

JERSEY / JUDGMENT

Morelli -v- Morelli [2016]

JRC 172 (29 September 2016)

[2016] JRC 172

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judgment

the bailiff: 1. On 22 nd June, 2016, the Deputy Bailiff signed an Order of Justice at the instance of the plaintiffs the purpose of which, as set out in paragraph 1 of the Order of Justice, was to obtain a freezing order over assets purported to be held, whether directly or indirectly, by the first and second defendants in Jersey, and to preserve those assets pending the outcome of criminal and civil proceedings due to be commenced in Monaco. The two plaintiffs and the two defendants are all siblings, the adult children of the late Annita Morelli née Pelosi (" Annita Morelli") who died on 16 th March, 2016. The plaintiffs are respectively resident in Monaco and Italy, and the defendants are both resident in the United Kingdom where Annita Morelli, who all parties agree was domiciled in Monaco, died. Annita Morelli had been living in the United Kingdom since August 2014 when, whilst on holiday, she suffered a stroke which the plaintiffs assert left her paralysed on her right side and as a consequence, bedridden. The plaintiffs say that following her discharge from hospital in October 2014 she moved to a residential care home in Kent where she lived until she passed away. 2. The first party cited ("LBSI") is a Jersey registered company, administered by another Jersey company STM Fiduciaire Limited. The second party cited owns 7 out of the 10 issued ordinary shares in LBSI, and is a Guernsey registered company. It is asserted that the first defendant is the beneficial owner of 70% of the shares in LBSI. The third party cited is also a Guernsey company and holds the remaining three issued ordinary shares in LBSI. The plaintiffs assert that the second defendant is the beneficial owner of that 30%. 3. The Order of Justice sets out that Annita Morelli died intestate and that her estate was validly opened in Monaco on or around 24 th March, 2016. The plaintiffs claim that under the laws of Monaco, each of the four siblings is entitled to an equal share of $\frac{3}{4}$ of the late Annita Morelli's worldwide estate, the value of which is calculated so as to include any lifetime gifts by the deceased. They claim that at her death Annita Morelli had cash to the approximate value of £400,000, jewellery and other personal effects valued at approximately £500,000 and the beneficial interest in Sumod Anstalt (" Sumod ") a Liechtenstein registered company which owned a property in Kent to the value of approximately £1.8 million. Sumod is said to be the holding company of LBSI. As the Order of Justice asserts that LBSI is beneficially owned by the defendants in unequal shares, it seems to be an inconsistent pleading to indicate that the deceased was the beneficial owner of Sumod which was the holding company of LBSI, although nothing turns on that for the purposes

of this judgment. 4. The plaintiffs assert that Annita Morelli made the following gifts inter vivos to the defendants:- (i) The shares in a Panamanian company Iduna , which owned an apartment in San Remo, Italy valued at approximately £2 million were transferred to the second defendant in August 2015. (ii) The ultimate beneficial interest in LBSI, the sole asset of which is a commercial property in Canterbury valued at approximately £4 million, was transferred to the defendants in unequal shares on or around 29th June 2015. (iii) The entire beneficial ownership in Sun Street Investment Limited ("SSI") a Guernsey registered company and subsidiary of LBSI, which owns other commercial and residential property in Canterbury valued at approximately £3 million, was transferred to the first defendant in March 2016 upon Annita Morelli's death in accordance with an agreement between her and the first defendant on 26 th September, 2006. (iv) A gift of £900,000 to the first plaintiff as an advance on his inheritance. (v) A berth in San Remo, Italy of which the second defendant has taken possession, valued at approximately £77,000. 5. The plaintiffs assert that the defendants are the ultimate beneficial owners of assets totalling £10 million which form part of the global estate of their late mother. They claim that the transfer of shares in LBSI in 2015 was the result of a forged authority from the late Annita Morelli and that in effect the shares in LBSI have been fraudulently misappropriated for the benefit of the defendants. The plaintiffs asserted in the Order of Justice in June 2016 that they were imminently to commence civil and criminal proceedings in Monaco against the defendants, and that based on the report of a handwriting expert which was said to demonstrate that the shares in LBSI had been fraudulently misappropriated for the benefit of the defendants, the absence of any communication from either of the defendants, whether with the plaintiffs or the notary instructed to deal with the estate of Annita Morelli, and the absence of communication from a Mr Enoch, a long-term adviser of the late Annita Morelli, the plaintiffs were entitled to an injunction to restrain the defendants from dealing with or diminishing or divesting themselves of the assets of LBSI in case those assets were put beyond the reach of the plaintiffs. Accordingly freezing and disclosure orders were sought, and indeed on the undertaking of the plaintiffs to instruct a duly qualified advocate to issue the intended Monaco proceedings within 30 days, the Deputy Bailiff granted injunctions restraining the defendants from removing from Jersey or in any way disposing of or dealing with or transferring, charging or diminishing the value of their respective interests in LBSI, making any changes to the share registers of any of the parties cited, or making any kind of payments for distribution on behalf of LBSI, or paying any dividends on the shares or paying any salary if any to the defendants. The restraining orders would cease to have effect on payment of £4.5 million into Court. There were various injunctions and disclosure orders made against the parties cited in addition. 6. The summons to vary the ex parte injunction was heard on 24 th August when the Court gave a short judgment making orders varying them, with full reasons reserved. This judgment contains those reasons and supplements what was said on 24 th August. To the extent, if at all, there is any inconsistency between the two, this judgment prevails. A full application to discharge the freezing orders and orders for disclosure is due to be heard on 26 th September, but the variation application was to enable sums representing income or dividends deriving from SSI to be paid to or as directed by the first defendant, and/or the shares in SSIL to be ordered to be transferred to or as directed by the first defendant. The grounds on which the summons was issued were that the injunctions obtained froze the shares in SSIL and the income

therefrom notwithstanding that legal title was held by LBSI but beneficial ownership vested in the first defendant in accordance with a share sale agreement dated 26 th September, 2006, and confirmed in a letter of wishes signed by Annita Morelli on 19 th January, 2015; furthermore no allegation of fraud or forgery was made in relation to the shares in SSI; the first defendant relied on the income from SSI for his livelihood and it was to be noted that the plaintiffs had never intended to restrain the shares in SSI when the ex parte injunction was obtained. 7. The skeleton argument of the plaintiffs put before the Deputy Bailiff set out the law relied upon as follows:- (i) The Royal Court could grant free-standing Mareva injunctions in support of foreign proceedings to preserve assets - see *Solvalub Limited v Match Investments Limited*

[1996] JLR 361 ; (ii) The Royal Court has jurisdiction to grant a freezing injunction before proceedings are commenced where the case is one of urgency or it is otherwise necessary to do so in the interests of justice. Reference was made to *Gee on Commercial Injunctions*, 5th Edition at paragraph 6.005; (iii) On the application of *Johnson Matthey Bankers Limited v Arya Holdings Limited* [1985-1986] JLR 208, the plaintiff in an application for a Mareva injunction must make full and frank disclosure, must give particulars of his claim against the defendant, must give some grounds for believing that the defendant has assets between the jurisdiction, must give some grounds for believing beyond the mere fact that the defendant is abroad that there is a risk of the assets being removed before the judgment is satisfied; and must give an undertaking as to damages. 8. The legal basis asserted by the plaintiffs at the time of the hearing of the application to vary the injunctions on 24 th August had changed. It was now asserted that the plaintiffs had obtained proprietary as opposed to Mareva injunctions from the Deputy Bailiff for the purposes of preventing any transfer of title to the shares owned by LBSI or the payment of any dividend or distribution whatsoever, or paying any income to the defendants, simply for the purposes of preserving the estate of the late Annita Morelli pending the determination of the Monaco proceedings. It was said now that the plaintiffs had a good arguable case to pursue the Monaco proceedings and there was a real risk of dissipation if an injunction were not granted. Although the plaintiffs had not realised that the shares in SSI would be caught by the injunctions and although the claims in respect of SSI shares depended on Monegasque law and were not dependent on the alleged fraudulent transfer of the LBSI shares, nonetheless the Royal Court should have regard to that fraudulent transfer for the purposes of holding the status quo in relation to any other assets of the late Annita Morelli including the SSI shares. 9. We have had the opportunity of hearing inter partes argument, not available to the Deputy Bailiff, and we have also had the opportunity of receiving documents, including affidavits from the defendants, which obviously were not put before him. We have had regard to all the material for the purposes of reaching our conclusion. 10. There was a suggestion in the affidavit of Marino Morelli put before the Deputy Bailiff on 22 nd June that the first defendant might have the intention of leaving the United Kingdom and travelling to an undisclosed location for a significant period of time, and that this was the basis upon which the dissipation or disposal of assets might be suspected. The first defendant's affidavit makes it plain that the four siblings lived in a flat

above the Broadstairs shop in Kent while they were growing up. The first defendant left school at 17 and immediately went into the family business. He has acquired other property in Canterbury, separate from 10/11 Sun Street in Canterbury, which we will come to later in this judgment. His current permanent address is 10A Sun Street. He had been a British tax payer all his life and his life and businesses are UK based. He exhibited to his affidavit a copy letter from his accountant confirming this. 11. The second defendant also disposed an affidavit that, like her brother the first defendant, her business and her home was in England. She was a partner with her husband, a chartered surveyor, managing their UK property assets from offices in Broadstairs, Kent. 12. This material was not before the Deputy Bailiff and in our judgment shows plainly that, contrary to the suggestion in the first plaintiff's affidavit, neither of the defendants can be considered as a flight risk. If ultimately a Monaco judgment goes against them, enforcement of that judgment against their assets in England or through process in England, where they will be subject to the personal jurisdiction of the English courts, would not in our view cause any particular difficulties. In the course of argument, Advocate Springate conceded that if there was no proprietary claim there was insufficient, by way of flight risk or other evidence, to justify a Mareva injunction. It seemed that she also accepted that there is no real risk of dissipation of assets. She made no substantial oral submissions that there was. To the extent that case was advanced, we do not accept it, for the same reason we think the defendants cannot be considered a flight risk. As a result of that concession, it follows that the question of whether or a proprietary claim has been made in relation to the assets generally, but specifically in relation to the shares in SSI in the Monegasque proceedings is of critical importance and we will shortly turn to those proceedings. 13. Before doing so, it is right to describe in more detail the arrangements around SSI. In his affidavit of 21 st June, 2016, the first plaintiff described the Sun Street transaction in this way:- "15. Before her death, my mother owned other assets, which she had gifted or transferred during her lifetime: ...

- (d) the ultimate beneficial interests in Sun Street Investment Limited ("SSI") a Guernsey registered company, whose sole asset is a commercial and residential property in Canterbury, UK (the "Sun Street property"). The Sun Street property has a market value of between £2.7 million - £3 million, accordingly to a valuation by Your Move which was commissioned In April 2016 at pages 10 and 11. The shares in SSI were transferred to Leonardo (100%) in March 2016, upon my mother's death, pursuant to an agreement which they had entered in to on 26th September 2006, which is exhibited at pages 12 to 16." 14. The first plaintiff exhibited a copy of a letter dated 19 th January, 2015, not in fact signed by Annita Morelli although it is in part written in her hand. At paragraph (a) of page 1 there appears the following extract:- "First I confirm that the shares in Sun Street Investments Limited, held by LBSI, should be transferred to my son Leonardo in accordance with the terms of the letter dated 26th September 2006." 15. Finally in this connection the first plaintiff exhibited a letter from Mr Enoch dated 22 nd January, 2015, setting out the details of how Annita Morelli wanted her assets divided in the event of her death. It is noteworthy

that that letter does not mention SSI at all. She clearly did not consider it to be her asset unless, which seems unlikely on the evidence we have, she simply forgot about it. Furthermore, the accounts of LBSI do not show SSI as a subsidiary. 16. What is clear from the first plaintiff's affidavit is that he was well aware of his mother's arrangements in relation to SSI. Nothing underhand or fraudulent is asserted in relation to this transaction, which has its basis in an agreement in 2006. 17. In his affidavit, the first defendant averred that in 2006 he made an agreement with his mother to buy the property 10/11 Sun Street. He had worked and run the Sun Street coffee shop/ice-cream parlour for over 10 years and owned the lease and business outright. He paid rent to his mother. He describes the basis of the agreement was that he would pay the purchase price of £750,000 including repayment of loans and in the meantime she kept ownership of the property as a form of security for the payments being kept. When he had paid everything that was due, or on her death, whichever was the earlier, the property would be transferred to him. He describes in his affidavit how until his mother's death his income was reduced because he had to apply part of it to his mother by way of payment for Sun Street. 18. We now look at the agreement itself. It is dated 26 th September, 2006, and takes the form of a letter from Sumod and Annita Morelli to the first defendant who counter-signed it. The letter does not indicate by what law the agreement is to be governed, and one is therefore left with an agreement between a Liechtenstein Anstalt , a Monegasque resident (we think) and an English resident. The subject matter of the agreement concerns the ownership of real estate in England, owned by LBSI a Jersey company, at that stage a wholly owned subsidiary of the Liechtenstein anstalt . There are clearly competing arguments which could be advanced as to the proper law of the contract but it has its closest connection with English land. 19. Under the agreement, the property was to be transferred from LBSI to SSI, a company incorporated in Guernsey for that purpose. LBSI would transfer the property for a consideration of £750,000 which would be paid by an initial lump sum payment of £200,000 followed by 22 six monthly payments of £25,000. The first defendant was personally responsible for ensuring that the instalments were paid when they became due and it was made plain that the instalments would be retained by Annita Morelli for her own benefit and that they would reach her by way of distribution by LBSI to Sumod . In the event of her death before all the instalments had been paid, or on SSI making the final transfer payment, the shares in SSI would be transferred to the first defendant immediately without any consideration. In the event that the first defendant predeceased his mother, the shares in SSI would be immediately transferred as to 50% to his children Mila and Leonardo and 50% equally between his wife Marie and children Zachery and Isaac. 20. In the summons issued for a variation of the injunctions, the first defendant seeks an order that the shares in SSI be transferred to or as directed by the first defendant. We do not think it is possible to make that order at this stage. The first defendant may ultimately be entitled to an order of that kind if it should be necessary, but it seems to us that at the very least the estate of his mother should be party to any proceedings in which such an order is made. It appears to us that there is more than one possible construction of the agreement of 2006. The first defendant may be correct in his assertion that the beneficial title to the shares in SSI passed in 2006 subject to a charge in favour of his

mother by way of security for the payments yet to be made to her under the agreement. Another possible construction is that there was intended to be a progressive transfer of the equity in SSI as the instalments were made; and a third possibility is that there was to be no transfer of equity in SSI until all the instalments had been paid. This last possibility would of course carry with it the necessary implication that the first defendant might have paid a very high percentage of the purchase price, but if he defaulted on the final payment or payments, he might nonetheless find himself without anything by way of return for the monies which he had paid over, which would seem to make that possibility an inequitable construction. Our provisional view - which we express only because we are looking at whether there is a good arguable case for the purposes of an injunction - is that it is most likely that beneficial ownership was transferred to the first defendant in 2006, but that is not a final view and could not be so until all the evidence had been received and assessed under whichever law is thought to govern the transaction. Even if it were not, however, there is *prima facie* an enforceable obligation on Annita Morelli, and therefore on her estate, to perform the 2006 Agreement because the first defendant, on the evidence available so far, appears to have discharged his obligations under it. The Monegasque proceedings 21. We recall the undertaking which the plaintiffs gave to the Royal Court to commence proceedings in Monaco in relation to Annita Morelli's estate and we now look at those proceedings in more detail. In that connection we have the benefit of an affirmation from Maître Richard Mullot, an advocate in Monaco which had been approved although not formally affirmed at the date of the hearing on 24 th August. It has subsequently been affirmed and filed with the Court. The purpose of looking at the Monegasque proceedings is to identify whether they indicate any proprietary claim from the plaintiffs in relation to the assets in Annita Morelli's estate, and particularly for the purposes of the current application, in the shares in SSI. 22. Maître Mullot had provided on 17 th June, 2016, a legal opinion in support of the plaintiffs' application for a freezing order in Jersey. On 19 th July, 2016, he filed a criminal complaint with an investigating judge in the first instance tribunal in Monaco on behalf of the plaintiffs. The criminal complaint was made upon the basis of an allegation of forgery in respect of a letter dated 29 th June, 2015, from Annita Morelli to Sumod, and abuse of the deceased as a vulnerable person (abus de faiblesse). The investigating judge has been paid a deposit of €5,000, but it is unclear as yet what progress he has made in his investigation. What one can be sure about for the present purposes (of assessing whether there is a good arguable case) it seems to us is that his investigation cannot extend to the shares in SSI. Whatever impact there may be under the civil law in relation to the contract of 2006, that contract was well known to all four siblings, and was executed at a time when there does not appear to have been any weakness or vulnerability on the part of Annita Morelli at all. No basis has been shown to us for asserting that the criminal proceedings could properly cover that transaction. 23. Judge Morgan Raymond opened dossier number CAB 1/16/18 on 22 nd July, 2016, noting he had received a complaint from the plaintiffs on 19 th July, 2016, of forgery, use of forged documents, abuse of confidence and other complaints, made against "X". By this document he fixed the amount of the deposit which was necessary to be paid to him for the costs of the procedure. Quite apart from the obvious difficulty that this Court has

not seen the complaint, as well as the fact that none of these complaints could reasonably be asserted in relation to the SSI shares, the disposition (whatever it was) of which was settled in 2006, we have also the difficulty that the persons subject to the criminal complaint are not even identified. It is not, for example, stated that it is the defendants, or either of them, who are asserted to have forged the document instructing Sumod to make the transfer of shares in LBSI. Furthermore, although it is not directly a matter for us other than in the context of assessing whether there is a good arguable case, it seems to us that it would be an unlikely long arm jurisdiction for a Monegasque criminal court to exercise when the actions in question are asserted to have been done outside the jurisdiction and related to English land, a Liechtenstein anstalt and a Guernsey company, and indeed such evidence of Monegasque law as we have seen supports that conclusion. The deceased was not a Monegasque national, and there are no proceeds of crime in the principality of Monaco. Even on the plaintiff's case, it does not seem that the Monegasque courts have jurisdiction. 24. For all these reasons, we do not think that in relation to the SSI shares, the criminal complaint gets off the ground, and certainly it does not get as far as asserting a good arguable case. 25. We turn now to the civil proceedings which were commenced against the defendants on 29 th July, 2016, and exhibited before us. The plaintiffs acknowledge the 2006 agreement which they describe as an agreement by which Anita Morelli agreed to transfer the SSI shares to the first defendant on her death, but it is asserted that the form and validity of that gift is in issue. Importantly however the specific orders which the plaintiffs seek in those proceedings are said to be these:- (i) The defendants are guilty of concealment of estate assets within the meaning of Article 673 of the Monegasque civil code, it having been their intention to conceal and/or divest a part of the assets to the detriment of the plaintiffs; and (ii) By application of Article 673 of the Monegasque civil claim, [sic] the defendants cannot claim any share in the assets diverted or concealed which includes the LBSI shares and the SSI shares. 26. In relation to these civil proceedings we note that in relation to both SSI and LBSI, it is asserted that the first defendant freely and knowingly misappropriated and/or concealed the assets of Annita Morelli's estate and similar complaints are made against the second defendant. At paragraph 35, in translation, the summons continues:- "Accordingly, Mario and Marino Morelli have very good grounds for requesting that this Court rule that, pursuant to Article 673 of the Monegasque civil code, Leonardo Morelli and Giannini Morelli be deprived of their claims to the rights of these various assets that are part of the estate of the late Annita Pelosi which they knowingly and in bad faith attempted to misappropriate and/or conceal, with all attendant legal consequences." 27. Following the various assertions contained in the summons, one turns to the prayer for relief in the Monegasque civil proceedings. The prayer for relief is that respectively the defendants cannot claim any share in the assets diverted or concealed, (and these follow those prayers in translation):- "For Leonardo Morelli the following sums: GBP 3,150,000, corresponding to 70% of the shares of the company Lower Bridge Street Investments, which were transferred to him pursuant to the contested letters of Annita Morelli of 19th January and 24th June 2015; GBP 3,000,000, corresponding to 100% of the shares of the company Sun Street Investments, which were transferred to him. For Giannina Morelli the following sums: GBP 1,350,000 corresponding

to 30% of the shares of the company Lower Bridge Street Investments, which were transferred in her favour pursuant to the contested letters of Annita Morelli of 19th January and 24th June 2015; GBP 2,000,000 corresponding to 100% of the shares of the company Iduna Corporation SA, which were transferred to her; GBP 50,000 approximately (EUR 60,000) corresponding to the value of the docking ring located in San Remo (Italy) of which she has taken possession; GBP 500,000 corresponding to the amount of furs, jewellery and personal effects diverted by her to the detriment of the decedent's estate; Order Leonardo Morelli to pay the total sum that was the sum total of GBP 6,150,000, or its equivalent in Euros for concealment of state assets; Order Giannina Morelli to pay the sum total of GBP 3,900,000 or its equivalent in Euros, for concealment of estate assets; Order Leonardo and Giannina Morelli jointly and severally to pay an additional sum of EUR 200,000 in damages, for all causes combined (material loss, pain and suffering, financial harm, deprivation of use)." 28. It seems to us that it is clear from the Monegasque civil proceedings that a monetary claim is being brought against the defendants, coupled with a claim for orders that they should not be able to benefit from the estate. These claims for relief (which incidentally appear to apply as much to LBSI as to SSI) do not assert ownership of the shares which are now sought to be restrained. Furthermore, the documents before us show that as at the date when the civil and criminal proceedings were launched in Monaco, the plaintiffs were aware that the shares in SSI and in LBSI respectively had not in fact been transferred into the names of the defendants. Accordingly, if there were in truth a proprietary claim in relation to those shares, it would be necessary, so it seems to us, for the Monegasque Court to have before it the legal owners of the shares in question in order that they could be directed to make the transfers. All of these factors in our judgment point to the conclusion that the current Monegasque proceedings do not contain proprietary claims in relation to the shares in SSI, notwithstanding the affirmation of Maitre Mullot . 29. For all these reasons on the balance of probability we are not satisfied that there is a proprietary claim being made in relation to the shares in SSI and accordingly we do not think that it would be appropriate to impose any form of injunction in relation to those shares on the information currently before us. Indeed, all the information in relation to SSI points in the direction that the first defendant has worked in the Sun Street business for very many years, and that he lives on those premises. Of course we accept that there may be a possibility that in the division of the estate, Monegasque law may require the first defendant to account for the benefit of any gift he has received, including SSI if that is the case, in the overall sharing out of the estate, just as the same principles might apply to any other sibling who has received a gift. The present judgment is not concerned with the administration of the estate. All we are concerned with is an identification of the issues which appear to us to arise on the Monegasque proceedings, and the equity of making an immediate interim order in Jersey at this stage in relation to the SSI shares. We are quite convinced that there would be no equity in making such an order and that had all the information we have seen been made available to the Deputy Bailiff, he would never have made an order which included these shares. Indeed the plaintiffs did not anticipate that that was the effect of the orders which they obtained either. For the avoidance of doubt, the conclusions expressed in this paragraph are not intended to suggest any

wrongful non-disclosure on the part of the plaintiffs in applying for these injunctions, nor indeed was that case advanced by the defendants. 30. For all these reasons we released the SSI shares from the injunctions. 31. We note that we were asked to order a stay of execution in relation to the lifting of the injunctions, and leave to appeal. Both applications were refused. This Court is quite clear that there is no basis in equity for these injunctions in relation to the SSI shares and we do not see any case to be plausibly argued on appeal. Postscript 32. In accordance with usual practice the draft judgment was circulated to counsel for comment - the primary purpose of supplying it in draft was to enable the parties to consider the judgment and decided what consequential orders, if any, they would seek, and a secondary purpose is to enable advocates to submit to the Court suggestions about typing errors, factual errors, wrong references and other minor corrections of that kind. The draft judgment was circulated at 0903 on 19 th September. Subsequently, on 20 th September the parties reached agreement about the final form of a consent order which had the effect of staying the entire proceedings in Jersey, lifting the injunctions but substituting various undertakings which the defendants would give in lieu . In the light of that development, Advocate Springate , on behalf of the plaintiffs, requested the Court not to hand down the judgment and I sat as a single judge with the consent of both parties to hear that application on 26 th September. She explained that the parties had been discussing settlement in correspondence since her firm wrote to Messrs Carey Olsen on 9 th September and she asserted that for practical purposes agreement had been reached by Sunday 18 th September i.e. before the draft judgment was circulated. She accepted that the Court had a discretion as to whether or not to hand down the judgment, and she asserted that the principles in *F G Hemisphere Associates LLC v Democratic Republic of Congo* and another

[2010] JLR 484 applied, with the additional principles set out in *Barclays Bank Plc v Nylon Capital LLP*

[2011] EWCA Civ 826, and in particular the comments of Lord Neuberger at paragraphs 74-78. She submitted that there was no public interest which required the judgment to be published, and that it contained an amount of private information about a family dispute. It was an interlocutory judgment which was ancillary to the proceedings in Monaco and the decision of the Royal Court was an interim one which could not bind the Monaguesque court. She pointed out that the terms of settlement included undertakings given by the defendants in these terms:- "And upon the plaintiffs and the defendants mutually undertaking:- Not to purport to refer to the existence or extent of these undertakings or the injunctions ordered by the Deputy Bailiff on 22nd June 2016 in the Monaco proceedings as any form of admission or validation of their respective cases; and To seek to agree the arrangements for and participate in a mediation of the plaintiffs' claims and the division of Annita Morelli's estate within three months of this order; All of the above undertakings to remain until final resolution of the Monaco civil proceedings or further order of the Royal Court (with liberty reserved to apply);" 33. Advocate Springate submitted that it was of real concern to the plaintiffs that, within a day of agreeing this form of consent order, Advocate Kistler , on behalf of the defendants, wrote to the Court to

indicate inter alia that "to the extent the Royal Court has now given judgement inter partes on any aspects before it, the Monaco Court should have the benefit of the Royal Court's judgment to ensure it has a complete picture." 34. It was put to Advocate Springate that there was a potential difficulty in that the Court had given oral reasons in public on 24 th August at the time the injunctions were varied. An Act of Court had been prepared. Advocate Springate submitted that, ex post facto , the Court should order that despite the summary judgment having been given in open Court, it should be sealed, and the Act of Court with it. 35. For the defendants, Advocate Kistler opposed the application. He took issue with the question of when agreement between the parties was reached but he went on to submit, in my view correctly, that as the parties had agreed that the Court had a discretion as to whether or not to hand the judgment down, both parties must have accepted that the delivery of the draft judgment had taken place before agreement was reached. Accordingly, the line of cases - Prudential Assurance Co Limited v McBains Cooper (a firm) and Others

[2000] 1WLR 2000 , HFC Bank Plc v HSBC Plc (formerly Midland Bank)

[2000] CPLR 197 , Liverpool Roman Catholic Archdiocesan Trustees Inc v Goldberg (Number 3)

[2001] WLR 2337 and Gurney Consulting Engineers v Gleeds Health and Safety Limited and Another

[2006] EWHC 536

- which make it plain that it is well established that if the parties agree terms of settlement before the process of handing judgment down has started, the Court has no jurisdiction to hand the judgment down, do not apply. 36. Advocate Kistler submitted that the comments of Lord Neuberger M R in Barclays Bank Plc v Nylon Capital LLP were summary comments which did not draw on any of the relevant authorities and perhaps for that reason should not be relied upon. Certainly it is true that at paragraph 74 Lord Neuberger indicated that "where a case has been fully argued, whether at first instance or on appeal, and it then settles or is withdrawn or is in some other way disposed of, the Court retains the right to decide whether or not to proceed to give judgment". The reference to the discretion of the Court to proceed to give judgment where a case settles before the judgment process has started at first instance would appear to be a departure from the line of cases which we have referred to above. However, leaving that point aside, the remaining comments of Lord Neuberger seem to us to be a useful summary of principles, consistent indeed with the FG Hemisphere case which is of direct relevance to us in Jersey. It is noteworthy that the factual circumstances in Barclays Bank Plc v Nylon Capital appear to have been that the judgment process had started because Thomas L J, as he then was, had circulated a draft judgment to his fellow judges on the Court of Appeal, albeit that no sign of that judgment, even in draft, had arrived with counsel. Applying that by analogy, it would follow that where the judge in Jersey has prepared a draft judgment and circulated it to the Jurats, the process of delivering judgment had started. If I were to apply that test in the instant case, that process started on

14 th September. 37. At all events, I proceed in this case on the basis of the decision of this Court in *F G Hemisphere Associates LLC v Democratic Republic of Congo and Another*, the relevant principles of which seem to me to be as follows:- (i) The discretion to withhold judgment should not be exercised lightly. It should normally be expected that once the process of issuing a draft judgment has started, the matter will proceed to formal delivery. (ii) Of course, weight should be given to the parties' wishes and their reasons for making an application that the judgment should be withheld, but those wishes must always be weighed against the public interest in the publication of a judgment. That public interest included whether the judgment dealt with points of law of general interest, the saving of time and expense likely to result from an overall settlement and whether one or more parties might be taking advantage of the Court's practice in circulating a draft judgment to try and prevent the publication of an unwelcome one. (iii) It is the duty of the parties and their legal advisers to inform the Court immediately they become aware of any development which might make it unnecessary for judgment to be delivered. This is a matter of courtesy, of course, but the more pertinent point is that it is also in the interests of the efficient administration of justice. In the present case, had the Court been told that on the 9 th September that Messrs Bedell Cristin had opened without prejudice negotiations with a view to settlement, it is possible that the time taken in preparing the draft judgment between 12 th and 14 th September might have been more profitably spent elsewhere. Instead the Court, conscious of the forthcoming hearing on the 26 th and 27 th September, gave priority to the preparation of the draft judgment now in question. 38. In my view, there is no reason not to deliver the present judgment. The consent order which has been made does not compromise the SSI issue, nor does it settle all matters in dispute between the parties. It does not even dispose of the Jersey proceedings, which are merely stayed, and as Advocate Kistler submitted, there may be further applications in the future either for a discharge or a variation of the undertakings which have been given. Because the possibility of further proceedings in Jersey is a live one, it is appropriate that the Court's full reasons for reaching the conclusion it did on 24 th August should be made available. 39. There is a further reason why this is so. In Monaco, the plaintiffs' summons draws on the making of Jersey orders *ex parte* for support, and makes various allegations in relation to the defendants' conduct. I pressed Advocate Springate on this point, but all she could say was that she would take instructions from Maître Mullot about it. I am firmly of the view that a decision on whether or not to issue the present draft judgment will not be dependent upon the views of the plaintiffs' Monaco adviser as to what he might or might not do in the relation to existing proceedings in Monaco. 40. I should also like to add a comment about the nature of the undertakings which have been given by the parties. This is important because Advocate Springate submitted that to deliver the judgment, in the light of an obvious intention on the part of the defendants to resile from the undertakings quickly after they had been agreed, might have an adverse impact on the undertaking to mediate. To reach that conclusion would require me to accept that the plaintiffs would be justified in reaching that view. I am quite clear that they would not. The form of the mutual undertaking at paragraph A is that the parties should not refer to the existence of the undertakings or the injunctions "as any

form of admission or validation of their respective cases". The first thing to say is that the undertaking does not extend to this judgment. The second is that even if it did extend to the judgment, which it does not, the obligation is not to refer to it as a form of admission or validation of case. That is not to say that the Monaco court should be unaware of what has taken place in Jersey. Indeed it would be surprising if that were the conclusion, because on Advocate Springate's case the Jersey proceedings were taken out in support of what is happening in Monaco and accordingly it seems to me that it would be entirely right that the Monaco courts are aware of what has taken place in the proceedings which support their own. 41. For all these reasons I reached the view that the application by the plaintiffs that judgment should not be handed down should be dismissed, and I awarded to the defendants the costs, on a standard basis, of and incidental to this application. 42. There is a further matter. I was requested by the parties to ensure that on any publication of this judgment the names of the parties would be anonymised. It was recognised that this would be an extension of the existing rules around anonymisation but it was said that this was a family dispute and the allegations are serious and unproven. All that may be so. However, I am not at all clear what the limits of the departure from the present rule would be if I was to order anonymisation in these hostile estate proceedings and I consider that no adequate reason has been advanced as to detract from the application of the usual rule. Accordingly I have not ordered anonymisation of the parties in this judgment. *Authorities Solvalub Limited v Match Investments Limited*

[1996] JLR 361 . *Gee on Commercial Injunctions*, 5th Edition. *Johnson Matthey Bankers Limited v Arya Holdings Limited* [1985-86] JLR 208. *F G Hemisphere Associates LLC v Democratic Republic of Congo and another*

[2010] JLR 484 . *Barclays Bank Plc v Nylon Capital LLP*

[2011] EWCA Civ 826. *Prudential Assurance Co Limited v McBains Cooper (a firm) and Others*

[2000] 1 WLR 2000 . *HFC Bank Plc v HSBC Plc (formerly Midland Bank)*

[2000] CPLR 197 . *Liverpool Roman Catholic Archdiocesan Trustees Inc v Goldberg (Number 3)*

[2001] WLR 2337 . *Gurney Consulting Engineers v Gleeds Health and Safety Limited and Another*

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