Neutral Citation Number: [2023] EWHC 2225 (Ch)

Case No: PT-2022-000493

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY TRUSTS & PROBATE LIST (Ch D)

IN THE MATTER OF THE LITTAUR MARRIAGE SETTLEMENT 1948

The Rolls Building
7 Rolls Buildings, Fetter Lane
London EC4A 1NL

Friday, 28 July 2023

BEFORE:

DEPUTY MASTER LINWOOD

BETWEEN:

GAVIN LITTAUR

Claimant

- and -

(1) ALISTAIR COLLETT
(2) ELIZABETH NEALE
(Trustees of a Marriage Settlement of 12th January 1948)
(3) Dr GLEN FOX

Defendants

MR LITTAUR appeared in person
MR P BURTON (instructed by BDB Pitmans) appeared on behalf of the First and Second Defendants
MS G GALLEY (instructed by Oriel Law) appeared on behalf of the Intervenor/Third Defendant

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JUDGMENT
(Approved)

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THE DEPUTY MASTER:

1. This is my extempore judgment on this disposal hearing in Littaur v Collett and Neale, claim number PT2022-000493. Where I refer to the defendants, that is the first and second defendants, not including Dr Fox, who was joined in the course of the hearing, unless the context appears otherwise.

2. By a Part 8 claim form issued on 13 June 2022, the claimant, Mr Gavin Littaur, who represented himself before me today, claimed for:

   (1) "…an Account of the rents, profits, dividends, interest and income received or administered by the defendants or by either of them or by any other persons or person by the order of or for the use of the defendants or either of them of the property for the time being subject to the trust of the settlement made on 12 January 1948 between David Littaur and Joyce Fox, and Marcus Littaur and Cecil Louis Fox and of the dealings of the defendants, or either of them, therewith; ("the Account")

   (2) …an inquiry as to what property, properties and assets subject to the trusts of the settlement made between David Littaur and Joyce Fox and Marcus Littaur and Cecil Louis Fox made on 12 January 1948 was received or possessed or administered by, or vested in the defendants, or either of them, and whether any property so received or possessed was administered or vested was paid or transferred to or into the name of any other person, and if so to whom, at what time or times and under what circumstances, and what changes of investment of the property, properties and assets were made, and when and under what circumstances, and what has become of the property"
   ("the Inquiry").

3. I will call the 1948 settlement by which the assets are held and passed as the "Marriage Settlement". The Part 8 claim form and the particulars of claim are accompanied by a witness statement by Mr Littaur. He says at paragraph 2 that he is a co-beneficiary:

> "… together with my sister, Glen Fox, of the marriage settlement. My beneficial interest came about upon the death of my father, David, on 16 March 2022, aged 96. My interest arises pursuant to

> paragraph 7 of the settlement, which for the sake of brevity, I reproduce below:
> " After the death of the husband and the wife, the trustees shall stand possessed of the husband's fund and wife's fund in trust for all and any children or child of the said marriage, who being male, shall have obtained the age of 21 years, or being female shall have obtained that age or married under that age, and if more than one, in equal shares.""

4. It is not in dispute that the current position is that Mr Littaur and his sister, Dr Glen Fox, are now equally entitled to the assets and properties comprising the Marriage Settlement.

5. Mr Littaur continues: "The first defendant was, and still is, a trustee of the settlement as well as being solicitor for my late father, referred to as the husband in the settlement." Then he says:

> "Prior to her appointment, my late father was co-trustee together with the first defendant. However he took little or no active role and left all to be dealt with by the first defendant."

6. Mr Littaur then states: "I have very little knowledge about the contents in the settlement, save for the limited information provided to me by the first defendant on various occasions." Next at paragraph 5:

> "It is not disputed that no accounts were ever made in respect of this settlement, which I understand contained various properties and shares, nearly all of which produced an income as well as a considerable amount of cash."

7. Then at paragraph 7, he refers to the duties of trustees, including:

> "a duty of care, avoiding conflicts of interest, taking control of the trust assets and preparing accounts. No such accounts have been produced, notwithstanding that the settlement had considerable assets. I believe the value of the assets in the settlement were in excess of £6 million."

8. Paragraph 8:

> "I also have some concern with the regard to the property situated at 84 Wildwood Road, Hamstead Gardens Suburb, London, NW11, where my parents lived, which was recently sold at what

> appears to be at a considerable undervalue to my niece, a connected party."

His niece is Ms "achel Montague, daughter of Dr Fox. Mr Littaur continues: "This property was an asset within the settlement. Once again, the failure to provide an account is astonishing." Then Mr Littaur refers to copy correspondence, and he states the explanation provided in relation to this property, "is in my view absurd."

9. Paragraph 10:

> "In the circumstances, I ask the honourable court for an order that the defendants provide an account for the period of the last 15 years, which in light of the dismissive explanation provided by the first defendant in correspondence should not be an endless task."

10. Mr Littaur subsequently in the course of his submissions said that, in the circumstances, he would accept an account from the first defendant, Mr Collett, who is a solicitor and partner in BDB, from the time he was appointed as a trustee (until then he was solicitor to the trustees) in 2017 to date.

11. Mr Collett in his witness statement explains he is a solicitor and partner in the firm of BDB Pitmans Limited. He specialises in private client work and has acted as a professional trustee on numerous occasions throughout his career. He refers to the background of the settlement, and at paragraph 5 sets out the assets. The assets settled were simply: leasehold property at Hornsey by Joyce; £23,000 by David; a life policy, sum insured £2,000 by David; furniture and effects, wife's chattels by Joyce.

12. Referring to Mr Littaur's and Dr Fox's parents, David and Joyce, Mr Collett says they: "… approved advances of capital to the claimant and his sister as follows …" Then there are various advances, six altogether, over the period 1998 to 2011, totalling £550,000 to them both, so they received £275,000 each.

13. Paragraph 10:

> "I am of course aware of the duties of trustees to account to the beneficiaries for assets of the trust, and I believe I have complied with this duty since becoming a trustee on 6 September 2017 and that prior to my appointment the claimant was provided with regular and adequate accounts of the capital assets of the settlement to the correspondence sent in by my firm on behalf of the incumbent trustees."

14. Then paragraph 11:

> "My understanding is that in order to satisfy my trustee duty to account, I am required to identify to the beneficiaries, (a) the original assets of the settlement; (b) how the assets have been dealt with; (c) what the assets are at the date of the beneficiaries' request; and (d) what distributions have taken place?"

15. Paragraph 12:

> "Prior to David Littaur's death on 16 March 2022, all income from the settlement was mandated to the life tenants David and Joyce, and formal trust accounts were not required to be produced to the claimant, who had no interest in the income. If capital assets of the settlement had been transferred to David and Joyce as income beneficiaries, this would have given rise to an obligation to account to the claimant for income, but this did not happen, and the claimant and his sister have been the recipients of transfers of capital from the settlement."

I interject there to say I accept Mr Collett's point that formal trust accounts were not required to be produced to the claimant who had no interest in the "income" – and I emphasise the income – of the Marriage Settlement.

16. At [13], Mr Collett continues:

> "It is not correctly suggested by the claimant that he has 'very little knowledge about the contents of the settlement' or that the information relating to the Marriage Settlement has been limited. I attach at pages 8 to 90 some of the correspondence with the claimant, or his solicitors, in the period February 2006-08. From this correspondence, it can be seen the claimant has been provided with an account of the assets of the settlement at regular intervals, sufficient to enable him to understand the assets held and their values."

17. Then he refers to specific items of correspondence. I turn to that correspondence to set out the context and the full background to Mr Littaur's application and in particular what he asked for from the Trustees and what he was aware of over the years. Not all of the correspondence over all those years is before me but a substantial amount is.

18. The correspondence commences with a letter from Farrer & Co, a firm at which Mr Collett was previously a partner, dated 14 November 2005, to Mr Littaur. He says:

> "Dear Gavin, I refer to our meeting and your request for further financial assistance from your parents given the circumstances of your significant mortgage of £490,000 secured on the house, which you own, which may now be worth some £625,000. Your parents have very carefully reviewed their present financial circumstances, and they have concluded that there is simply no option which would enable them to assist you to the extent that would actually pay off the mortgage. Their position is that they do not have sufficient free assets to assist you to this extent."

19. Later, "As stated above, however, they do not have sufficient free assets to assist you, even if they were to abandon this principle and defer payment to Glen." Then over the page:

> "The funds your parents believe they may be able to make available to you amount to some £300,000. They would not be made available to you outright, and on condition, they would be made available for the purpose, (a) of assisting in the purchase of a new property, which must not be subject to any commercial mortgage; and (b) as to part for investment to provide annual income/drawdowns."

20. Mr Collett concludes:

> "You should further understand your parents are not prepared to give any monies to you at this point, on top of all the monies advanced to you over the past 30 years, where it is probable that in fact the monies will in fact simply pass to creditors, and it is for this reason it is an absolute pre-requisite that you should bear primary responsibility for sorting out your affairs."

21. I emphasise that was almost 18 years ago, in November 2005. On 10 February 2006, Mr Collett wrote again to Mr Littaur:

> "You wanted information about the Marriage Settlement, and this is attached. From this, you will see your parents would be forgoing an income of some £15,000 per year in the proposals they advance to you, and this is, and has been, required by them to meet their living expenses out of income. They therefore need to retain and have access to some of the capital themselves to cover this loss in the years to come, which is why they are prepared to contemplate the high figure of £300,000, taking into account tax on disposals."

22. This is accompanied by a schedule headed, "Littaur Marriage Settlement". It has three columns, namely, the asset, the indicative capital value, and income. There are just five assets listed in the schedule:

    (1) Shares, £80,000 -- £2,826 income;
    (2) 84 Wildwood Road, £700,000 – income, nil;
    (3) 54 Broadway, Greenford, leasehold, £170,000 -- £14,114;
    (4) Unit trusts, 3.16 per cent yield, £384,761 – income, £15,114;
    (5) Standard bank cash deposits, £10,000 – income, £422.

23. As appears above this is a most simple trust both as to the assets held and the terms. Another letter that was sent by Mr Collett to Mr Littaur referred to a meeting the previous week. The letter is dated 3 April 2006. In it, Mr Collett says:

> "I am writing to restate the offer subject to conditions your parents made, and to correct an impression you appear to have that there was further negotiation to be had, (a) as to the amount available, and (b) as to conditions."

24. Then:

> "If, however, you wish to have financial assistance from your parents which requires them to give up and forego income in capital advance, you do have to satisfy the conditions on which they will be prepared to assist you again, and in doing so at this stage, also prefer your interests ahead of those of Glen, on top of the very significant gifts previously made to you over a number of decades."

25. Mr Littaur replied on 19 April 2006. This is a closely typed letter of some seven pages. I quote a few paragraphs, which are not out of context in the whole letter. Mr Littaur says, quoting from Mr Collett's letter:

> "'The offer, subject to conditions that your parents made.' I do not think so. Rather, subject to impossible conditions that Glen made, who would rather die than see me receive money before she does, who has therefore pressed my parents to impose unattainable conditions. My parents, being weak, cowardly, miserly, dishonest, deceitful and unusually disloyal, contrary to their protestations, naturally have acceded to Glen's pressure, and they have use bullying tactics on me to flaunt their inherited financial power. This is very sad, as we all know that my father has always been financially impotent, and that he and my mother have long abused and continue to abuse her father's hard-earned money, which was left to them on a plate, and have used this power as a battering ram on my head in an attempt to beat me into submission. This will never happen, as I am fortunately made of sterner stuff than my parents. I should always say it is as it, while they say it as they pretend it is, that is, when they are not hiding behind you and Glen to do their dirty work. But, you are well paid by these cowards, so what do you care, Alaistair?"

26. There is also an earlier reference to:

> "My parents, egged on behind the scenes by my obnoxious, vindictive sister, came to it with only one aim in mind, to ignore everything I said, showed and suggested, however sensible, like Pharoah with a hardened heart, to restate their absurd, intransigent conditions ad nauseam."

27. In reply, Mr Collett said on 12 May 2006:

> "I feel it would be unhelpful to seek to reply to your letter point by point or seek to put the record straight in relation to the various statements you make. The position in short is that you are requesting your parents to give you money to which you are not entitled at present. Giving is a voluntary action and is not done under duress or in the face of threats or of compulsion. Attaching conditions to gifts is a matter for the giver to decide upon."

28. Then:

> "In relation to the 1948 settlement, however, you do have an entitlement as remainderman in part following the deaths of your parents as life tenants entitled to the income during their lives. You are therefore entitled also to information about the assets in such a trust, and I have in the past given you details of the trust assets and copies of the trust deed. Most recently, I gave you outline details of the assets presently comprised in the Marriage Settlement in my letter of 10 February 2006. Trustees do not

> consider it a useful purpose would be served by going to the expense of formal valuations of the two properties at present, and you have had details of the share and unit trust values with my opening letter. Present holdings of the trustees in shares, unit trusts and OEICs are enclosed for your information, as is a further copy of the settlement."

29. Then:

> "In relation to the matter of costs raised in your letter, virtually all costs were paid by your parents out of their own income, and accordingly, it is not information which you are entitled to."

30. I emphasise that with that letter again Mr Collett listed the assets that comprised the settlement. Whilst formal valuations were not provided, as Mr Littaur had requested, that was because the trustees said they did not consider it would serve a useful purpose. But the point was the assets were set out as Mr Littaur requested.

31. Going forward to 19 March 2008, Mr Collett wrote to Mr Littaur saying:

> "I refer to your letters of 28 February, and 10 and 19 March, requesting information on the gifts made in the trusts. The list of gifts and payments made and capital advanced or paid over is in the attached schedules, and has taken some time to assemble given the years covered and may not be complete. You have previously, on a number of occasions, most recently May 2006, had copies of the Marriage Settlement, together with details of the assets and the 1954 grandchildren settlement. On the schedules enclosed, you will see references to other family trusts that have previously been fully paid out and wound up."

32. Those family trusts are not in issue before me. Attached are a couple of schedules showing the commencement of the settlement of 1954, with the 1972 variation, and then various loans and settlements, and then the list of solicitors' fees paid for Gavin from 1984 to 1996.

33. Mr Littaur responded on 2 June 2008. First he set out an exhaustive list of requests for details of assets held, returns on those assets, valuations of the entire trust, valuations of specific assets, reserves held and so on. Then he asked in numbered paragraph 6:

> "In order to ensure transparency over honouring the assets/gifts/benefits parity with my sister, to which you and my parents, (your clients), have been repeatedly been at pains to insist was being adhered, would you please advise me what assets, gifts and benefits have been given to Glen and her children, directly or indirectly?"

34. Next at number 8:

> "I understand you recently discussed, on Radio 4, Inheritance Tax, as an expert/ specialist. Given my parents have your repeated assurances that IHT provision and gifts were 'an ongoing process', would you explain their absence, according to your schedule, in 2001, 2003, 2004, 2006, 2007 and 2008?"

35. The corollary is that shows the provision of schedules in or for those years. That paragraph continues:

> "Usually, the older parents become, the more they are professionally advised to give away, given the burden of estate duty. Not less! My parents clearly instruct you with the eyes and hearts of a bailiff."

36. Correspondence continues with Mr Collett then replying to a letter from Mr Littaur on 5 June 2008. He says he is not a trustee of the Marriage Settlement, because this was 2008, so nine years before he was appointed, but goes on to say:

> "The information which you are now requesting concerning the trust is in large measure duplication of information that you already had over the years since the sale of 24 Stormont Road. You were last given information about the Marriage Settlement in May 2006, and since then there has been no change in the properties held. A list of shares and unit trusts is attached, and there is a small cash balance of £5,000."

37. Attached is a list of investments – 19 in all. No values are provided but these could easily be ascertained via the internet or hardcopy financial press.

38. Mr Collett continues:

> "The unit trust holdings represent the balance of monies available for investment after the sale of Stormont Road, and the purchase of

> 84 Wildwood Road, and the advancement to you and Glen equally of a total capital sum …of £500,000."

39. Then:

> "The trustees do not keep annual accounts, as all the income is due to the life tenants, and there seems to be no utility in expending professional costs in doing so. Similarly, as you have already been informed, the properties are not regularly valued, and you can obtain valuation information for yourself using the details you hold."

40. Then over the page:

> "You have previously been informed on many occasions that you are not entitled to information about your parents' own affairs and that they reserve the right to alter their wills and dispose of their own assets as they please, and you may not rely upon any position stated to you and you have acknowledged that they do have the right to change their minds at any time."

Then:

> "Your request for information is not therefore appropriate. Your reference to inheritance tax planning is similarly inappropriate if your parents have already over the years made significant sums available to you and Glen."

41. By October 2013 Mr Littaur had engaged solicitors, Lawrence Sternberg & Co in New Barnet. Mr Collett replied to two letters from them of 21 and 24 October 2013, and in his reply he said:

> "The only trust which is ongoing is the Marriage Settlement in which Gavin has a remainderman interest as to ne half, following the death of both parents, is the…Marriage Settlement. This settlement provides income for the support of his parents. We have previously provided information to Gavin upon specific requests made. We enclose for your information a copy of the letter sent in June 2008 providing such information about this ongoing trust and others previously wound up, and you will no doubt be able to get Gavin to hand to you copy documents related to the various trusts…"

42. Mr Collett then says: "We are also instructed to enclose schedules showing funds advanced/distributed to Gavin over many years and as sent to him in March 2008." That was some five and a half years before this exchange. He continues:

> "There has since 2008 been a further distribution of monies, £50,000 between Gavin and his sister. Since 2011, our clients have not been in a position to advance further funds, whether from the Marriage Settlement or otherwise, having previously advanced the surplus funds they felt they were able to. The funds advanced have already resulted in substantial accelerated receipts by Gavin and his sister, and in significant inheritance tax savings. We enclose a note of the Marriage Settlement investment holdings for Gavin's information."

A list of unit trusts and OEICs identifying each fund and the number of units held is provided.

43. Correspondence with Lawrence Sternberg continues. In December 2013, Mr Collett replies to Lawrence Sternberg stating:

> "Gavin is entitled to information about the continuing family trusts in which he has an interest. As previously stated, these trusts are now only the Marriage Settlement and the Littaur grandchildren settlement. If he were to have children, his children would have an interest. He is only entitled to information about distributions from a trust in which he has an interest."

44. Still the correspondence continues. On 26 February 2014, replying to Lawrence Sternberg, Mr Collett says:

> "You have asked for further information about the 1948 settlement, ie. The Marriage Settlement, much of which is in fact already known to your client if not to you for specific documentation, which residuary beneficiaries would not normally receive or be entitled to request. We are instructed to facilitate your understanding of the manner in which the settlement is being administered for the benefit of all family members."

45. Then Mr Collett sets out in some detail the way in which the assets were dealt with. In particular he reiterates that:

> "Gavin is well aware that the Settlement has always provided the matrimonial home for Mr and Mrs Littaur. Wildwood Road, bought in 1998, is simply the latest purchased pursuant to the terms of the settlement."

46. He then refers to other properties and investments and provides, again, a list of the assets, and states:

> "There is no separate bank account for the Settlement. As far as we understand there have never been separate Settlement bank accounts. Rental income and investment income are paid directly to Mr & Mrs Littaur and there has been little capital movement and there has been no requirement for a separate bank account and all income is due to Mr and Mrs Littaur as life tenants."

47. Mr Collett concludes by saying:

> "Your client is, of course, entitled to issue proceedings in the Chancery Division – and he has done so previously. We believe such course of action to be wholly without merit. The Trustees have over many years consistently enabled the application of significant capital to or for the benefit of Gavin and Glen (both from family trusts and their own resources) in a sensible manner which has resulted in your client receiving accelerated benefits. The costs of an application to court will simply result in a diminution of family resources and enrichment of professional advisors."

This prescient warning was, I emphasise, in February 2014.

48. In April 2014, the correspondence continues. Mr Collett says to Lawrence Sternberg & Co: "As we understand the position, your client's underlying purpose in pursuing this course is to obtain further sums from the Marriage Settlement or directly from his parents."

49. Then later:

> "It is well recognised formal accounts are not required when all the income is mandated to life tenants, and there are no, or very few, investment changes made in capital funds. Your client has received full details of the capital assets of the settlement on a regular basis on his request. He has all the information necessary to value unit trusts and the OEICs, which have an original purchase value of £300,000. The properties had acquisition costs of £495,000 and £24,000. Your client has all the necessary details to obtain outline valuations. If he wishes to arrange formal valuations, then his appointed qualified surveyor can make an appointment via this office to inspect each property. Your client is not authorised to enter upon either property, and the qualified

> surveyor must agree in writing in advance to provide a copy of the formal valuation to the trustees."

50. Then:

> "The cost of formal accounts being prepared falls to be considered in relation to what the accounts relate to. If formal accounts were to be prepared in relation to a capital account, the costs of so doing would fall upon the capital. If your client has received details of the capital assets and has received sufficient information and suffered no prejudice."

51. The correspondence continues over the years. Mr Littaur, on 2 October 2018, criticised his parents' failure to reduce his debts and said:

> "On the contrary, there is a certain merit in helping to reduce any debt their children might have – this is what families are for – not just selfishly feathering their own nest, which they have done all their lives – and at my expense. First by means of the Caution on Stormont, I saved my parents £400,000…"

52. In March 2022, Mr Littaur's father died and so the Marriage Settlement ended. In May 2022, Mr Collett wrote to Mr Littaur and said:

> "Thank you for your letter of 27 April and emails of 13 April and 12 May. You will have by now received a copy of your father's will and codicil. As I said following the cremation, it will take quite some time to gather together all the information required for probate and prior to that to obtain the formal valuations and information that is required by HMRC as well as funds for the initial tax payable. We have these matters in hand, but it will probably be a month or more before we have everything ready. Meanwhile, you have requested some information about the marriage settlement, and a further copy of the settlement is enclosed, with which you are familiar. By way of reminder of past correspondence on the Marriage Settlement, you have known for years that your parents did not keep or prepare full accounts, and this was fully explained to you in correspondence with Lawrence Sternberg."

53. Referring to provision of information in 2014 Mr Collett said:

> "…you were given a note of the assets of the settlement, as you had been on previous occasions, and these then comprised:

- 84 Wildwood Road;
- short lease on 54, The Broadway;
- a small portfolio of unit trusts and OEICs;
- a loan to David of £36,000 immediately went on to you in the sum of £35,491; and
- a loan of £20,000 to your parents."

54. I reiterate that that was, and had been for some considerable time, the total assets of this simple trust. I continue. Mr Collett then said:

" Roll forward to 2022 and the main changes in the settlement are that:

- Wildwood Road was sold for £1,025,000 following Joyce's death, and net proceeds of sale were invested and added to the portfolio held at Charles Stanley;
- the short lease on 54, The Broadway has now just nine years to run. The rent is currently £27,908, but the tenant has arrears of £6,500 outstanding, which she has difficulty in paying down. There will be dilapidation issues; and
- the loans made to your parents and then latterly to David amounted to some £80,000 as at David's death, but are secured by a charge to the trustees over 7 Peascod Street…"

55. Then:

> "You particularly expressed concerns relating to the sale of Wildwood Road. This was driven by the need to find an increased income for David. Wildwood Road was the single largest asset and produced no income, and could be sold without CGT being payable. The house was professionally valued in connection with Joyce's probate at £1,025,000 without query from HMRC, and this was the price Rachel paid in full in sale to her with no agent sale commission paid, and on which she paid SDLT, again without query by HMRC. David was delighted that he was able to increase his income and to stay in the home he loved. As a market value sale reported to HMRC, it should not be an issue now of a gift with reservation of benefit."

56. That letter is accompanied by 30 pages of documents, including previous correspondence and valuations, including the Charles Stanley (as investment managers) valuations of all the tradeable securities, the stocks and shares and so on held as part of the trust.

57. Mr Collett then at paragraph 17 of his witness statement refers to a further balance sheet and schedule of investments, which appears at page 190 of the bundle. This again shows the essence of the Marriage Settlement trust as of 14 May 2018, which included 84 Wildwood Road, and then at 16 March 2021, being the date of death of Mr Littaur's late father, David, without of course 84 Wildwood Road, but now including a commensurate increase in the Charles Stanley portfolio from about £446,000 to £1.303 million.

58. In summary, Mr Collett states that he has given Mr Littaur accounts of assets of the Marriage Settlement at regular intervals. Mr Burton submits that the information provided goes beyond what is required as a matter of law.

59. After proceedings were issued Mr Collett wrote to Mr Littaur on 23 September 2022. He lists the assets again, the schedule of assets (to include the market valuations of the tradeable securities) being some 30 pages, and refers to the assets, namely, simply, (1) the investment portfolio at Charles Stanley; (2) the leasehold interest in 54, The Broadway; (3) the benefit of the two loans; and (4) small cash balances at Charles Stanley and BDB Pitmans.

60. Mr Littaur wrote another letter requesting information on 8 November 2022. On 24 November 2022, Mr Collett replied, stating the Marriage Settlement came to an end when David died, and enclosing the Charles Stanley consolidated tax report, with a statement of the rent paid in respect of 54, The Broadway, and referring to what Mr Littaur needed to do in respect of his own tax return.

61. Again, more inquiries were made by Mr Littaur. I am skipping a substantial part of the correspondence, as but I do not think there is anything I need to address now, but I would in particular refer to an email of 1 March 2023, in which Ms Lucinda Brown of BDP Pitmans, replying to Mr Littaur's emails of 2, 5 and 15 February said:

> "I have explained to you previously it is not appropriate for me or the trustees to incur cost of the trust responding to emails that you send to us which do not serve to advance the administration of the trust or estate, and which only repeat matters already stated. Your emails of 2, 5 and 15 February fall into such a category."

62. There is a common theme in this correspondence that letters or emails from BDB often reply to two or three emails or letters from Mr Littaur.

63. Mr Collett yet again confirmed the assets in the Marriage Settlement on 3 May 2023. Mr Littaur became increasingly frustrated with the information he was receiving. His frustration got the better of him. On 18 May 2023, he emailed Ms Brown, copying in Mr Collett and others, including his sister, and her solicitor.

64. He thanked her for her email but then said that, of the meeting that was proposed, no apology was provided for ignoring his offer of a whole week to meet up:

> "Put simply, this is rude, inconsiderate and unhelpful, and I take exception to such arrogant treatment, which – admittedly – is hardly a total surprise from you at BDB Pitmans."

65. He continues:

> "Are you aware that there should be an element of speed, even urgency in your deliberations? <u>Your relaxed approach is to specialise in delay, delay, delay, with Alaistair also devoting himself to gross managerial incompetence, abusing the trust, running it into the ground, yet staying on regardless and preying on – instead of protecting – the two beneficiaries, Glen and myself</u>.
>
> Please understand, unless we can successfully resolve this at the meeting, you will regrettably leave me no alternative but to take your client to court, where he will inevitably be fully exposed." (emphasis as in original).

66. Then later, referring to Mr Collett:

> "However, despite this catastrophic record of negligence and failure, he did manage to look after his client, Rachel, during an economic firestorm, although at Glen's and my expense, thereby exemplifying a blatant conflict of interest."

67. Mr Littaur emailed Ms Brown, also copied to Mr Collett, the second defendant, Ms Neale, to his sister and her solicitor, on 5 June 2023. Mr Littaur did say in his submissions that his approach in correspondence is robust. I find it rather more than robust. This is an intemperate and baseless attack on a partner in a firm of solicitors,

whose correspondence to Mr Littaur had always been professional, polite and to the point.

68. Mr Littaur said:

> "There appear to be no limits to the deceit, duplicity and chicanery that you employ. I am dumbfounded that you, as an officer of the court, have the arrogance and hubris even to suggest that you regret I was 'not willing to attend the meeting to discuss the Marriage Settlement claim'. How dare you. I can only presume you intended to deceive the court into believing your conduct was impeccable and mine reprehensible. The reality, which I will certainly report to the court, is your actions in fact dishonour your profession, and they are especially deplorable for a lawyer."

69. Later:

> "Equally, I am astounded that you have the temerity, the impudence and the hypocrisy then to lecture me about pre-action protocol, given your own unprofessional behaviour. To suggest you will address the court that I failed to provide you with the details of my claim is yet another example of your duplicitous attempt to take unfair advantage and to mislead the court."

70. Then towards the end:

> "Whilst I would be the first to applaud you and your client, Alaistair, for approaching the treatment of detailed facts in the present case forensically and with unflinching thoroughness, most regrettably, I am unable to do so, as your whole approach is rather one of flagrant deceit, evasion, bullying and bogus claims, shrouded in an overall cocoon of misconduct."

71. BDB continued to respond properly and politely, notwithstanding Mr Littaur describing an email from Ms Brown as "…insolent, deceitful, and unprofessional…" , for example in an email of 14 June 2023 from the second defendant, Ms Neale, to Mr Littaur, wherein she says:

> "Dear Gavin, Further to your request below, please find attached the document which contains this information… (1) David and Joyce's assets and liabilities at May 2008, March 2022 and May 2023; (2) Marriage Settlement assets and liabilities as of those dates; (3) David and Joyce's Marriage Settlement, assets and liability at 14.05.08; (4) David and the Marriage Settlement assets

and liabilities, 16.03.22; (5) David's estate and the Marriage Settlement assets and liabilities, 31.05.23; (6) Marriage Settlement investments with Charles Stanley, 14.05.08, 16.03.22 and 31.05.23."

The Law.

72. Mr Burton referred me to the decision of Master Matthews (as he then was) in *RNLI & Ors v Headley and McCole* [2016] EWHC 1948 (ChD). At paragraph 10, Master Matthews said:

> "On the substantive issue, the claimants argued that it was the duty of trustees to be ready with their accounts. Prima facie beneficiaries had the right to production of accounts. The claimants referred to what Millett LJ said in *Armitage v Nurse* [1998] Ch 241, 261, CA:
>
> 'Every beneficiary is entitled to see the trust accounts, whether his interest is in possession or not.'
>
> 11. There is some danger of misunderstanding here. When the books and cases talk about beneficiaries' 'entitlement to accounts' or to trustees being 'ready with their accounts' they are not generally referring to annual financial statements such as limited companies and others carrying on business (and indeed some large trusts) commonly produce in the form of balance sheets and profit and loss accounts, usually through accountants, and – in the case of limited companies – file at Companies House. Instead they are referring to the very notion of accounting itself. Trustees must be ready to account to their beneficiaries for what they have done with the trust assets. This may be done with formal financial statements, or with less formal documents, or indeed none at all. It is no answer for trustees to say that formal financial statements have not yet been produced by the trustees' accountants."

73. Master Matthews at [14] then stated:

"I do not think that it necessarily follows that all such documents must be disclosed to all beneficiaries. It must depend on what is needed in the circumstances for the beneficiaries to appreciate, verify and if need be vindicate their own rights against the trustees in respect of the administration of the trust. That will vary according to the facts of the case."

74. Mr Burton also referred me to *Lewin on Trusts* at paragraph 21-038, to the effect that trustees are not required to: "…answer never-ending, lengthy and voluminous inquiries

as to the state of the trust beyond what is reasonable." A footnote cites the Australian authority, *Gray v Guardian Trust Australia* [2003] NSWSC 704. But, as Mr Burton put it, "The duties to account in the two jurisdictions are so closely aligned there is no reason to consider the same limitation would not apply to English law, trusts and trustees". I agree with his submission.

Discussion and Decision: The Account.

75. Mr Littaur in his skeleton argument submits that "…the accounts provided have been probate accounts, and not the accounts the subject of the claim, namely an Account of the Settlement…" This submission does not bear examination as first his late father's will has nothing to do with the Marriage Settlement and secondly, if I am wrong as to that, probate has not been obtained as Mr Littaur has lodged a caveat preventing same.

76. Then he submits that Mr Collett admits no accounts have been prepared. That submission likewise has no substance as first there is no such admission and secondly the information provided by the Defendants over many years complies with and indeed exceeds in certain respects what the law requires as I will turn to.

77. Mr Littaur also submits that he has absolutely "no idea" as to the income and assets of the Marriage Settlement, saying he had only "…limited information provided to me by [Mr Collett] on various occasions." Again this does not bear examination in view of the full and detailed documentation provided to Mr Littaur and his solicitors over many, many years – at least 16 years prior to the issue of these proceedings

78. Mr Burton submits that the duty to provide accounts and Mr Littaur's right to request them are not in dispute, emphasising *Lewin* at [21-038] that the Defendants do not have to "…answer never-ending lengthy and voluminous enquiries …beyond what is reasonable." In my judgment, on the evidence before me, the Defendants have as is apparent from the correspondence I have quoted answered never ending and voluminous enquiries and more than complied with their duty to account as is required in law.

79. I therefore have no doubt in finding that on the evidence before me, the defendants have provided on numerous occasions all the information that they should in their professional capacity as trustees, plus further information to assist Mr Littaur. This is, after all, a family trust. Further, they have continuously answered Mr Littaur's questions. The fact Mr Littaur does not approve of certain transactions is not a reason to order an account, or for that matter, as I will turn to, an inquiry.

80. The accounts of the Marriage Settlement have been provided on a proper and timely basis, with sufficient information repeated at frequent intervals over the years, as I have indicated, in the correspondence to satisfy the requirements as set out in *RNLI*. Indeed, I have identified above some eight occasions when the information required plus more has been provided. I have no doubt that the Defendants have met the requirements set out in the authorities I have mentioned. I accept Mr Collett's evidence that yet further updated information would have been provided had Mr Littaur not lodged his Caveat.

Discussion and decision: the Inquiry

81. Mr Burton submits that Mr Littaur in effect replicates his claim for an Account in his claim for an Inquiry which, in his submission, adds nothing. Mr Littaur in his skeleton argument and oral submissions maintains that he is seeking an Inquiry into the sale of 84 Wildwood as it was not sold on the open market, but at a considerable undervalue, to a related party, namely Ms Montague, his niece, thereby causing substantial losses to the Marriage Settlement and himself.

82. I think Mr Burton may be taking a slightly restrictive view of the relief sought by in effect submitting both heads of relief amount to the same. Mr Littaur's response to that was to point to his use of the word "circumstances" to show the Inquiry was wider than Mr Burton submitted.

83. In my judgement, Mr Littaur has had for some time before these proceedings were issued all the information he requested, namely, what the properties are, subject to the trust; what has been transferred; when, to whom, and the dates and the sums received, plus the valuation relied on – the Defendants obtained a Red Book valuation before transfer. In summary, Mr Littaur has therefore been aware of (a) what is in the

Marriage Settlement trust; (b) the dispositions that have been made (c) what the current assets held are at all material times (d) the monies received and I the valuation relied upon.

84. Mr Littaur has made extensive submissions as to how he considers that Ms Rachel Montague has been a client of BDB Pitmans, which took him, he says, some considerable time to ascertain. He says, in his view, the whole thing "stinks" in terms of the sale of 84 Wildwood Road, and this is what there should be an inquiry about.

85. Mr Burton submits that Mr Littaur has had at all times the information that he needs in that respect, with which I agree. What Mr Littaur is in effect asking for, or trying to persuade me to do, is to look at a claim for breach of trust and breach of professional duties or negligence as against the trustees, but that is not the relief he claims in his claim form and is not appropriate for a Part 8 claim.

86. The claim form asks for: (1) an account; (2) an inquiry. Those matters have been settled by the comprehensive, timely and repeated provision of information by Mr Collett and Ms Neale, at times beyond what is required by law.

87. I therefore must dismiss this claim in its entirety. It was in my judgment wholly unnecessary when it was issued, as all the information to which Mr Littaur is entitled had been given to him repeatedly over the years prior to the issue of this Claim. I cannot however conclude without referring to other matters which arose in the course of this hearing.

Capacity of Dr Fox.

88. First, the capacity of Dr Fox to participate in these proceedings. This was something that Mr Littaur raised at the outset of the hearing. He has written a detailed letter to Master Pester, for whom I am sitting, setting out his concerns, dated 23 July 2023 accompanied by various attachments. One attachment is a local authority safeguarding report concerning Dr Fox prepared in 2017. Part of it recites a letter from Dr Fox's son in law, who says Dr Fox lacks capacity. The outcome was that no abuse or neglect occurred.

89. This is the evidence Mr Littaur relies upon, plus his own observations of his sister. This letter was not in the first or the supplemental trial bundles but was provided to me at the very start of this hearing by Ms Galley, counsel instructed by Oriel Law, Dr Fox's solicitors.

90. I have also read a letter from Oriel Law dated 25 July 2023 responding to Mr Littaur's letter. It states that the solicitor concerned, Ms Ruth O'Neill, was satisfied as to Dr Fox's capacity to conduct this litigation, as is Ms Galley herself told me she was following a video conference with Dr Fox. Ms O'Neill also explained that Dr Fox had passed a detailed capacity assessment carried out in 2018 in the course of estate planning, preparation of a will and a Lasting Power of Attorney.

91. In those circumstances and on the basis of capacity being presumed under the Mental Capacity Act 2005, I did not accede to Mr Littaur's request for an examination at his expense, he added, to assess his sister's capacity, his submission being that on the evidence before me I could not proceed. I ruled that there was nothing before me to displace the presumption of capacity, which is concerned with the capacity to understand this matter and instruct others to conduct representation here on her behalf.

92. My reasons are:

(1) The medical evidence Mr Littaur relies upon is substantially out of date.
(2) It is not a capacity assessment but a letter regarding concerns as to safeguarding. It is therefore not on point.
(3) I accept the assurances of Ms O'Neill who has known Dr Fox as her solicitor for some time and has substantial professional obligations as to capacity.
(4) Likewise I accept the submissions of Ms Galley, experienced Chancery counsel, as to her view following her Zoom meeting with Dr Fox. Ms Galley likewise has substantial professional obligations to this Court.
(5) Capacity is to be presumed under the Mental Capacity Act and there is nothing before me to displace that presumption.

93. If I am wrong as to the above and Dr Fox does not as of now have capacity then the position does not in my judgment change for two reasons. First, a litigation friend

would add little beyond protecting Dr Fox as to costs. Her interests are the maximisation of the Marriage Settlement assets as to her half share. I cannot see how those interests could be adversely affected if she lacked capacity.

94. There is a further reason; even if I suspected Dr Fox may possibly have lacked capacity I would have proceeded to determine this matter as a) it would accord with the Overriding Objective and b) there would be little a litigation friend could add for the reasons I have mentioned.

No cross examination of the Trustees.

95. Secondly, Mr Littaur was rather taken by surprise at the outset of the proceedings. He expected to be able to cross-examine Mr Collett, Ms Neale, and if necessary his sister. I explained that in these Part 8 proceedings that was not common in that Part 8 proceedings are where there is basically no dispute of fact. I explained the difference with Part 7 proceedings and said that cross-examination would not be permitted. It was not provided for in any order or directions, and in the circumstances, I would not contemplate it.

96. I said that particularly in view of the overriding objective, and the need to dispose of cases fairly, justly and at proportionate cost, taking into account the parties' respective resources and also the use of court time.

The allegations by Mr Littaur in his correspondence

97. Thirdly, I should say that, notwithstanding certain correspondence I have quoted, Mr Littaur's submissions were eloquent, whilst rather verbose, but not, in the main, in the tendentious way certain of his correspondence was expressed.

98. I do consider in many family disputes parties understandably can become emotionally upset, stressed and annoyed, and matters stated in correspondence that, on reflection, would better not have been said. However, it is necessary in my view to set out such correspondence, to explain the background and context of the claim and the approach taken by the parties over the years.

The allocated hearing time and Mr Littaur's request for an adjournment and joinder.

99. These matters were canvassed at some length during the hearing and I think it may assist Mr Littaur if I now set out my approach in more detail. First, listing of the hearing. The Defendants requested a disposal hearing. Mr Littaur objected saying a directions hearing was appropriate. A Master or Deputy approved a two-hour disposal hearing with one hour pre-read after consideration of the evidence and issues.

100. The pre-read time is vital; it is concentrated reading in for the judge of the evidence assisted by the skeleton arguments. Whilst it is unseen work, it directly assists in the proper and efficient management of the hearing. Here, I fortunately had far more than the one hour allotted. It should be regarded as part of the hearing time as it substantially reduces the need for the parties to read documents to the court.

101. Mr Littaur was very critical of the two hours allotted, saying it was "ridiculous" and "never possible". I remain of the view that two hours was, as is common for disposal hearings, sufficient if Mr Littaur had structured his submissions in a focused way. But Mr Littaur several times said he was rushed and not given the time he needed.

102. One of my functions is to determine and manage the time during hearings in accordance with the Overriding Objective. Time cannot be as elastic as the parties – whether professionally represented or not – may require or expect. I have to ensure that parties have sufficient time to put their case to ensure a just and fair disposal but I must also bear in mind a) the interests of other litigants to have their cases heard on a timely basis b) the increase in costs as hearings over-run and sometimes are adjourned part-heard c) that that costs increase will inevitably be borne by one of the parties before me and d) that judicial and court resources are finite. Here, I was satisfied that I had all the evidence before me so that I could fairly and properly determine the issues. If I had any doubt that I could not have done so, the hearing would have gone part-heard.

103. During the hearing, after I think about one hour and forty minutes, Mr Littaur asked me to adjourn "…for a proper discussion". I refused, my reasons being that a) such an application should have been at the outset if there was a good reason which was not put

to me b) it would not accord with the Overriding Objective c) it would cause further cost and delay to the parties plus d) lead to increased judicial and court time unnecessarily.

104. Finally, Mr Littaur filed on about 12 July 2023 a second witness statement, albeit unsigned and undated. It is in support of an unissued application for removal of the Trustees on grounds of conflict of interest, breach of trust, undue influence and gross negligence. In his skeleton argument he submitted that this hearing was therefore premature as he wished both his applications to be heard together. That did not get off the ground as no such application plus supporting evidence was ever issued.

(After further submissions)

105. The next point I must determine is the incidence of costs. I first take the costs of the first and second defendants, Mr Collett and Ms Neale, as trustees of the Marriage Settlement. They are entitled to an indemnity from the trust, as long as they are not found to be in breach of their duties, in any event. However, here, Mr Burton submits that costs should follow the event and that Mr Littaur should be personally responsible for them.

106. I agree. It is a fundamental point of our litigation system that, where a party has commenced proceedings and have lost those proceedings, they should pay the reasonably incurred and proportionate costs of the other party. In those circumstances, Mr Littaur will pay the defendants' costs of this Part 8 claim.

107. I now turn to the position of Dr Fox. As I mentioned, Dr Fox has instructed Oriel Law, and Ms Galley has appeared before me. I have already indicated during submissions that I will in any event add – no matter what my decision on costs is – Dr Fox as a third defendant. She should be heard, and I say that particularly because of the way the correspondence has evolved in that Ms Galley took me to the correspondence starting in February 2023, where Ms O'Neill, Dr Fox's solicitor, emailed Mr Littaur and said:

> "Our client's only interest is in the timely winding up of the Marriage Settlement, so she can receive the half share to which she is entitled, without having been disadvantaged by the costs you are

> incurring and the progression and completion of the administration of her late father's estate. We will not enter into any further correspondence with you on this"

108. That was then followed by a direct email from Dr Fox to Mr Littaur:

> "I ask you to drop your ridiculous claim. You are only harming us with this so-called vexatious claim. What is the point? I am disgusted with your behaviour, and I do not want my share of the trust fund to be eaten up by the extra legal fees you are causing."

109. Then there is a long, three-and-a-half-page, closely typed reply by Mr Littaur to his sister. He says he is going to report the solicitors at BDB Pittmans to the SRA and he is convinced that pursuing the claim is the right and proper course of action to take:

> "even though you do not appreciate it. This is partly, I suspect, because you have not been told the full facts, regrettably, making you blind to reality, an inevitable state of affairs when the truth is being withheld from you. I regret to advise you that BDB Pitmans has been feeding you a selective diet of half-truths, untruths and misleading omissions. Believe me, I have personal experience of this myself from this firm."

110. It was then subsequent to that, quite recently, that Mr Littaur provided his draft witness statement on 12 July, and then submitted that his sister did not have capacity. That was also following on from certain correspondence, in which he effectively said that she supported his position.

111. I have no doubt that in the circumstances of her interest in the Marriage Settlement, notwithstanding the fact that, as she explained in direct terms, she did not wish to be involved, she has no alternative but to be represented because Mr Littaur has purported to speak for her and in circumstances where her views do not coincide with his. She wishes the trust to be wound up and cannot see why it should be delayed any further. I am satisfied Dr Fox has had to intervene due to the actions of Mr Littaur and so he should bear her costs.

112. In all those circumstances, I accede to Ms Galley's request in that, by operation of section 51 of the Senior Courts Act, I will make an order pursuant to CPR 46(2), namely, to date in favour of what was a non-party, and that the person should be added to the proceedings for the purpose of costs only.

113. Again costs should follow the event. It seems to me to be particularly important here that Dr Fox's costs should be borne by Mr Littaur personally and should not come from the estate. There is no costs schedule before me from Dr Fox's solicitors. Therefore, in those circumstances, I will make an order for a detailed assessment.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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This transcript has been approved by the Judge