



**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION**

Claim No FSD 205 of 2017(NSJ)

BETWEEN:

**(1) LEA LILLY PERRY
(2) TAMAR PERRY**

Plaintiffs

and

**(1) LOPAG TRUST REG
(2) PRIVATE EQUITY SERVICES (CURACAO) NV
(3) FIDUCIANA VERWALTUNGSANSTALT
(4) GAL GREENSPOON
(5) YAEL PERRY
(6) DAN GREENSPOON
(7) RON GREENSPOON
(8) MIA GREENSPOON
(9) ADMINTRUST VERWALTUNGSANSTALT**

Defendants

**RULING ON THE PAPERS ON THE FORM OF ORDER TO BE MADE TO GIVE
EFFECT TO THE COURT'S JUDGMENT DATED 19 JANUARY 2024**

1. The parties have been unable to agree the form of order to be made to give effect to my judgment dated 19 January (the *Judgment*) and (after various extensions of time) have filed (in accordance with the directions I have given) the forms of order they each ask the Court to make with written submissions explaining their respective positions.
2. I have reviewed and considered the submissions (with draft orders) filed by the Trustees on 7 March 2024 and by the Plaintiffs and the Fifth Defendant on 8 March 2024. I did ask the parties to provide me with a single copy of the draft order with the agreed wording

Page 1 of 5

in black and the wording proposed by the Plaintiffs, the Trustees and the Fifth Defendant in separate colours to make a review of the competing wording easier but I have still not received this and have decided not to delay further the handing down of my ruling by waiting for it.

3. I attach the form of order that I shall make (in a clean version and a mark-up to show the changes to the Trustees' draft).
4. I do not propose to provide a detailed explanation of my reasoning since the wording of the amended form of order is, I believe, self-explanatory. But I would make the following points.
5. I accept the Trustees' submissions regarding the approach to be adopted in relation to the recitals.
6. As regards the form of the order:
 - (a). *paragraph 3*: the Judgment makes it clear that the Amended Undertakings can only be terminated if the funds deposited in the jurisdiction with the Court (or in another account approved by the Court) have been lawfully transferred and will be available to satisfy a judgment obtained by the Trustees in respect of the Trustees' Damages Claim. It seems to me that the Trustees' addition of the words "*unencumbered funds from an unimpeachable source*" adequately captures this requirement (and if a US\$20 million deposit is made and a dispute arises as to whether this requirement has been satisfied an application to Court can be made). I have also made some drafting changes to spell out that the funds held on deposit will be held pending a further order of the Court and, consistently with the approach taken in paragraph 2 of the Amended Undertaking, to require that the terms on which the funds are deposited are approved by the Court (and not just the Trustees). I do not agree with the Trustees' introduction of the reference to "*security*." While the purpose of the deposit is to give the Trustees security by having a fund available in the jurisdiction against which a judgment could be executed, the Trustees will not have (or at least it has not yet been established that the Trustees should have) a security interest in the deposit.

- (b). *paragraph 5*: I accept the Trustees' submissions as to the wording of this paragraph.
- (c). *paragraph 6*: I accept the Plaintiffs' submissions, and form of order, as to costs.
7. As regards the drafting of the Amended Undertakings:
- (a). *introductory wording*: I have in the introductory wording added a definition of the Plaintiffs and a stipulation that they give the undertakings jointly and severally.
- (b). *paragraph 2 introductory wording*: it seems to me that, having regard at least to the English translation of SFPP's articles of association, the correct term to use to describe the payments covered by paragraph 2 (and paragraph 3) is "*distributions*". Accordingly, I have added/substituted that term where appropriate. I have also added wording that clarifies the capacity in which the distributions are to be made to the Plaintiffs.
- (c). *paragraph 2a*: I note and accept the points made by the Plaintiffs on this, namely that the current Curacao proceedings do not contemplate an order being made which would approve or permit a distribution of the type referred to. However, it seems to me that there can be no objection to retaining (and that it might be of assistance to the Plaintiffs to retain) a provision which permits the distribution to be made if pursuant to another application the Curacao Court does make an order approving the distribution.
- (d). *paragraph 2b*: it seems to me that paragraph 2b provides the Plaintiffs with the main mechanism for obtaining the US\$20 million they need to fund the deposit in the jurisdiction and to obtain the discharge/termination of the Amended Undertakings. That mechanism, consistently with the Judgement, needs to provide for advance notice of the proposed date of the distribution and service of an affidavit from a suitably qualified person, sufficiently in advance to allow the Trustees to apply to this Court for an order to prohibit the distribution being made. 28 days seems to me to be needed rather than 21 days (although if all the parties are agreed that 21 days is appropriate that period should be adopted). The paragraph needs to make explicit what was implicit namely that the distribution cannot be

made before the notified distribution date if this Court has before that date made an order prohibiting the Plaintiffs' exercise of their powers to procure the distribution.

- (e). *paragraph 3 (previously paragraph 2c)*: the Judgment did (see [71(f)]) confirm that it would be acceptable for the Amended Undertakings to be varied to permit the Plaintiffs to procure that SFPF makes distributions from the Pictet Account to a beneficiary other than the Plaintiffs. But the Judgment made it clear that that any such distributions must be properly authorised and lawful and that following the making of such a distribution the Plaintiffs must remain entitled to distributions, there will be sufficient funds retained to allow distributions to be made to the Plaintiffs subsequently in an amount of at least US\$20 million, and that any such distribution does not adversely affect or prejudice the Plaintiffs' rights to be paid distributions of at least US\$20 million or prevent SFPF making, or make it less likely that SFPF will make, distributions to the Plaintiffs in such an amount. So it seems to me that the Amended Undertakings should, contrary to the Trustees' submissions, include a proviso that permits distributions to be made by SFPF out of the Pictet Account to other beneficiaries. But in order to satisfy the conditions to which I referred in the Judgment, there need to be additional safeguards beyond those proposed by the Plaintiffs and the Fifth Defendant. The mechanism set out in the new paragraph 3 establishes these safeguards in a way that involves a series of simple steps that will ensure that any distributions to other beneficiaries can only be made when the rights of the Plaintiffs to receive at least US\$20 million is preserved and will shortly be followed by a distribution of US\$20 million to the Plaintiffs for the sole purpose of funding the deposit account, if such a distribution is permissible (I have moved the provision dealing with distributions to other beneficiaries to a new and separate paragraph because paragraph 2 only deals – see the introductory wording – with distributions to the Plaintiffs although I appreciate that the Fifth Defendant had suggested additional language in the additional wording to address this – a separate paragraph seems to me to be preferable).
- (f). *the impact of the dismissal of BGNIC's (and the Trustees') claims in the Curacao Proceedings*: once the outcome of the Curacao Proceedings is known it will be open to the Plaintiffs (and the Fifth Defendant) if they wish to make a further

application supported by further evidence, depending on and in light of the decision of the Curacao Court, for the termination or a further variation of the Amended Undertakings (and the freezing injunctions). Alternatively, it may be that in view of the decision of the Curacao Court, the Plaintiffs will be able to rely on the mechanisms included in the Amended Undertakings to facilitate distributions to themselves (or other beneficiaries).

- (g). I have noted the update on developments in the Curacao proceedings contained in the Fifth Defendant's submissions (and in Priestleys' email to the Court of yesterday). The Fifth Defendant has also made submissions on the Trustees' evidence in support of the freezing order as to their resources. The submissions (and unilateral emails to the Court) are not the appropriate methods for dealing with these issues. If the Fifth Defendant wishes to file further evidence she can do so (and can seek permission to do so if required) and if she wishes to make further applications she can do so now or at the appropriate time. The Court required that further evidence be filed in relation to the Trustees' evidence as to means and resources since the Court was not satisfied with the evidence previously filed by the Trustees and so that the Plaintiffs and the Fifth Defendant had the benefit of supplemental evidence and could then decide whether to make further applications. Dealing with these issues in submissions relating to different procedural points or in email correspondence with the Court is unhelpful (in any event developments after the Judgment can and should not have any impact on the order to be made to give effect to the Judgment, at least not without further applications and evidence). On a related point, the Court has already said that it is aware that Lopag has resigned and that this may have serious implications for the further conduct of the ANOM and the TNOM and has asked that the parties deal with this issue and explain their positions at a hearing.



The Hon. Mr Justice Segal
Judge of the Grand Court, Cayman Islands
28 March 2024

CAUSE NO: FSD 205 OF 2017 (NSJ)

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

IN THE MATTER OF THE ESTATE OF ISRAEL IGO PERRY DECEASED

BETWEEN:

- (1) LEA LILLY PERRY
- (2) TAMAR PERRY

Plaintiffs/Counterclaim Defendants

and

- (1) LOPAG TRUST REG.
- (2) PRIVATE EQUITY SERVICES (CURACAO) N.V.
- (3) FIDUCIANA VERWALTUNGSANSTALT
- (4) GAL GREENSPOON
- (5) YAEL PERRY
- (6) DAN GREENSPOON
- (7) RON GREENSPOON
- (8) MIA GREENSPOON
- (9) ADMINTRUST VERWALTUNGSANSTALT

Defendants/Counterclaim Plaintiffs (First and Ninth Defendants)

ORDER

UPON Solid NV ("**Solid**") issuing shares in favour of the Solid Fund Private Foundation ("**SFPF**") on 24 May 2017, the effect of which was to dilute the holding of Britannia Guarantee National Insurance Company from 100% to 1%

AND UPON the directors of Solid declaring a dividend of €100m on 20 July 2017 of which €99 million was paid to SFPF ("**the Solid Dividend**")

AND UPON the Court having granted a proprietary injunction against the Defendants and the Third Parties on 17 October 2017 ("**the Proprietary Injunction**"), each Plaintiff having given a cross-undertaking in damages to the Court ("**the Plaintiff's Cross-Undertakings**")

AND UPON the Plaintiffs having given undertakings to preserve assets in accordance with the Order of the Court dated 10 April 2018 ("**the Undertakings**")

AND UPON the Plaintiffs having given further undertakings dated 8 February 2021 to preserve assets in accordance with the Order of the Court dated 15 January 2021 ("**the Further Undertakings**")

AND UPON the Court having appointed Hugh Dickson and John Royle of Grant Thornton Specialist Services (Cayman) Limited ("**the Receivers**") as Joint-Receivers of the single share of Britannia Holdings 06 Limited ("**BH06**"), Hugh Dickson having been replaced by Margot MacInnis on 7 April 2022

AND UPON the funds held by Banque Pictet & Cie SA in the name of SFPF and Solid having been transferred into joint accounts in the name of the Receivers and SFPF/Solid respectively ("**the Pictet Accounts**")

AND UPON the Trustees having made a claim against the Plaintiffs for damages pursuant to the Plaintiff's Cross-Undertakings ("**the Trustees' Damages Claim**")

AND UPON the Court granting worldwide freezing injunctions on 9 June 2023 restraining the Plaintiffs from disposing of, dealing with, or diminishing the value of their assets up to the value of US\$20 million (together the "**Freezing Injunctions**")

AND UPON the Court having, by paragraph 6 of its Order of 9 June 2023, directed that the Receivers should continue in office for the purpose of retaining their rights in relation to the Pictet Accounts (and the funds credited thereto) as to ensure that those funds are not dealt with by the Plaintiffs in breach of the Undertakings and the Further Undertakings.

AND UPON the Plaintiffs' Summons dated 24 July 2023 (the "**Summons**");

AND UPON hearing Leading Counsel for the Plaintiffs, Leading Counsel for First, Third and Ninth Defendants ("**the Trustees**") and Leading Counsel for the Fifth Defendant

IT IS ORDERED THAT:

1. The Summons be dismissed.

2. The Undertakings and Further Undertakings be amended in the form of Schedule A hereto (the "**Amended Undertakings**").
3. The Amended Undertakings and Freezing Injunctions shall be discharged without further order and the Receivers shall cease to have or exercise any rights in relation to the Pictet Accounts (and the funds credited thereto) in the event that US\$ 20million of unencumbered funds from an unimpeachable source is paid into Court or such other account within the jurisdiction, in each case on such terms as may be approved by Court (including a term that no rights or interests in respect of the sums deposited have been or may be granted to any other person) or the Trustees as security to abide and pending the final outcome in respect of the Trustees' Damages Claim and subject to a further order of the Court.
4. The Freezing Injunctions each be amended by the following additions:
 - a. At paragraph 6(3) - "The value of assets frozen shall be reduced by any sum paid into Court by either the First or Second Plaintiff as security on terms approved by the Court; and
 - b. At paragraph 8(4) - "That this Freezing Injunction does not prevent the Plaintiffs from acting in any manner permitted pursuant to the Amended Undertakings given to the Court".
5. The Receivers shall permit any withdrawal from the Pictet Accounts as may be permitted by the Amended Undertakings.
6. ~~The Plaintiffs shall pay the Trustees' costs of the Summons to be assessed if not agreed. There be no order as to costs.~~
7. Liberty to apply.

DATED this day of February 2024

FILED this day of February 2024

THE HONOURABLE JUSTICE SEGAL

2933030-1

Judge of the Grand Court

2933030-1

SCHEDULE A

The undersigned (the *Plaintiffs*) hereby jointly and severally undertake that pending the determination of the Trustees' Damages Claim or further order of the Court in the meantime:

1. Save as provided at paragraphs 2 and 3 below:
 - a. They will not deal with, encumber, dispose of, make payments out of, or take any other steps, whether directly or indirectly, in respect of the assets and/or the shares of and/or their interests in BH06, Britannia Guarantee National Insurance Company ("**BGNIC**"), Solid and/or SFPF, or any title, interest, right, or power in such assets and/or shares thereof;
 - b. They will not dispose of, encumber, pay away, use, or otherwise deal with any dividend or distributions made by BH06, BGNIC, Solid, and/or SFPF (or in the case of the Second Plaintiff the proceeds of any loan made by Solid) or any asset, funds, or property representing such dividend or distribution or the proceeds of sale of such asset or property, and (in the case of the Second Plaintiff) that she shall not agree to any amendment to the terms of a loan agreement between Solid and the Second Plaintiff dated 22 June 2017 (the "**TP Loan**") and she shall procure that Solid shall not make or agree to any such amendment, or waive or give up its rights in respect of the TP Loan;
 - c. They will exercise all and any of their rights and powers (held directly or indirectly) in relation to Solid and SFPF (save to the extent that the exercise of such powers would result in criminal or other liabilities to unconnected third parties) to ensure that no dividends or distribution shall be made out of the assets and funds of Solid and SFPF, in each case until the conclusion of these proceedings or further order of the Court;
 - d. Individually and collectively to exercise all of their rights and powers (held directly or indirectly and save to the extent that the exercise of such powers would result in criminal or other liabilities to unconnected third parties) to restrict the boards of SFPF and Solid so that they cannot remove or change the appointment of the Receivers as joint account holder and a party whose consent to withdrawals is required to the accounts and who are entitled to receive information concerning the accounts.

- e. They will not agree to any variation of their rights in respect of SFPF and will not exercise their rights as beneficiaries to procure or permit their share (and entitlement to a 60.86%) of SFPF's funds to be reduced or adversely effected.
2. Notwithstanding the above, the Plaintiffs may exercise any rights or powers only to permit or procure the making by SFPF of a distribution dividend of US\$20 million to themselves as beneficiaries of SFPF (in accordance with SFPF's articles of association as amended and in force from time to time and other relevant documents) from the SFPF Account for the sole purpose of providing a payment into Court or other account in the jurisdiction, in each case on terms approved by the Court (including a term that no rights or interests in respect of the sums deposited have been or may be granted to any other person) to be held as security for to abide and pending the final outcome of the Trustees' Damages Claim (and subject to a further order of the Court) in the event that:
- a. The Curacao Court makes an order permitting s any such a distribution dividend to be made and either (a) any appeal or final appeal against that decision of the Curacao Court is dismissed, or (b) the time for appealing against any such decision elapses without any appeal being issued; or
- b. (i) Not less than 248 days prior to the date of the proposed distribution by SFPF, the Plaintiffs have notified the Trustees and the Fifth Defendant in writing of the date on which the distribution is to be made (the Distribution Date) and have filed and served on the Trustees and the Fifth Defendant an affidavit (and serve it on the Trustees) from a suitably qualified and independent person confirming that after making reasonable inquiries in their opinion such distribution would be properly authorised and would neither be unlawful nor give rise to any breach of duty as a matter of Curacao or other applicable law; (ii) the distribution is not made before the Distribution Date; and (iii) the Court has not on or before the Distribution Date ordered that the Plaintiffs may not so exercise their rights or powers.;
3. Notwithstanding the above, the Plaintiffs may exercise any rights or powers only to permit or procure the making by SFPF of a distribution to another beneficiary of SFPF (in accordance with SFPF's articles of association as amended and in force from time to time and other relevant documents) from the SFPF Account provided that (a) following such distribution at least US\$32,862,307 (the Minimum Sum) is retained in the SFPF Account as assets of SFPF; (b) all the beneficiaries, the directors and the

protector of SFPF have agreed in writing (the **Agreement**) that at least US\$20 million of the Minimum Sum will be held absolutely for and will as soon as practicable and permissible be distributed to the Plaintiffs for the purpose of making a payment into Court or another account in accordance with paragraph 2 above and (c) the not less than 28 days prior to the date of the proposed distribution by SFPF, the Plaintiffs have notified the Trustees and the Fifth Defendant in writing of the date on which the distribution is to be made (the **Distribution Date**) and have filed and served on the Trustees and the Fifth Defendant a copy of the Agreement and an affidavit from a suitably qualified and independent person confirming that after making reasonable inquiries in their opinion such distribution would be properly authorised and would neither be unlawful nor give rise to any breach of duty as a matter of Curacao or other applicable law; (d) the Distribution is not made before the Distribution Date and (e) the Court has not on or before the Distribution Date ordered that the Plaintiffs may not so exercise their rights or powers.

Formatted: Font: Bold, Italic

3.4. The undertakings given in paragraph 1 above shall not prevent the Plaintiffs from exercising their rights so as to permit the payment by SFPF or Solid of ordinary business expenses within reasonable limits including payment of the fees of the Investigator.

2933030-1