey) Limited Unreported [11/2015] in which Deputy Bailiff McMahon (as he then was) said this:

“22. ... (a) *There is a general presumption that all aspects of a case are to be held in public.*

(b) In exceptional circumstances, that presumption can be rebutted where it can be demonstrated that justice would be frustrated otherwise.

(c) The test to apply is one of strict necessity.

(d) The burden of establishing that the test applies lies on the applicant.

(e) The Court expects the applicant to adduce clear and cogent evidence in support of such an application.

(f) If that test applies, derogating from the general presumption follows as a matter of principle. Equally, if the test does not apply, the Application must be refused. There is no question of exercising a discretion.

Any limitations on the ordinary rule of open justice granted by the Court will, therefore, be the minimum required to preserve the confidentiality of the information involved so as to secure the proper administration of justice.”

40. In Robin Fuller and Adam Ian Hayden Tattersall and Patrick Barry Moroney v Guernsey Financial Services Commission [2024] GCA 083 delivered on 4th December 2024, the Court of Appeal of Guernsey said this:

“14. *Accordingly, we start from the assumption that all matters before the courts of Guernsey should normally take place in open court, see the much cited judgment of Lieutenant Bailiff Day in IFS Investments Ltd v Manor Park (Guernsey) Ltd [2003-04] GLR 77, in which it was emphasised (at para 21) that “the principle of open justice ... is and always has been a fundamental principle of our administration of justice”. That statement is as applicable in 2024 as it was 20 years ago.*

15. *The parties have found common ground in their citation of Alpha Development Limited v Barclays Wealth Trustees (Guernsey) Limited, unreported Royal Court 4 March 2015, at para 22:*

“(a) *There is a general presumption that all aspects of a case are to be held in public;*

(b) In exceptional circumstances, that presumption can be rebutted where it can be demonstrated that justice would be frustrated otherwise;

(c) The test to apply is one of strict necessity;

(d) The burden of establishing that the test applies lies on the applicant;

(e) The Court expects the applicant to adduce clear and cogent evidence in support of such an application;

(f) If that test applies, derogating from the general presumption follows as a matter of principle. Equally, if the test does not apply, the application must be refused. There is no question of exercising a discretion;

(g) Any limitations on the ordinary rule of open justice granted by the Court will, therefore, be the minimum required to preserve the confidentiality of the information involved so as to secure the proper administration of justice."

16. Thus, the agreed test for determining whether this appeal hearing should take place in private is one of strict necessity in the interests of justice, see In the Matter of the L Trusts [2020] GCA 061. There is no question of balance. This is a binary question. Either a hearing in private is necessary, or it is not.

17. Furthermore, even if there were any question of balance, the focus would not be on the supposed absence of prejudice to the Respondent. It is a central principle of Guernsey law that the courts should sit in public so that the proceedings can be observed by members of the public and reported on by the media. Transparency improves the quality of justice, enhances public understanding of the process, and bolsters public confidence in the justice system in the Bailiwick. The counterweight to any privacy plea is the wider interest of society in open justice, not the interests of the financial services sector.

18. The importance of the principle of open justice was explained by Lord Dyson JSC in Al Rawi v Security Service [2012] 1 AC 531 at p 572, para 11: "The open justice principle is not a mere procedural rule. It is a fundamental common law principle. In Scott v Scott [1913] AC 417, Lord Shaw of Dunfermline (p 476) criticised the decision of the lower court to hold a hearing in camera as constituting 'a violation of that publicity in the administration of justice which is one of the surest guarantees of our liberties, and an attack upon the very foundations of public and private security'. Viscount Haldane LC (p 438) said that any judge faced with a demand to depart from the central rule must treat the question 'as one of principle, and as turning, not on convenience, but on necessity'."

The Applicant's Submissions on the Privacy Application

41. In the Supplemental Skeleton Argument, the Applicant helpfully brought further definition to the privacy application and clarified that as the Court has agreed to decide on the application on the papers and as hearings are not required, the privacy application comes down to whether it is strictly necessary for the Court file to be sealed and whether any written judgment or Act of Court in these proceedings should be redacted of all information that could identify the beneficiary or the settlor of the Trust.
42. In support of the privacy application, the Applicant contends as follows:
 - (i) the exception to the general rule should apply in this case for the reasons set out in the affidavit of Ms Nicola McGall. At paragraph 95 of her affidavit, Ms McGall avers that the Applicant is concerned about the potential release of private and confidential information pertaining to the B Trust, and the Trust Fund when the substantive application is brought before the Royal Court which could include private and confidential information concerning the financial circumstances of the B Trust and B.
 - (ii) the substantive application concerns the administration of a private family trust and the Court is not acting as a public administrator of justice. By the substantive application, the Applicant seeks declarations as to the powers of the Trustee and the GP under the Trust Instrument concerning the appointment and termination of various roles and services pertaining to the Trust.
 - (iii) the protection of confidential information in relation to B and her wider family wealth, including B's financial circumstances and personal needs should prevail over the public interest.

- (iv) the facts of the case as detailed in paragraphs 23 to 35 of the Affidavit reflect that this is not ordinary hostile litigation, but a case related to the construction of the Trust Instrument and so there is no public benefit for this matter to be heard in open court and B's personal and financial information being released to the public.
- (v) the substantive application concerns the administration of a private family trust. Privacy considerations legitimately override the principle of open justice, and privacy is necessary to secure the proper administration of justice.
- (vi) the application for privacy has been limited to the minimum required to preserve the confidentiality of the information involved namely the redaction of all information from any written judgment or Act of Court that could identify the beneficiary or the Settlor (who was the beneficiary's mother, such that if she was identified it would be relatively easy to identify the beneficiary).
- (vii) the privacy application should be seen in the context that it is possible that there may be the interest of minors to consider in future (as the class of beneficiaries presently includes the beneficiary's future unborn children).
- (viii) Consistent with the guidance of the Court of Appeal of Guernsey in *Salem*, the privacy application is limited to the minimum required to preserve the confidential information in question.

Discussion

- 43. The substantive application before the Court invokes the supervisory jurisdiction of the Court in a case that concerns the administration of a private family trust.
- 44. I am satisfied that the privacy application has been restricted to the minimum required to preserve the confidentiality of the information involved, namely the redaction of all information from the written judgment or Act of Court that could identify B or S.
- 45. Applying the relevant principles of application as set out in paragraphs 34-40 above, I am satisfied, bearing in mind that this case concerns the administration of a family trust, that the privacy sought is strictly necessary to secure the proper administration of justice.
- 46. Accordingly, the Court file shall be sealed and any written judgment or Act of Court in these proceedings shall be redacted of all information that could identify the beneficiary or the settlor of the Trust. In this judgment and in any Act of Court, the Settlor shall be referred to as 'S', the beneficiary shall be referred to as 'B' and the Trust shall be referred to as 'the B Trust'.

The Substantive Application

The Trust Instrument

- 47. Part 2 of the Trust Instrument is entitled "Administrative Provisions". Clause 29 provides for Power of Investment. Clause 29.1 provides that:

"The Trustees may apply any money to be invested in the purchase or acquisition (either alone or jointly with other persons) of such property, of whatever nature and wherever situate and whether of a wasting nature, involving liabilities or producing income or not, or in making such loans with or without security, as they think fit so that they shall have the same powers to apply money to be invested as if they were an absolute beneficial owner."

48. Clause 33 provides for Power of Management:

"The Trustees shall have all the powers of an absolute beneficial owner in relation to the management and administration of the Trust Fund."

49. Clause 48 provides for Powers to Delegate:

"48.1 The Trustees may engage any person or partnership as investment advisor to advise them on the investment of all or any part of the Trust Fund and they may, without being liable for any consequent loss, delegate to such investment adviser discretion to manage investments on such terms as the Trustees with Protector Consent think fit.

48.2 The Trustees may, without being liable for any consequent loss, delegate to any person the operation of any bank, building society or other account.

48.3 Any trustee may, by deed revocable or irrevocable with Protector Consent, delegate to another trustee or any other person the exercise of all or any trusts and powers conferred on such trustee (other than the power of delegation conferred by this sub-clause) notwithstanding the fiduciary nature of such trusts and powers".

50. Part 1 provides for the Operative Provisions which include Definitions and Construction. Clause 1.14 provides that:

"Protector Consent" shall mean the prior unanimous written consent of the Board of Protectors."

51. Clause 20 provides for Proceedings before Board of Protectors. Clause 20.1 provides that:

"The Board of Protectors shall act unanimously by written resolution signed by all the members thereof."

52. Clause 20.2 underlines the requirement for the Trustees to obtain Protector Consent before exercising a range of powers as set out in the Trust Instrument. It provides *inter alia* that:

"Notwithstanding any other provision of this Deed, the Trustees shall not exercise any of the following powers or such of them as may subsist from time to time without first obtaining Protector Consent;

.....

20.2.10 clause 48.1 49.1 and 48.3 49.3 (Powers to Delegate);"

Legal Principles on the Construction of a Guernsey Trust

53. In *In the matter of the K Trust* [2020] GCA 080, the Court of Appeal of Guernsey endorsed the summary of Bailiff Collas on the construction of a Guernsey trust in the Royal Court judgment in the same matter at paragraph 10:

"10.....The aim is to establish the presumed intention of the Settlor from the words used in the Trust Instrument, construed against the background of the surrounding circumstances or matrix of facts existing at the time the... Trust was created, the critical provisions being read in the context of the document as a whole, giving words their ordinary meaning as far as possible. When comparing different constructions, a construction that leads to a very unreasonable result would be relevant; the more unreasonable the result, the less likely it would represent the Settlor's intention. In

looking at the matrix of facts, evidence of subjective intention, drafts and other matters extrinsic to the Trust Instrument is inadmissible.”

54. In *Oak Trust (Guernsey) Limited v Stewart and others* [2024] GRC 043, the Deputy Bailiff recalled Bailiff Collas’ guidance cited at paragraph 53 above and endorsed by the Court of Appeal. The Deputy Bailiff referred to the approach of Commissioner Page at paragraphs 62 and 63 of *In the Matter of the Internine and Intertraders Trusts* [2005] JLR 236 which was cited with approval as also representing the law of Guernsey by the Court of Appeal in *In the matter of the K Trust* at paragraphs 30-31:

“62. The correct approach to the task before the court is to a large extent the same as it is for any instrument the meaning of which is in contention:

(i) the aim is to establish the presumed intention of the maker(s) of the document from the words used: in the present case, there being no settlor-signatory, the maker must be taken in each case to be the trustee - or possibly the trustee and Sheikh Abdullah as the parties to the letters of instruction which conferred authority on the trustees to execute the declarations of trust (it makes little difference which in the present case);

*(ii) words must, however, be construed against the background of the surrounding circumstances or “matrix” of facts existing at the time when the document was executed – a principle that has been a bedrock of English law since judgment of Lord Wilberforce in *Prentiss v. Simmonds* ([1971] 1 WLR 1381) and appears now to have been accepted as also properly reflecting the approach that this court should adopt in relation to such matters;*

*(i) the circumstances relevant and admissible for this purpose are those that must be taken to have been known to the maker at the time or, where there are more than one, known to the makers of or the parties to the document, and include (to use the language of Lord Hoffmann in *Investors Compensation Scheme Ltd. v. West Bromwich Bldg. Socy.* ([1998] 1 W.L.R. 896, at 913), from whose speech only Lord Lloyd of Berwick dissented) – “. . .absolutely anything which would have affected the way in which the language of the document would have been understood by a reasonable man”;*

(ii) evidence of subjective intention, drafts and negotiations and other matters extrinsic to the document in question is inadmissible, as is evidence of events subsequent to the making of the instrument (evidence of this kind being relevant where an estoppel is said to arise but not in this jurisdiction, unlike some others, as an aid to construing the original meaning of the document);

(iii) the critical provisions, cll. 2(b), 6(c) and 6(f), as with all words and phrases, have to be read in the context of the document as a whole;

*(iv) words should as far as possible be given their ordinary meaning: “Loyalty to the text of a commercial contract, instrument, or document read in its contextual setting is the paramount principle of interpretation”: per Lord Steyn in *Society of Lloyd’s v. Robinson* ([1999] 1 W.L.R. 756, at 763); and*

*(v) this last precept may, however, have to give way if consideration of the document as a whole, having regard to the principles set out above or common sense, points to a different conclusion: “common sense” in this context being best reflected by the passage from the speech of Lord Reid in *Schuler (L.) A.G. v. Wickman Machine Tool Sales Ltd.* ([1974] A.C. 235, at 251) in which he observed:*

“The fact that a particular construction leads to a very unreasonable result must be a relevant consideration. The more unreasonable the result the more unlikely it is that the parties can have intended it, and if they do intend it the more necessary it is that they shall make that intention abundantly clear.”

(See also Lord Steyn, again in Society of Lloyd’s v. Robinson ([1999] 1 W.L.R. 756, at 763), and Lord Hoffmann’s observations in the Investors Compensation Scheme case concerning the need, on occasion, for a court to accept that the parties must have used the wrong words or syntax.)

63. It is also elementary, first, that when attempting to discern the true meaning of a power conferred in a trust deed or other instrument the court must have regard to the nature of the deed and the purpose for which the power appears to have been granted – though this will depend to a large extent on the terms of the instrument itself; and secondly, that a power of amendment reserved in a trust must be exercised for the purpose for which it was granted and not for one beyond the contemplation of the makers of the original instrument (Lord Steyn (ibid.), citing Hole v. Garnsey [1930] A.C. 472.).”

Relevant Legislative Provisions – Trusts (Guernsey) Law 2007

55. Part Two of the Trusts (Guernsey) Law, 2007 is entitled *Provisions applicable only to Guernsey Trusts*. Section 30 in Part Two provides for the powers of trustees in relation to property:

“Subject to the provisions of this Law and to the terms of the trusts, a trustee has, in relation to the trust property, all the powers of a beneficial owner.”

56. Section 33 of the Trusts Law provides for delegation by trustees:

“(1) A trustee shall not delegate his functions unless permitted to do so –

(a) by the provisions of this Law or by the terms of the trust, or

(b) in the case of the Public Trustee, by the provisions of the Public Trustee (Bailiwick of Guernsey) Law, 2002.

(2) Except where the terms of the trust specifically provide to the contrary, a trustee may –

(a) delegate the management of trust property to, and appoint, investment managers whom the trustee reasonably considers to be competent and qualified to manage the investment of the trust property,

(b) appoint professional persons to act in relation to the affairs of the trust or to hold any trust property, and

(c) authorise any such manager or person to retain any commission or other payment usually payable for services of the description rendered.”

The Applicant’s Submissions on the Substantive Application

57. The Applicant contends, in the context of Section 33 of the Trusts Law, that in the absence of express restrictions contained in the Trust instrument, the Trustee of the Trust has all the powers

of a beneficial owner and would be entirely unconstrained in how it might invest, administer or manage the trust fund. Further, a Trustee is entitled to delegate the management of trust property and to appoint investment managers unless the terms of the Trust expressly forbid this.

58. It is submitted that Clause 48.1 permits the Trustee to delegate to any person the discretion to manage investments on such terms as the Trustee with Protector Consent thinks fit. Clause 48.1 is silent about the Trustee's power to terminate such a delegation. The Applicant contends that in the absence of an express restriction in the Trust Instrument, the trustee has all the powers of a beneficial owner and can therefore terminate the appointments of Copernicus and Dreyfus unilaterally.
59. It is further submitted that Clause 48.1 has no relevance to the appointment or termination of a custodian as that involves no delegation of the management of investments. The appointment or termination of a custodian by the Trustee is covered by Clause 33 of the Trust Instrument which makes no reference to Protector Consent being granted.
60. Relying on the advice of Mr Richard Wilson KC, the Applicant submits that the terms of the Trust instrument are clear that there is no requirement for the consent of the Board of Protectors to the termination of the services of investment managers and/or custodians.
61. In response to the points raised by Babbé on behalf of Copernicus and Dreyfus on the power of the Partnership (through the GP) to terminate both the services of the investment managers and the services of Dreyfus as custodian (as set out in the letter from Babbé dated 9 February and cited at paragraph 33 above), the Applicant submits as follows:
 - (i) there is no requirement in the Trust instrument for the trustee of the Trust to appoint an investment manager, whether on a discretionary basis or otherwise. If the Trustee so chose, the terms of the Trust permit the trustee to manage the trust fund as it sees fit – for example it might appoint an investment advisor to provide advice and then take investment decisions itself in reliance on its own experience and in-house expertise.
 - (ii) the Applicant is a licensed fiduciary business in Guernsey and is therefore subject to the Fiduciary Rules and Guidance 2021 (as amended). Paragraph 3.2.1 of the Rules provides that:

“A licensed fiduciary acting as a trustee must ... (d) subject to the terms of the trust, manage the investment and custody of trust assets professionally and responsibly and must.... (ii) consider appointing competent agents and managers, including an investment manager; an investment manager; an investment adviser; a property manager....”

In the present case, the Partnership does intend to appoint new investment managers but the issue before the Court relates to the construction of the Trust instrument on the power of the trustee to terminate investment managers without requiring the consent of the Board of Protectors.

Discussion

62. This application calls on the Court to decide on a narrow and discrete issue of construction of the Trust. The Court is concerned with the power of the Trustee and the Partnership to *terminate* the services of Copernicus and Dreyfus. The Court is not concerned with the intended appointment of investment managers and a new custodian.
63. Applying the relevant applicable case-law principles, I consider the correct interpretation of the Trust Instrument on the issue before the Court to be as follows.

64. First, it is abundantly clear that whereas Clause 48.1 permits the Trustee to delegate to any person the discretion to manage investments on such terms as the Trustee with Protector Consent thinks fit, the Clause is entirely silent on the Trustee's power to terminate such a delegation.
65. Second, I accept that Clause 48.1 of the Trust Instrument has no relevance to the appointment or termination of a custodian as that involves no delegation of the management of investments.
66. Third, I accept the Applicant's submission that under Section 33 of the Trusts Law, in the absence of express restrictions contained in the Trust instrument, the Trustee of the Trust has all the powers of a beneficial owner and would be entirely unconstrained in how it might invest, administer or manage the trust fund. A Trustee is entitled to delegate the management of trust property and to appoint investment managers unless the terms of the Trust expressly forbid this.
67. In light of my findings on Clause 48.1, I consider that the Trustee can terminate the appointments of Copernicus and Dreyfus unilaterally.

Conclusion

68. Accordingly, I grant the substantive application and I shall hear from Counsel on any consequential directions or orders.