IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

FSD CAUSE NO. 205 OF 2017

IN THE MATTER OF THE ESTATE OF ISRAEL IGO PERRY DECEASED

BETWEEN

(1) LEA LILLY PERRY
(2) TAMAR PERRY

Plaintiffs

and

(1) LOPAG TRUST REG.
(2) PRIVATE EQUITY SERVICES (CURAÇAO) NV
(3) FIDUCIANA VERWALTUNGSANSTALT
(4) GAL GREENSPOON
(5) YAEL PERRY
(6) DAN GREENSPOON
(7) RON GREENSPOON
(8) MIA GREENSPOON
(the Seventh and Eight Defendants both children, by* HAGAI GREENSPOON *their guardian ad litem)
(9) ADMINTRUST VERWALTUNGS ANSTALT

Defendants

JUDGMENT ON TRUSTEES' SUMMONS

Appearances:	**Mr Nicholas Dunne of Walkers (Cayman) LLC on behalf of the Plaintiffs**
	Mr Justin Fenwick QC instructed by Mark Goodman and Shaun Tracey of Campbells LLP on behalf of the First and Ninth Respondents
	Mr Sam Dawson of Carey Olsen on behalf of the Fifth Respondent
	Mr Christopher Harlowe of Mourant instructed on behalf of the Joint Receivers
Before:	**The Hon. Justice Segal**
Hearing:	**17 December 2021**
Draft judgment circulated:	**21 December 2021**
Judgment delivered:	**24 December 2021**

Introduction

1. This judgment deals with the summons dated 9 December 2021 filed by the First and Ninth Defendants (the ***Trustees***). The Trustees filed evidence in support of the summons in the form of Mr Boehler's Fifth Affidavit. The background to the Trustees' application can be found in my judgment dated 1 December 2020 (the ***Consequentials Judgment***) and my judgment on the further directions to the Joint Receivers dated 7 December 2021.

2. The summons was heard on 17 December 2021. Mr Fenwick QC appeared and made submissions on behalf of the Trustees and Mr Dunne appeared and made submissions on behalf of the Plaintiffs. Mr Dawson appeared on behalf of the Fifth Defendant and Mr Harlowe appeared on behalf of the Joint Receivers but both took no position on the Trustees' summons.

3. I have concluded, for the reasons given below, that the Trustees application should be dismissed.

The status of the of the account opening process for the new accounts at Pictet

4. At the hearing, I also heard from Mr Harlowe for the Joint Receivers who reviewed the Joint Receivers' recent written reports regarding arrangements and provided an update on progress made by them (and the Plaintiffs) in arranging for the opening of the two new accounts with Banque Pictet & Cie SA (***Pictet***), to be in the joint names of the Joint Receivers and Solid Fund Private Foundation (***SFPF)*** and Solid NV (***Solid***) respectively. At the conclusion of the hearing, I directed the Joint Receivers to provide by 4pm on Monday 20 December 2021 a further report on the status of the account opening process, making it clear that I expected the accounts to be opened and the funds to be transferred from SFPF's and Solid's existing accounts to the new accounts by then or shortly thereafter, and I informed the parties that I would provide my decision on the Trustees' summons after receiving that further report.

5. Yesterday, at 4pm, the Court received the following email from Mr Burgess-Shannon of Mourant:

"*Following the hearing on 17 December 2021, the Joint Receivers' team have asked that we pass on the following update. We would be obliged if this email could be passed to his Lordship as soon as possible:*

I would be grateful if this email could be placed before His Lordship Justice Segal for his consideration. It provides an update on the progress of opening the new joint accounts for Solid and SFPF at Pictet (the "New Accounts") since the hearing of the Grand Court on Friday 17 December.

Earlier today, Monday 20 December 2021, the Joint Receivers received confirmation from Pictet that the New Accounts are now open and active. In addition, Pictet has also provided confirmation that the funds which were held in the old accounts in the sole names of Solid and SFPF at Pictet have been transferred to the New Accounts. A copy of Pictet's confirmation is attached for reference.

On the basis that the New Accounts have now been opened by Pictet and the funds have been transferred from the old accounts in the sole names of Solid and SFPF at Pictet to the New Accounts, the Joint Receivers consider this matter to be closed and do not intend to pursue alternative options at EFG and/or Safra any further unless the Court otherwise directs.

I look forward to hearing from the Court once it has had a chance to consider my above."

6. Accordingly, some eleven months after the order made to give effect to the Consequentials Judgment, the funds at Pictet are now deposited in accounts with Pictet which are opened and held in the joint names of the Joint Receivers and SFPF/Solid. As I understand it from the Joint Receivers' written reports, this means that as a matter of Swiss law, no withdrawals or transfers can be made from and there can be no dealings with the funds or the accounts, including by way of charge or the creation of encumbrances, without the Joint Receivers' consent (I have not seen evidence dealing specifically with the Swiss law advice that the Joint Receivers have received on these points but would expect the Joint Receivers to have obtained or to obtain such advice). I note that the Trustees had noted that there had been references in the discussions with Pictet of pledges and encumbrances with respect to the accounts in the sole names of SFPF and Solid and had suggested that the Joint Receivers obtain a written confirmation from Pictet that no pledges, charges, or other encumbrances were held by Pictet and that Pictet was unaware that any pledges, charges, or other encumbrances were held by third parties. In my view, this is a sensible suggestion, and the Joint Receivers should seek such confirmations from Pictet.

The Trustees' application

The relief sought and the background to the application

7. The Trustees now seek (a) an order appointing or confirming the appointment of Mr Hagai Greenspoon (***Mr Greenspoon***) as guardian ad litem for the Eighth Defendant, who was at the commencement of these proceedings and remains a child or minor (the age of majority in this jurisdiction is of course 18 - see the Age of Majority Act (1999 Revision)) and (b) orders requiring the Fourth, Sixth and Seventh Defendants to acknowledge service for the purpose of these proceedings and give undertakings to the Court in the same terms as those given by the Plaintiffs (see [6] of the Consequentials Judgment).

8. The Fourth, Sixth, Seventh and Eighth Defendants are the children of the Second Plaintiff. The Fourth Defendant had reached majority before the commencement of the proceedings; the Sixth Defendant reached majority before service of the proceedings, the Seventh Defendant was under 18 when the proceedings commenced but reached 18 on 23 January 2019 (and turns 21 on 23 January 2022) and the Eighth Defendant is aged 16.

The Trustees' submissions

9. The Trustees were understandably concerned that while Mr Greenspoon had been repeatedly referred as the guardian ad litem in these proceedings for the Seventh and Eighth Defendants (see for example, references in the heading to the action as set out in various orders and judgments and [14(a)] of the trial judgment dated 27 May 2020) no formal order had been drawn up to confirm or complete his appointment. As I explained at the hearing, however, in my view, it is clear that the Plaintiffs at the first hearing at which they sought *ex parte* injunctive relief had requested an order appointing Mr Greenspoon as guardian ad litem for the Second Plaintiff's children, which request I granted, and proceeded on the basis that Mr Greenspoon had consented and would act in that capacity. Mr Dunne for the Plaintiffs confirmed at the hearing that the Plaintiffs accepted and agreed with this account and that Mr Greenspoon had (initially) been appointed as guardian ad litem for the Sixth, Seventh and Eighth Defendants so that they had each been properly served (see the Second Plaintiff's Twenty Fourth Affidavit, sworn on 16 December 2021, at [6] – [8]). However, it appears that no formal order confirming his appointment was drawn up and that the position needs to be regualarised. I directed that the parties prepare and seek to agree, and then file with the Court for my approval, a draft order for this purpose.

10. The Trustees were also concerned at the consequence of the Seventh Defendant turning 21 on 23 January 2022. The Trustees referred to the undertakings given by the Plaintiffs, which included undertakings not to deal with the assets of or the Plaintiffs' interest in or rights relating to SFPF and Solid and noted that the director of SFPF (which held 99% of the shares in Solid) was subject to the control of the monitoring beneficiaries under SFPF's constitution. The monitoring beneficiaries are entitled to pass by written resolution a special resolution giving directions to the director of SFPF either to act or refrain from acting. The Trustees pointed out that there are six monitoring beneficiaries: the Second Plaintiff, her children being the Fourth, Sixth, Seventh and Eighth Defendants and the Fifth Defendant. Under SFPF's constitution, until the Second Plaintiff's children reach the age of twenty-one, the second Plaintiff is entitled to exercise the voting rights of children for the purpose of passing a special resolution, which binds the directors (see the definition of "*Special Resolution*" in the Amended Articles of Incorporation of SFPF). The monitoring beneficiaries act by absolute majority (that is four votes are needed to pass a resolution). At present, prior to the Seventh Defendant reaching twenty-one, the Second Plaintiff holds three votes (her own and that of her youngest two children). At the time that the Plaintiffs undertakings were given (in April 2018), she held four votes and so had complete positive and negative control over SFPF. Since 31 October 2020 (when the Sixth Defendant turned twenty-one), the Second Plaintiff had controlled three votes, giving her negative control over SFPF. However, once the Seventh Defendant turned twenty-one next month the Second Plaintiff will only control two votes. This meant that the other monitoring beneficiaries can out vote her and pass resolutions. The Trustees submitted that this resulted in a material change of circumstances from those existing when the Plaintiffs undertakings were given and resulted in the protection provided by the undertakings being seriously diluted and there being a serious risk to the Trustees' interests and position (which the undertakings had been designed to protect). The Trustees accepted that for the other monitoring beneficiaries to out vote the Second Plaintiff and pass resolutions against her wishes the Fifth Defendant would need to vote with the Second Plaintiff's adult children but submitted that there may be circumstances where that might happen. Further, it is possible that the Second Plaintiff's adult children may object to any special resolution being passed, thereby causing a stalemate amongst the monitoring beneficiaries. In addition, there was a risk that the Second Plaintiff or the Fifth Defendant might resign as a monitoring beneficiary with the result that the adult children could have complete control. The Trustees submitted that in these circumstances, the Second Plaintiff's adult children should give the same undertakings as those given by the Plaintiff. There was, they submitted, no conceptual

reason why this should not be done and doing so was a reasonable and proportionate step which would ensure that the Court maintained full control over the assets of SFPF. The existence and continuation of partial, negative, control was insufficient. In order to bring the assets under control, all of those with power to deal with the assets needed to give undertakings. The Trustees said that the fact that these undertakings have not been proffered voluntarily when this issue had been raised with the Second Plaintiff was a cause of considerable concern.

11. The Trustees sought the following orders:

> "*4. By 31 December 2021:*
>
> *.....*
>
> *b. the Fourth, Sixth [and] Seventh Defendants shall acknowledge service.*
>
> *c. Each of the Fourth, Sixth, Seventh Defendants and Mr Greenspoon (on behalf of the Eight Defendant) shall undertake to the Court (in writing in a form approved by the Court) as follows:*
>
> *i. That he/she 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 of and/or the shares of or their interests in Solid Holding NV ("Solid") and/or SFPF;*
>
> *ii. That he/she will not dispose of, encumber, pay away, use or otherwise deal with any dividend or distributions made by Solid and/or SFPF or any asset, funds or property representing such dividend or distribution or the proceeds of sale of such asset or property;*
>
> *iii. That he/she 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 from Solid or SFPF, and that no further payments 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.*
>
> *5. Each of the Children shall have permission to apply to set aside or vary the order at paragraph 4(c) above provided that they make such application by Summons supported by affidavit no later than 31 December 2021.*

6. *If the Children have not acknowledged service and/or given undertakings in the form of paragraph 4(c) above by 31 December 2021 and/or if the Children or any of them have issued a Summons pursuant to paragraph 5 above, the Summons (and any Summons issued by the Children) shall be listed for a further hearing no later*

than 13 January 2022 with a time estimate of ½ a day, on which hearing, the Court shall consider whether any, and if so what, further injunctive or other relief should be ordered.

7. *The Plaintiffs and the Children shall pay the costs of the Summons to be assessed if not agreed."*

12. The Trustees also submitted that additional protection was required because of concerns regarding Pictet's participation in the Solid Dilution. This concern had led the Fifth Defendant to file a summons seeking an order that the funds held in the accounts with Pictet be moved to accounts with another bank (see the Fifth Defendant's Tenth Affidavit filed in support of that application). The Fifth Defendant's summons was listed to be heard at the same time as the Trustees' summons. However, shortly before the hearing, the Fifth Defendant decided to withdraw her summons, with the consent of the other parties.

13. The Trustees said that if this relief was not granted, they would need to consider applying for injunctive relief against the Fourth, Sixth and Seventh Defendants in order to protect their position. the Trustees did not explain the basis on which they would seek such injunctive relief.

The Plaintiffs' submissions

14. The Plaintiffs opposed the Trustees' application. The Second Plaintiff's Twenty Fourth affidavit set out the evidence relied on by the Plaintiffs. The Plaintiffs submitted that the Court had no jurisdiction to require and should not order the Fourth, Sixth and Seventh Defendants to submit to this Court's jurisdiction (by ordering them to file acknowledgements of service) or to give the undertakings sought by the Trustees. Once the funds of SFPF and Solid had been transferred into bank accounts in the joint names of SFPF/Solid and the Joint Receivers, which was to happen very shortly and certainly before 23 January 2022, the funds were adequately protected and there was nothing which SFPF and Solid, acting with or without directions given by the monitoring

beneficiaries could do to transfer or deal with the funds without the Joint Receivers' consent or a direction from this Court.

15. The Plaintiffs' submitted that the premise underlying the Trustees' case (and Mr Boehler's Fifth Affidavit), that upon the Seventh Defendant attaining the age of 21 in late January 2022 the Court will lose control over SFPF, was misconceived. As the Second Plaintiff had said in her Twenty-Fourth Affidavit, even after that date her children will be unable to authorise transactions on and transfers from SFPF's joint account and the account will be protected by the joint signatory requirements with the Joint Receivers. Whatever the position within SFPF, there is nothing the Foundation, its monitoring beneficiaries or its directors can do in relation to the funds at Pictet without the signature of the Joint Receivers. The Plaintiffs' submitted that the nature of this Court's control to date via the undertakings given by the Plaintiffs, in particular the Second Plaintiff, Tamar Perry had only ever been negative in nature. That negative control will continue after the Seventh Defendant became 21 since the Second Plaintiff will still be able to vote for herself and the Eighth Defendant and with the Fifth Defendant to block further special resolutions being passed by the other monitoring beneficiaries. The Plaintiff argued (referencing [28] of Mr Boehler's Fifth Affidavit) that the true purpose behind the Trustees' application may be to transform the Court's control from negative to positive control by creating the conditions in which the Court would be able to compel SFPF to take action (although no particular order directing SFPF to take action had been identified as being either necessary or likely to become so). That, the Plaintiffs said, was of concern in circumstances where all internal matters relating to SFPF were currently being litigated before the Curacao court, and as a result that court was the proper forum in which to seek relief against SFPF. The Plaintiffs argued that properly understood, the relief sought by the Trustees appeared not in fact to be the preservation of the status quo, but a fundamental change in the manner in which SFPF was dealt with in these proceedings and pursuant to the undertakings already provided. The Plaintiffs submitted that there was no proper basis upon which the Court could or should trespass on matters before the Curacao court.

Discussion and decision

16. In my view, the core question is whether the fact that the Seventh Defendant will reach eighteen on 23 January 2020 represents a relevant and sufficient change of circumstances to justify the relief that the Trustees seek.

17. In the undertakings to which the Trustees have referred, the Plaintiffs undertook to the Court:

(a). "*not to deal with, dispose of, make payments out of or take any other steps whether directly or indirectly in respect of the assets … or my interest in [Solid] and [SFPF].*"

(b). "*to exercise all and any of my rights and powers (whether 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 (i) no dividend or distribution is paid from Solid or SFPF and (ii) that no further payments shall be made out of the assets and funds of Solid and SFPF until the conclusion of these proceedings or further order of the Court*."

18. I also note that the Plaintiffs (and in particular the Second Plaintiff) have been ordered (in [6(2)] of the Consequentials Order, as amended by [19] of my judgment of 7 December 2021) to "*take steps to procure that SFPF and Solid give instructions to Pictet for the immediate transfer of all the funds currently held in the Pictet account[s] to be transferred to the new accounts*"). It is unclear whether the monitoring beneficiaries have yet signed a special resolution directing the SFPF board to do so.

19. The monitoring beneficiaries have issued special resolutions directing that the board of SFPF refrain from (a) amending the signatory authorities on its account with Pictet without specific approval of the monitoring beneficiaries and (b) authorising by shareholder resolution the board of Solid to amend the signatory authorities of the account of Solid without specific approval of the monitoring beneficiaries."

20. The evidence indicates that the only assets (at least assets of any material value) in SFPF and Solid are the funds deposited with Pictet. SFPF also owns the shares in Solid and Solid is a creditor of the Second Plaintiff in relation to the loan made by it to the Second Plaintiff. But, based on the evidence adduced, assuming that the funds are in joint accounts in the names of the Joint Receivers, the shares in Solid are not of any material additional value (the Trustees did not argue that the shares was were of any value or that action was needed to protect them).

21. Now that all the funds held in SFPF's and Solid's accounts have been transferred and credited to the new joint accounts in the name of the Joint Receivers and SFPF/Solid, the funds cannot be transferred away since they cannot be without the Joint Receivers' consent. While the Trustees and the Fifth Defendant have expressed concerns about the reliability and probity of Pictet, no evidence has been adduced and they have not asserted that Pictet acted in breach of mandate or otherwise unlawfully in relation to the Solid Dilution (there are suggestions that the Trustees and the Fifth Defendant may wish to allege that Pictet knowingly assisted the directors of SFPF and Solid in transferring the funds but no evidence has been produced or claims directly made to that effect). In these circumstances, the boards of Solid and SFPF cannot authorise or effect the transfer (or otherwise dispose of or encumber) the funds in the new joint accounts, so that there is no need for the monitoring beneficiaries to exercise or be able to exercise control over and give directions to the directors, in order to ensure that the funds remain in place and cannot be dissipated or encumbered.

22. In my view, the Plaintiffs undertakings were required to ensure that the Plaintiffs would be prevented from taking any steps (in the same way as if they were subject to an injunction, as the Trustees are) which would have the effect of SFPF and Solid dealing with, disposing of or transferring their assets. The core objective of the undertakings was to preserve the status quo (thereby protecting the position of the Trustees) by ensuring that the assets of SFPF and Solid were not transferred or reduced in value while these proceedings continued. The undertakings were the flip side of the coin on the other side of which was the proprietary injunction against the Trustees. The injunction and the undertakings, which were a condition to the granting of the injunction, were designed to protect both (all the) claimants to proprietary rights in the BHO6 Share, and to ensure that if the Trustees were prevented from exercising their rights as the registered holder of the share, they could not be prejudiced by action taken by the Plaintiffs to transfer or otherwise deal with the substantial funds transferred from Solid (a sub-subsidiary of BHO6 at the time) as part of the contested Solid Dilution.

23. Since the funds are now held on terms that prevent them from being disposed of or otherwise dealt with without the consent of the Joint Receivers, and since the funds represent (virtually) all of the assets of SFPF and Solid, in my view, the fact that the Second Plaintiff is no longer able on her own to pass a special resolution does not affect, or at least materially prejudice, the position of the Trustees or represent a change of circumstances justifying the Court ordering that further

undertakings be given, in the absence of which the proprietary injunction would need to be amended or discharged. The undertakings were focused on ensuring that the assets of SFPF and Solid remained in place and were not dissipated. The order in [6(2)] of the Consequentials Order was made so as to ensure that the funds in Pictet were transferred to the new joint accounts. Now that the funds are held in the new joint accounts, the change in the Second Plaintiff's voting rights as a monitoring beneficiary do not affect the achievement of these objectives.

24. As I noted during the hearing, there will be a risk that action could be taken by the director of SFPF with the consent of the protector which the Second Plaintiff will be unable directly to prevent by passing a special resolution. But there is no indication in the evidence that the director could take any action to transfer, encumber or deal with the funds in the joint account.

25. At [15] of her Twenty Fourth Affidavit, the Second Plaintiff said as follows:

> *"As to Mr Bohler's [sic] suggestion that I could relinquish my rights as a Monitoring Beneficiary as a device in order to hand control to my majority children, I have no intention of doing so, and do not consider that such a course of action to be consistent with my existing undertakings to the Court."*

26. The Second Plaintiff is right that resignation is not permitted by her current undertakings. She has undertaken "*not to deal with, dispose of, make payments out of or take any other steps whether directly or indirectly in respect of the assets … or my interest in [Solid] and [SFPF]" and "to exercise all and any of my rights and powers (whether 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 (i) no dividend or distribution is paid from Solid or SFPF and (ii) that no further payments shall be made out of the assets and funds of Solid and SFPF until the conclusion of these proceedings or further order of the Court*." I would regard her resignation as a monitoring beneficiary, certainly when the resignation was done to permit the other monitoring beneficiaries (or with knowledge that they were intending) to deal with, dispose of or make payments out of the assets of SFPF and Solid, as being inconsistent with and a breach of the undertakings.

27. Accordingly, I do not consider that amendments to the *Plaintiffs'* undertakings are needed or justified. But the Trustees wish the Court to go further and order, now, after trial and an appeal to the Court of Appeal, that the Fourth, Sixth and Seventh Defendants submit to this Court's jurisdiction and themselves give undertakings. This seems to me to be unjustifiable. It has been and remains a matter for these defendants to decide whether to submit to the Court's jurisdiction and there may be good reasons why they do not wish to do so. It has been a matter for these defendants to decide whether actively to participate in and defend these proceedings. As the Second Plaintiff said at [6] of her Twenty Fourth Affidavit, "*The children were added as defendants in the usual way because they had an interest in the assets in dispute and to give them the opportunity if they wished to, to join in the proceedings.*" Furthermore, the undertakings were required of the Plaintiffs as a condition to the granting or continuation of the Proprietary Injunction. There is no proper basis for forcing the Fourth, Sixth and Seventh Defendants to submit to the jurisdiction and participate in the proceedings or to give the undertakings sought by the Trustees. The Trustees presented their case on the basis that they sought an order that would give the Fourth, Sixth and Seventh Defendants an opportunity to provide the requested undertakings and make provision for a further hearing, at which the Trustees could seek further additional relief, including an injunction, if the undertakings were not given. But, as I pointed out at the hearing, the Trustees' draft order included an unconditional and immediate order to give the undertakings such that a failure to do so would be a contempt. The draft order, as I have noted above, did give the Fourth, Sixth and Seventh Defendants liberty to apply to set the order aside and no doubt a failure in the first instance to comply with the order would not result in a serious risk of sanctions for contempt, nonetheless the drafting of the order did not sit well with the Trustees' explanation of the structure of the relief they sought at this stage.

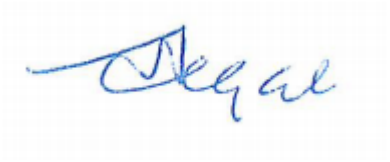
28. The Trustees, as I have mentioned above, have not set out the legal basis for any injunctive relief against the Fourth, Sixth and Seventh Defendants. It remains to be seen whether the Trustees wish to seek such relief, how they frame their case and whether the Court can be shown to have jurisdiction to grant relief against these defendants in the present circumstances. But, as I also said during the hearing, and have mentioned before, it seems to me that claims relating to and relief, including interim relief, with respect to the effects of the Solid Dilution, are properly to be made by BGNIC (with the approval of the Joint Receivers). If there is a genuine concern that those controlling SFPF and Solid may be planning to take action to defeat a judgment against SFPF or Solid to be made and based on a cause of action resulting from the Solid Dilution, then

the proper claimant is BGNIC (I note in passing the recent advice of the Privy Council in *Convoy Collateral Ltd (Appellant) v Cho Kwai Chee (also known as Cho Kwai Chee Roy) (Respondent) (British Virgin Islands)* [2021] UKPC 24). There are no doubt issues as to whether proceedings in this jurisdiction could or should be issued and served and of course, I am aware that BGNIC has already commenced proceedings against SFPF, and Solid in the Curacao court and that judgment is expected shortly. The existence of those proceedings may, as the Plaintiffs submit, mean that it would not be appropriate for interim relief to be granted here even assuming proceedings could properly be issued and served. In any event, the purpose of the undertakings was to find a proper balance to the interests and risk of prejudice to the parties to these proceedings, and ultimately to keep the funds that had been paid away to SFPF and Solid intact until the conclusion of this litigation and not to make it easier for the Trustees to enforce the judgment of this Court in the event that they were successful in these proceedings.

29. During the hearing. Mr Fenwick QC submitted that the Court was duty bound to take steps, by granting the relief sought, to ensure that the Trustees were able to enforce a judgment of this Court on their counterclaim (if upheld in the event that leave to appeal is granted by the Privy Council) and to avoid the risk that steps would be taken by the Plaintiffs or their family or associates to defeat enforcement of such a judgment and retain the funds transferred to SFPF and Solid pursuant to the Solid Dilution. This submission, or perhaps it is better described as an exhortation, seems to me to be misconceived. It is and has for some time been for the Trustees (or more precisely the board of BGNIC with the approval of the Joint Receivers and where appropriate in consultation with the Trustees) to assess what proceedings and relief are needed to protect BGNIC's position, rights, and remedies and to prosecute, as BGNIC has for some time been permitted to do, such actions and obtain such interim relief as is properly available in Curacao and/or this jurisdiction. It is not appropriate to use these proceedings as a short cut to obtain the relief that is only properly to be granted in proceedings brought by, and based on a cause of action held by, BGNIC.

30. If the Trustees do wish to proceed with an application for an injunction, they will need to show that an urgent hearing is justified, and I expect, serve or at least to give proper notice to the relevant defendants and issue their application very rapidly to allow proper time for the filing of

evidence. I will make myself available to hear such an application if one is made and expedition can be justified.



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Mr Justice Segal

Judge of the Grand Court, Cayman Islands

24 December 2021