

JERSEY / JUDGMENT

Representation of V Trustees Limited Re N Trust (Royal Court : Hearing (Civil) : Thompson : Costs) [2025] JRC 247 (6 October 2025)

[2025] JRC 247

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judgment

the commissioner:

Introduction

1. This judgment contains my decision in respect of an application for leave to appeal by ("V") Trustees Limited ("the Trustee") against my costs judgment dated 7 August 2025 Representation of V Trustees Limited re N Trust

[2025] JRC 208 ("the Costs Judgment"). The Costs Judgment followed on from the judgment of the Royal Court dated 25 July 2025, reported at [2025] JRC 188, where I sat with Jurats Averty and Berry where we refused to bless two decisions reached by the Trustee ("the Substantive Judgment"). The Substantive Judgment is lengthy and sets out the background to the application by the Trustee for the blessing. It is not necessary to repeat for this judgment that background. What is material is that the Trustee has not elected to appeal the Substantive Judgment, although the Trustee has a right to do so. The application for leave to appeal 2. In light of the decision by the Trustee not to appeal the Substantive Judgment, pursuant to Article 13(1)(c) of the Court of Appeal (Jersey) Law 1961 , leave is required from the Royal Court making any order as to costs only. If the Royal Court refuses leave, then that is the end of the matter. 3. This is the application that the Trustee has now made. The application was made by summons with a Notice of Appeal annexed and was supported by a Skeleton Argument. I determined to deal with the application on the papers. The Respondents to the Substantive Judgment were made aware of the application but no comments have been received on it. The Trustee was also content for the matter to be dealt with on the papers. 4. The grounds of appeal are as follows: Ground 1

- The Royal Court erred in that it failed to give proper weight to the principle that the Trustee's indemnity is a right given to it by the law, and part of the fundamental basis of the relationship between trustee and beneficiary. Ground 2

- The Royal Court erred in that it failed to give proper weight to the public interest in Jersey of trustees being supported in their duties by the Court. Ground 3
- The Royal Court erred in that notwithstanding that on a blessing application the proper administration of the Trust is the paramount concern, it placed no weight on the potential consequences of such an order for the Trust and whether it was truly in the best interest of the beneficiaries. Ground 4
- The Royal Court erred in that it wrongly took into account a finding (at paragraph 28(a) of its Costs Judgment) that a previous composition of the Royal Court had rejected in principle a "quantitative approach" to its proposed exercise of its discretion to make an appointment excluding ("Mr A") but the Trustee had wrongly continued with that approach; when that finding was plainly wrong. Ground 5
- The Royal Court erred in that it took into account (at paragraph 28b) its finding that "the Trustee resolved to totally exclude [Mr A] without ever explaining why its position had changed", when that finding was not a relevant consideration. Ground 6
- The Royal Court erred in that it took into account (at paragraph 28c) its finding that "The Trustee failed to consult with [Mr A], [BB] or [W], notwithstanding the duty owed by the Trustee to have regard to their interests"; when that finding was not a relevant matter. Ground 7
- The Royal Court erred in that it took into account (at paragraph 28d) its finding that "The Trustee failed to minute its thinking"; when that finding was not a relevant matter, alternatively gave it too much weight. Ground 8
- The Royal Court erred in that it (at paragraph 28e) placed too much weight on its finding that the Trustee had failed to have regard to Chancery Counsel's advice. Ground 9
- The Royal Court erred in that it took into account (at paragraph 28f) its finding that "The Trustee also took into account the views of [Mr D] who wished [Mr A] to be excluded" when that finding was not a relevant matter. Ground 10
- The Royal Court erred in that it took into account its findings that "The Trustee failed to consider how far they should have regard to the wishes of [Mr E], (at paragraph 28(g), and see also paragraph 333(7) of the Substantive

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"while the Trustee did not have to have regard to [Mr E's] wishes it is not clear his wishes were considered at all") . Those findings of fact were not open to it on the evidence presented and were hence not a relevant matter. Ground 11

- The Royal Court erred in that it took into account its finding that "In relation to the hearing on 19th June 2024 the Trustee had wrongly refused to provide discovery" (at paragraph 28(h)) when that finding was wrong and hence not a relevant matter, alternatively gave it too much weight. Ground 12
- The Royal Court erred in that it took into account its finding that "The Trustee had also failed to raise at all or consider the question of [BB] having a representative appointment and [W] being convened. The idea of [Mr A] representing their interests had never been raised by the Court" (at paragraph 28(i)) when that finding was plainly wrong on the face of the record and hence not a relevant matter. Ground 13
- The Royal Court erred in that it took into account its finding that "There is also force to Advocate Jordan's criticism that the convening of [BB] was designed to show that the Trustee had considered her position because otherwise the first decision and the November 2023 decision would not have been blessed" (at paragraph 28(j)) when that finding was not a considered finding of fact and could not have been a finding open to the Court on the evidence before it. The applicable legal test 5. The Trustee in its Skeleton Argument referred to the applicable legal test in *Crociani v Crociani*

- [2014] (1) JLR 426, where at paragraphs 50 to 53 the Court stated the following: "50 In order to dissuade us from granting permission or (if need be) from allowing the appeal, the respondents relied on a well-known principle of Jersey jurisprudence, namely that- (i) in order to obtain permission to appeal the appellants must show: (a) there is a clear case that something has gone wrong; (b) a question of general principle falls to be decided for the first time; or (c) there is an important question of law upon which further argument and a decision of the Court of Appeal would be to the public advantage (see *Glazebrook v. Housing Cttee.* (13)). And that- (ii) In so far as the Royal Court was exercising discretion, that the Court of Appeal will only interfere if- (a) it had misdirected itself as to the principles governing the exercise of its discretion; (b) it had taken into account matters which it ought not to have done or had failed to take into account matters which it ought to have done; or (c) its decision was plainly wrong (see *United Capital Corp. v. Bender* (33) (2006 JLR 269, at para. 25)). I myself consider that criterion (i)(a) for permission to appeal, i.e. that there is a clear case that something has gone wrong, requires revisiting, since it would appear as a matter of language to be a basis for allowing an appeal rather than merely granting permission (see my dicta in *Cotterill v. Ozanne* (9) (2011-12 GLR 1, at para. 11) and *Warren*
- v. Att. Gen. (34) (2012 (2) JLR 286, at para. 15)) and I find illuminating and supportive the observations in *McNamara v. Gauson*
- (21) (2009-10 GLR 387, at paras. 21-32). While my doubts about criterion (i)(a) as currently formulated matter not since in this case criterion (i)(c) is obviously satisfied, nonetheless in my view the time has come to align the tests in each Bailiwick, there being no cultural or other reason to distinguish them, and I propose, if my brethren concur, that henceforth the

Royal Court and Court of Appeal in this jurisdiction should apply the criterion, in lieu of (i) (a), that the appeal "has a real prospect of success" when considering whether or not to grant permission under the Court of Appeal (Jersey) Law 1961, art. 13(1)(e). In the context of forum disputes this court has repeatedly endorsed the following words of Lord Templeman in *Spiliada Maritime Corp. v. Cansulex Ltd.*, *The Spiliada*

- (31) ([1987] A. C. at 465): "In the result, it seems to me that the solution of disputes about the relative merits of trial in England and trial abroad is pre-eminently a matter for the trial judge... An appeal should be rare and the appellate court should be slow to interfere." (See e.g. *Wright v. Rockway* (36) and *Leeds United F. C. Ltd v Weston* (19) ([2012]JCA083, at para. 3.) The admonition has sometimes been more honoured in the breach than in the observance (Lord Walker of Gestingthorpe in *Gheewala*
- v. *Compendium Trust Co. Ltd.* (12) (2003 JLR 627 at para. 1)) but in any event can only sensibly apply to matters of discretion or evaluation when there may be a spectrum of reasonable answers, and not to pure questions of law, which admit of only one answer." 6. The test was more recently applied by the Court of Appeal in *Buckley v Minister for Treasury and Resources*

[2024] JCA 085 , where the Court at paragraph 38, in considering an application for leave to bring judicial review proceedings, that: "The Court requires to be satisfied that there is an arguable ground for judicial review which has realistic prospects of success." 7. In my judgment, the same test in respect of seeking leave to appeal against a costs decisions applies, i.e. the Court is required to be satisfied that there is an arguable ground for an appeal against a costs decision which has a realistic prospect of success. 8. In *Britannia Building Society v Milborn*

[2007] JLR Note 11 , Page, Commissioner, in relation to an application for leave to appeal on costs stated: "When considering the above criteria on an application for leave to appeal on costs, regard should be had to the well-established, limited grounds upon which the Court of Appeal will interfere with the Royal Court's exercise of discretion (*Brown v Barclays Bank Plc*

[2002] JLR Note 1 referred to) and an applicant should have the benefit of any doubt as to whether there is a realistic prospect of success, if the Court is satisfied that there is no such prospect it has a duty to refuse leave." 9. These are the principles that I have applied.

Submissions

10. In its Skeleton Argument, the Trustee made submissions that: (i) The Court had not directed itself according to the correct principles; (ii) The Court had failed to take into account all relevant matters or had considered irrelevant matters; (iii) The decision was plainly wrong; (iv) The decision raised important questions of law. 11. The costs order made was set out in an Act of Court dated 7 th August 2025 as follows: "1. The Representor (the Trustee) shall bear its own costs of and incidental to the application relating to: (i) Provision of discovery;

(ii) The appointment of a guardian ad litem in respect of [BB]; and (iii) Convening [W] at the hearing on 19 June 2024; and 2. The Representor shall only recover half of its costs of and incidental to the Amended Representation, such costs to be paid from the Trust on the Alhamrani basis; and 3. The Fourth and Fifth Respondents of and incidental to the Amended Representation shall be paid from the Trust on the Alhamrani basis." The appeal against paragraph 1 of the Act of Court of 7 August 2025 12. Paragraph 1 of the Act of Court concerned a decision made by the Court on 19 June 2024. The reasons for this were set out in a file and parties judgment dated 25 June 2024 ("the June 2024 Judgment"). The hearing on 19 June was initially supposed to have been the date listed for the hearing of the Trustee's substantive application for the blessings it was seeking at that time; those were for the First Decision and the November 2023 Decision as set out in the Substantive Judgment. However, in the bundle provided for the hearing it was clear that requests for detail about the sale of the [Redacted] and loans due to the ("K") Estate had been made by Mr A but had been refused by the Trustee. 13. The pertinent parts of the Court's June 2024 Judgment are to be found in paragraphs 17 to 31 as follows: "17. In relation to [Redacted], what appears to have occurred is a sale of approximately 50% of the estate. However, no valuation evidence or evidence on the strategy to be adopted in respect of such a significant sale has been produced to the Court. Nor has the Representor produced to the Court any evidence about what it intends in respect of a future sale of [Redacted] notwithstanding that there are significant sums said to be owed to [K]. 18. The approach of the Representor appears to be that because no sale of the entirety of the [Redacted] Estate was sought then no court approval was required. This was made clear in a letter dated 3 February 2023 from Advocate Renouf on behalf of the Representor to [Mr A]. Yet over half of an estate said to be worth approximately £30 Million has been sold; the remainder of the Estate is also the only available asset to repay any sums due to [K]. If enforcement of what is said to be due can be compelled, this would appear to lead to at around 80% of [Redacted] being sold since the Royal Court's judgment in October 2020. On any view that is a momentous decision even though the Representor, as it is entitled to do, has not sought any blessing for any past or intended sales of different parts of [Redacted]. 19. In terms of the sale, [Mr A] was seeking information from the Representor about the terms of the proposed sale as set out in detail in his lengthy affidavit filed in opposition to the present application. 20. In the same letter, Advocate Renouf in response to [Mr A's] request for information stated as follows: "As always, the Trustee administers the Trust assets in the best interest of the beneficiaries, and do not consider it is in your best interest or [Mrs C's] to supply the information you have request to you." 21. We find this a surprising observation to say the least. In principle, the sort of information [Mr A] was requesting which had been paid for out of Trust assets was information he was entitled to see as part of holding a trustee to account. If the Representor's concern was that [Mr A] should not receive such information then the Representor should have come to court seeking directions that it should not provide information to a beneficiary that a beneficiary was ordinarily entitled to see to hold it to account (see Rabaiotti Settlement 2000 JLR 173). 22. We wish to add that there are safeguards that could be imposed in relation to the provision of such information such as

restricting the use to which [Mr A] could use such information and expressly preventing him from using it to communicate with any third parties. 23. In our view, what the Trustee has done and proposes to do in relation to [Redacted] is extremely significant and relevant context to the blessing it seeks. We wish to understand whether the Trustee proposes further sales in relation to [Redacted] to repay [K] leaving the balance for [Mrs C] or whether it proposes to sell the entirety of the estate. 24. If it sells the latter and the Representor is left holding significant cash, the Royal Court has to evaluate whether it should bless a decision that leaves the entirety of cash with [Mrs C] and her issue or whether a trustee should at least consider holding part of that cash for the issue of [Mr A] even if it is reasonable to exclude [Mr A] because of the impact of his conduct on the assets of [N]. The approach of the Representor is in summary that the "sins of the father" should be visited on his issue and they should not benefit at all from any trust where he has caused significant damage to it. 25. At present, it is only the 11th affidavit of [Mr Q] that considers the position of [Mr A's] issue expressly. This affidavit was only sworn some months after the Representor's decision. The minute of the meeting makes no reference to [Mr A's] issue. 26. The difficulty the Court faces with the Representor's approach is that it does not know what assets ultimately will end up in [N]. The size of the pot available is a critical issue against which to determine the reasonableness of the Representor's Decisions. 27. Nor has the Representor addressed at all the issue of the enforceability of the loan between [K] and [N] notwithstanding that both the Royal Court and the Court of Appeal expected this issue to be addressed. If the loan is not enforceable, then the value of [N] increases significantly. 28. If the loan is enforceable, the Representor has not explained how this would occur. To repay the [K] loan as well as the remaining financing would, on any view, require the majority of the remaining [Redacted] Estate to be sold. The fact that this might be done in stages does not detract from the sale of the main asset of [N] which in 2020 was said to be worth in the region of £30 million as not being anything other than a momentous decision or a series of linked decisions which are momentous when looked at in the round. Yet as noted at paragraphs 16 to 18 above the Court has not been provided with any evidence about the sale or marketing of [Redacted] Estate and what value might be realised both in relation to the sale that took place in September 2023 and any future possible sales. 29. We also observe that we have not had produced to us any correspondence either between the Representor and the Trustee of the [K] Trust or the Representor and [Mr D] or between any of the Directors, in particular [Mr Q] and [Mr D] about repayment of the loan said to be due to [K]. The short summary in [Mr Q's] affidavit at paragraph 15 comes nowhere near discharging the duty of disclosure owed by the Trustee when asking the Court to bless a momentous decision. 30. Nor is there any evidence addressing the enforceability of this loan notwithstanding the Royal Court in 2020 and the Court of Appeal in 2021 expected this issue to return to court. There is not even an explanation why the Representor has not addressed this issue. 31. The disclosure of the material in relation to the sale of part of [Redacted] in September 2023 is also material to the blessing sought by the Representor on a retrospective basis for its decision to exclude [Mr A] from benefitting from any income. It is said this was done for tax reasons but the Representor has not explained how the urgency came about, what decisions it made to sell

parts [Redacted] and when and how that timeframe fits in with the decision to exclude [Mr A] from half the income." 14. This led the Court to state at paragraph 32 the following: "These gaps in the evidence are significant. Without them we do not feel, as a Court, we can bless the decisions of the Representor. That is not to say that we are not sympathetic to the difficulties that [Mr A] has caused as noted in previous judgments. However the fact that [Mr A] may have caused difficulty does not absolve the Representor from complying with the duties owed to the Court of full and frank disclosure." 15. In relation to ordering disclosure on the enforceability of loans to the K Trust, we also stated at paragraph 33: "If no advice has been taken in relation to enforceability such advice should be taken before this Court can consider whether or not to exclude [Mr A] and his issue or either of them. The Representor may then need to revisit its decision in the light of that advice." 16. We also ordered that ("W") be convened and that a guardian ad litem be appointed for ("BB"). 17. That was for the reasons set out in paragraph 24 of the June 2024 Judgment cited above, where the Trustee's approach was to visit the "sins of the father" on Mr A's issue. 18. There was no appeal by the Trustee against these directions. 19. In the Costs Judgment, I noted that the Trustee had wrongly refused to provide discovery. I also noted that the Trustee had been aware around the time of the November 2023 decision that Mr A had a child, and that by the time of the June hearing that Mr A was married. 20. Under Ground 11 of its Notice of Appeal, the Trustee contended that it had not refused to provide discovery. This is however completely contrary to the finding at paragraph 20 of the June 2024 Judgment and the response from Advocate Renouf which is clearly a refusal to provide information to a beneficiary of a trust which information that beneficiary was prima facie entitled to see. As paragraph 21 of the June judgment sets out, there is a clear and well-known mechanism for a trustee coming to Court which the Trustee failed to follow. 21. In this part of its application for leave, the Trustee also raised a concern whether paragraph 1 extended to the costs of the discovery exercise itself. I accept that these were not covered by the order I made which related to the costs of and incidental to the hearing of 19 June itself, not work that the Trustee was required to carry out as a result of that order. The subsequent work is caught by paragraph 2 of the costs order I made, not paragraph 1. There is therefore no double recovery. 22. The second ground relied upon in relation to paragraph 1 of the Act of Court of 7 August 2025 is Ground 12. The Trustee in its grounds of appeal therefore raised the fact that the question of separate representation had been raised when the Representation was first presented in December 2023. 23. The difficulty with this argument is the failure by the Trustee to consider whether Mr A was married or ascertain whether he had any issue (see paragraph 333(vi) of the Substantive Judgment) where the Trustee was arguing that it was Mr A's responsibility to raise these issues with the Trustee; the Trustee was also arguing that the sins of the father should be visiting on his spouse and issue. These differing approaches should have been raised by the Trustee expressly with the Court at the convening hearing as part of consideration of who should be convened and whether it was enough just to join Mr A and not his spouse or issue. 24. It should not have been left to the Court to have to require parties to be convened. It should be for a trustee to ensure on a convening application that the question of who is convened is fully explored with the Court. It should not be left to the

Court on what frequently can be quite short hearings to try to work out who should be joined to or notified of a blessing application. At that stage the Trustee will be much more familiar than the Court with the detail of the issues before it. In that regard the ninth affidavit of ("Mr Q") filed in support of the application to convene Mr A does not discuss the issue a of joining his spouse or a representative for minors and unborns at all. 25. Yet it is clear from the Substantive Judgment that the position of BB in particular had to be addressed and, as the Substantive Judgment shows, the position of W and BB was significant. Yet the Trustee had failed to consider their position separately from that of Mr A until the Second Decision i.e. 6 Months after the 19 June 2024 hearing. 26. In relation to Ground 13 and the Trustee's criticism of paragraph 28(x) of the Cost Judgment, this followed the criticism at paragraph 28(ix). The real point in paragraph 28(x) was that without BB being convened, the First Decision and the November 2023 Decision could never have been blessed because her position had not been considered. This conclusion was therefore further illustrative of the Trustee's failure to raise with the Court at the outset the question of a guardian for BB. 27. I have set out these arguments and my comments on them because in my view they do not meet any of the grounds where leave to appeal should be granted. 28. Firstly, for the reasons set out above, there is no clear case that something has gone wrong. 29. Secondly, the hearing on 19 June 2024 was a directions hearing where there were serious failings on the part of the Trustee. There is no question of any general principle that applies to such a hearing. The failings were also very far from being an accidental oversight because the Trustee had deliberately refused to provide discovery and had not followed the correct approach. The Costs Judgment sanctioned the Trustee for that approach which was the main issue before the Court. The Trustee had also failed to deal with the position of W and BB. Given that it was seeking a blessing, it was its duty to raise their position with the Court but the Trustee clearly failed to do so. 30. To the extent that the Trustee relies on Grounds 1 and 2 above in respect of paragraph 1 of the Act of Court of 7 August 2025, while I address this argument in more detail below in relation to the Substantive Judgment, the right of a trustee to an indemnity does not prevent the Court penalising a trustee who has acted unreasonably or improperly. In relation to Ground 2, while I understand the submission that the Royal Court is supportive of trustees seeking the assistance of the Court, that is not a carte blanche permitting a trustee to adopt a course of action contrary to clear authority which the Trustee did in this case in relation to discovery. While the Royal Court will not penalise a trustee for simple mistakes, the approach of the Trustee leading to the June 2024 Judgment does not fall within that category. 31. Leave to appeal is therefore refused in respect of paragraph 1 of the Act of Court of 7 August 2025 The application for leave to appeal in respect of paragraph 2 of the Act of Court of 7 August 2025 32. The first submission made by the Trustee in its Skeleton Argument was that the Court had failed to direct itself in accordance with the correct legal principles. This appeared to be a submission based on Grounds 1, 2 and 3 of the Notice of Appeal set out above. 33. The Skeleton Argument emphasised the following: (i) The authorities made it clear that trustees ought not to be dissuaded from bringing blessing applications and that the fact at paragraph 2 amounted to a strong disincentive to trustees bringing such applications; (ii) The discretion of the Court in determining whether to

deprive a trustee of its indemnity was different from those governing an inter partes costs order; (iii) The fact that the Trustee did not receive the blessing it sought did not justify removing its indemnity. 34. The applicable legal principles were set out at paragraphs 4 to 12 of the Costs Judgment. As the Costs Judgment noted, there was little dispute between the parties on the applicable legal principles. Neither the grounds of appeal nor the Skeleton filed suggest that these have been set out incorrectly. The matter has also been reviewed by the Court of Appeal in *J P Morgan 1998 Employee Trust*

[2013] 2 JLR 239 as noted at paragraphs 8 and 9 of the Costs Judgment. I am not therefore satisfied that anything has gone wrong in relation to the principles set out which justifies leave to appeal being given. This is also not a case where the Court of Appeal has not considered the relevant legal principles which might justify leave being given. 35. Rather, the issue raised in the present application concerns the application of those principles and how they were applied. This appears to be the real thrust of Grounds 1, 2 and 3 and the criticism that I failed to give "proper weight" to the Trustee's right of indemnity or the public interest of trustees being supported in their duties by the Court 36. What was at the heart of the judgment was paragraph 28, where I set out ten failings, eight of which related to the Substantive Judgment and which led to the costs orders I made. This paragraph was a summary of the main findings of the Substantive Judgment which runs to three hundred and seventy-four paragraphs, of which the decision part runs to eighty-one paragraphs. 37. In relation to the Trustee's criticism of paragraph 28(a), this is a summary of the detailed findings at paragraph 334. The Trustee's criticisms of it do not stand up. While the Trustee contends that the material before the Court in 2024 was more extensive and brought up to date, the conclusion of the Royal Court in 2020 and the Royal Court in 2024 was the same. There is therefore nothing in this ground. 38. In relation to Ground 5 and the Trustee's criticism of paragraph 28(b), the Court at paragraph 346 was clear that the Trustee failed to look at an unequal split. The contentions filed also repeated the arguments put by the Trustee in reply at paragraph 276 of the Substantive Judgment, an approach which was rejected at paragraph 302. Ground 5 was therefore simply a repetition of arguments which the Royal Court had rejected. In my view, the failing by the Trustee to explain its change of approach, in particular given the significance of total exclusion as noted paragraphs 261 and 262 of the judgment, the findings summarised at paragraph 28(b) was a relevant consideration because it involved a serious misapplication of the applicable legal principles. Ground 5 is not therefore a basis to give leave. 39. In relation to Ground 6 and paragraph 28(c), the grounds fail to explain why the Trustee was not under a duty to consult with Mr A, BB or W. This was a submission rejected at paragraph 333(xi). The question of whether it would have been pointless to consult them was also addressed at paragraphs 333(ii) - 333(v). The arguments raised do not address these findings. 40. In relation to Ground 7 and paragraph 28(d) of the Costs Judgment, it is clear from the Substantive Judgment that the Royal Court had concluded the Trustee had not minuted its thinking - see for example, paragraphs 331, 333(i), 333(iv), 333(vi) (by implication), 333(vii), 340, 346 and 359. These failings are serious and I was satisfied that I was entitled

to take them into account as summarised at paragraph 28(d) of the Costs Judgment. 41. In relation to Ground 8 and the criticisms of paragraph 28(e) of the Costs Judgment, firstly, the Royal Court was clear in its findings about what should have been taken into account and the failure to follow Mr Flavin's advice (see paragraph 332 and 333 of the Substantive Judgment). 42. In relation to these specific criticisms, the Royal Court was entitled to reach the conclusion that the Trustee was influenced by ("Mr D's") wishes, bearing in mind that Mr D was the main beneficiary from the K Trust and only stood to gain from the ("N") Trust in the event of ("Mrs C"), her spouse and issue and Mr A, his spouse and issue not being able to benefit. Secondly, the Royal Court was clear that the Trustee had misunderstood paragraph 115(i) of the 2020 Judgment. In relation to the position of the inter-trust loans being clear by the autumn of 2023, this does not sit with the fact that it was only after the June 2024 directions hearing that the Trustee resolved matters with the Trustee of the K Trust about what the inter-trust debt was. The Trustee's arguments are not therefore a basis to interfere with the finding at paragraph 28(e). 43. The same criticisms apply in relation to Ground 9. The position of Mr D was as noted above. The Royal Court was entitled to reach that conclusion on the material before it. 44. I also consider that there is nothing in the point that the Royal Court has wrongly relied on the principles of improper purpose and irrelevant consideration. The advice of Mr Flavin was that the Trustee should not have regard to Mr D's wishes. The findings at paragraphs 337 to 339 entitled the Court to conclude that the Trustee had acted for an improper purpose by taking those wishes into account. 45. In relation to Ground 10, the minutes of the First Decision, the November 2023 Decision and the Second Decision do not make any reference to Mr E's wishes at all. The nearest reference to those wishes is in Mr Q's tenth affidavit, an earlier draft of which was before the Trustee when it reached the November 2023 Decision. However, as noted at paragraph 343 of the Substantive Judgment, those minutes did not contain any reasons for resolving to enter into the Deed of Appointment. The Court, at paragraph 331(v), also noted in relation to the First Decision that there was nothing in the minutes as to why there should be total exclusion. A draft of the tenth affidavit was only produced to justify the November 2023 Decision but that also did not set out the Trustee's deliberations but only the conclusions. The reliance on paragraph 29 of the tenth affidavit is therefore not enough to affect the court's conclusions in the Substantive Judgment about the inadequacy of the minutes and the lack of any reference to Mr E's wishes or my summary of those conclusions. Even though this paragraph of one affidavit was not expressly cited, this single reference does not mean that something has gone sufficiently wrong to justify leave to appeal being given. 46. I have addressed each of the grounds relied upon above because the grounds seek to attack each of the findings of fact made at paragraph 28. However, the introductory words at paragraph 28 made it clear that I was looking at matters in the round. Even if therefore contrary to the above analysis some criticisms can be made of the approach taken, I was entitled to stand back and look at matters in the round and the failings of the Trustee as a whole. 47. In considering this application, it is also pertinent that the Trustee is not seeking to appeal the Substantive Judgment as noted above. Yet Grounds 4 to 10 in particular seem to involve challenges to

certain significant findings of the

judgment.

I have concluded that it would be wrong in principle on a costs appeal to effectively allow a disaffected party to challenge substantive findings when there has been no appeal against the Substantive Judgment itself. In that regard, it is significant that the Trustee has a right to make such a challenge and does not require leave. 48. The more general point advanced by the Trustee in its Skeleton and Grounds 1 to 3 of its Notice of Appeal are that the findings of fact do not permit the Trustee to be deprived of its costs to the extent that has occurred. 49. In my judgment, this is an attack on the exercise of discretion. The reliance on the trustee's indemnity does not give a trustee an absolute right to recover costs. Nor does the conduct of a trustee have to amount to a breach of trust for it to be deprived of its costs. In this case, the course of conduct adopted by the Trustee where it made significant errors meant that it proceeded in a way it should not have done without considering other alternatives and without following the legal advice it itself had obtained. I am not therefore persuaded that anything significant has gone wrong in relying in these failings to justify the Court of Appeal reviewing an exercise of discretion. 50. In relation to comparisons with other cases, this does not assist; each case has to be reviewed on its own facts. The costs submissions of the Trustee in that regard are instructive. Its argument was that it should recover all of its costs, notwithstanding the very serious failings identified by the Royal Court. The position of Advocate Jordan for BB, supported by Advocate Cushing for W, was that the Trustee should not recover any of its costs. While that went too far, both parties ultimately left it to my discretion to decide what order to make. In my judgment, neither position was justified. I therefore exercised my discretion to reach an outcome that I regarded as best reflecting the justice of the case. I do not consider that this approach warrants the matter being considered by the Court of Appeal. 51. In relation to the assertion that trustees should be supported; while the Costs Judgment did not dissent from that proposition, the present case was far more than an accidental mistake; rather, it was a trustee which proceeded with a particular course of action that was significantly flawed. The support that the Royal Court extends, and will continue to extend to trustees, does not provide a carte blanche protection for trustees who adopt a particular course of action and make serious and fundamental errors in doing so. 52. In relation to Ground 3, this is not a basis to refer matters to the Court of Appeal. While I appreciate that the Trustee could not resign, that does not justify acting in the way this Trustee is found to have acted. I therefore remain of the view that the consequences for the Trustee are not a relevant consideration or justify matters being referred to the Court of Appeal. If the Trustee is insolvent as a result of the costs order made, that is a separate matter for the Trustee to raise and bring back to Court; it is not a basis to refer the costs order to the Court of Appeal. 53. The final argument therefore advanced by the Trustee was that the decision was plainly wrong. I accept that the decision may be seen as tough but, as noted above, that has to be set against the serious failings of the Trustee. While the Court said, as the Costs Judgment noted, that an order depriving a trustee of costs should not be made lightly, that does not mean that such an order should not be made at all when there are serious failings. 54. In reaching this conclusion, I have considered

anxiously whether there is any doubt that should be exercised in favour of the Trustee which would require leave to be given on this latter ground. I have no doubt, however, that the decision was one that I was entitled to make having regard to the findings in the Substantive Judgment. This was a simple exercise of discretion and therefore should not trouble the Court of Appeal. 55. Accordingly, leave to appeal is refused. Postscript 56. Notwithstanding the refusal of leave to appeal, in reviewing the Substantive Judgment, I noted at paragraph 249 that I had recorded a submission of Advocate Jordan that the Court of Appeal in *Crociani v Crociani*

[2014] JCA 089 at paragraph 57(i) had expressed a different view. However, paragraph 57(i) simply recorded the submissions of the appellants. The Court of Appeal at paragraph 58 declined to express any conclusion. It is right that I therefore correct the mistake recorded in paragraph 249. However, in my view, nothing turns upon this because the First Decision (adopting the definition used in the Substantive Judgment) would only have been void or voidable if the Court had found that the First Decision was only made because the directors had been moved by an improper purpose (see the quotation from paragraph 21 of the *Eclairs Group* judgment). However, while the Court found there was an improper purpose (see paragraph 337), the Court was clear that this improper purpose was not determinative. The Court stated at paragraph 345 that the Trustee had failed to take into account or consider the matters set out in paragraph 333) and that the Trustee "in part" was also acting for an improper purpose. This therefore led the Court to refuse to bless the First Decision. 57. I have set this out because the question of the First Decision being void or voidable strictly speaking did not arise. Rather, the Court simply refused to bless the First Decision. The reference in paragraph 374 of the Substantive Judgment to the First Decision being voidable is therefore incorrect. The question of whether the First Decision is void or voidable is accordingly a matter for another day, until the Trustee has had a chance to consider the judgment as set out in paragraph 374, ignoring the reference to the First Decision being voidable. At present the Trustee is left with a decision which the Court has refused to bless. This question of void/voidable does not arise in relation to the Second Decision as it was conditional upon Court approval. As Court approval was not forthcoming, the Second Decision simply fell away. *Authorities Trusts (Jersey) Law 1984. Representation of V Trustees Limited re N Trust*

[2025] JRC 208 . *Representation of V Trustees Limited re N Trust*

[2025] JRC 188. *Court of Appeal (Jersey) Law 1961. Crociani v Crociani* [2014]

(1) JLR 426. *Buckley v Minister for Treasury and Resources*

[2024] JCA 085 . *Britannia Building Society v Milborn*

[2007] JLR Note 11 . *J P Morgan 1998 Employee Trust*

[2013] 2 JLR 239 . *Crociani v Crociani*

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