Neutral Citation Number: [2023] EWHC 2062 (Ch)

Case No: PT-2019-000520

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
PROPERTY TRUST AND PROBATE LIST (ChD)

Royal Courts of Justice, Rolls Building,
Fetter Lane, London, EC4A 1NL

Date: 16 August 2023

Before:

MASTER MCQUAIL

- -

Between:

(1) SUTINDER KAUR HANSPAUL **(2) SANDEEP SINGH HANSPAUL** **(3) RAMNIK KAUR HANSPAUL**	**Claimants**
- and -	
(1) JOHN HOWARD WEARING **(2) DONNA MARIE HOLMES** **(3) RAJDEEP SINGH HANSPAUL**	**Defendants**

- -

Paul Burton (Direct Access) for the **Claimants**
Tom Dumont KC (instructed by **Anthony Collins LLP** for the **First and Second Defendants**
No representation for the **Third Defendant**
Hearing date: 5 June 2023

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Approved Judgment

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MASTER McQUAIL

This judgment will be handed down remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 3pm on Wednesday 16 August 2023

Master McQuail:

Background

1. By a settlement executed on 23 December 1994 (**the Trust**) Satbachan Sehmi and his wife Pritam Sehmi (**the Settlors**) settled shares in the family company, Rochmills Limited (**Rochmills**), upon trusts for the benefit of their family. By the time of the events relevant to the present proceedings the settlors' children Jatinder Sehmi and Sutinder Hanspaul and their respective children Anita, Raj, Kabir and Tejpaul Sehmi and Sandeep, Ramnik and Rajdeep Hanspaul were all beneficiaries of the Trust. Where I refer to family members by name in this judgment I will, without intending any disrespect, use their given names. Sutinder, Sandeep and Ramnik are the respective three claimants. Rajdeep is the third defendant.

2. It is plain from the memorandum of Settlors' wishes for the management of the Trust signed on 23 October 2009 and the memorandum of the Settlors' vision for the future of the company recorded in the minutes of a meeting on 20 November 2009 that the Settlors hoped that the beneficiaries of the Trust would have continuing involvement in an ongoing family business. Those documents, by their nature, do not deal definitively with all future eventualities for the Trust and the family business.

3. Rochmills was the subject of a dispute between the Sehmi and the Hanspaul branches of the family. The first and second defendants (**the Trustees**) are the current trustees of the Trust, they were appointed in the context of that family dispute by an order of the court dated 1 April 2015; they are solicitors and partners in the firm of Anthony Collins. The original family dispute was resolved and the family members agreed that the interests of the Sehmi and Hanspaul branches of the family should be separated. In 2016 this was effected by way of a demerger leaving each family branch owning a majority of the shares in each of two separate companies with the Trust having a minority holding in each. Each company held half of what had been the assets of Rochmills.

4. Of the new companies created to effect the demerger of Rochmills, one was owned by the first claimant and the Trust and was called Adara Group Limited (**Adara**), while the Sehmi family and the Trust shared ownership of the other, Rochmills Holdings Limited. On 13 January 2021, the Trust's shares in Rochmills (Holdings) Limited were appointed out to Sehmi family members, who entered into indemnities in favour of the Trustees. The Sehmi family members are no longer beneficiaries of the Trust. The remaining beneficiaries of the Trust are the claimants and the third defendant (**the Hanspaul Beneficiaries**).

The Proceedings

5. The claimants commenced these proceedings by Part 8 claim form dated 27 June 2019, supported by the second claimant's witness statement also dated 27 June 2019. The only defendants originally joined were the Trustees. Rajdeep was joined as third defendant by consent in October 2019 following an application by the Trustees.

6. Further witness statements have been filed as follows:
   (i) the second claimant's witness statements dated, 25 August 2019, 29 August 2019, 10 December 2019 and 29 March 2023;
   (ii) the third claimant's witness statement dated 10 December 2019;
   (iii) the first defendant's witness statements dated 30 July 2019 and 11 December 2019;

(iv) the second defendant's witness statements dated 30 July 2019 and 21 March 2023; and
(v) the third defendant's witness statement dated 27 November 2019.

7. By the terms of the claim form the claimants sought the directions of the court in circumstances where it was said that the Trustees had indicated that they proposed to appoint the interests of the Hanspaul Beneficiaries to them absolutely in equal shares, but the claimants' view was that that was not in the third defendant's interests, the claimants were unwilling to wind up the Trust and their preference was for all four Hanspaul Beneficiaries to remain as beneficiaries of the Trust.

8. One direction sought by the claim form was that the Trustees appoint the Hanspaul Beneficiaries as trustees of the Trust and thereafter retire as trustees (and in the first defendant's case protector), which would be an unusual direction. The first defendant's retirement, replacement or removal as protector need not be considered separately from his leaving office as a trustee. While the protector is a trustee the protector's role is effectively dormant. If the first defendant were to be removed or retire as a trustee he would clearly also need to be replaced as protector. The other relief sought by the claim form concerned the conclusion of the separation out of the Sehmi family members' interests, which is now complete, or is ancillary to the proposed removal or replacement of the Trustees.

9. The second claimant's witness statement of 27 June 2019 included the following statements:

(i) "we do not at present seek the removal of the Trustees by the court"; and
(ii) "we [the Claimants] have agreed that if Raj[deep] has a strong and settled wish to exit the Trust we will try to reach an acceptable figure with him on fair terms."

10. As appears from the first defendant's witness statement of 30 July 2019 the Trustees' position by that stage was that, because the third defendant did not wish to be a trustee and did not agree that the claimants should take control of the Trust, the third defendant's interest should be separated and paid out. He explained that options to achieve that objective had been under consideration and discussion for some time and that the Trustees had been giving consideration to applying to the Court for appropriate directions when the claim form was issued by the claimants without sending any prior letter before action.

11. If it were not already clear from the first defendant's evidence, it was plain from the terms of the third defendant's witness statement of 17 November 2019, after his joinder as third defendant, that replacement of the Trustees by all four Hanspaul Beneficiaries could never have worked in practice. The third defendant explained in his evidence that did not want to be a trustee with the claimants and did not want the Trustees removed. The third defendant also explained that he had not been involved in the running of Adara, was estranged from the claimants and considered that their application was made as a means to exclude him from benefit from the Trust.

12. For the first time, in the second claimant's witness statement of 10 December 2019, he invited the Court to remove the Trustees, although the Part 8 claim form has never been amended expressly to seek that relief. His position was that events that had occurred between the issue of the proceedings and the date of his statement meant that removal of the Trustees was now necessary.

Eventual Agreement between the claimants and the third defendant

13. The claimants' preferred option up to and including the date of issue of the claim form was consistently that the Trust should remain in existence for all four Hanspaul Beneficiaries with all appointed as trustees. The claimants suggest that the third defendant was wrongly persuaded by the Trustees that he would effectively be excluded from any benefit if that route were followed, because he is not a participant in the family business. I am not satisfied that there is any evidence of such persuasion by the Trustees or that it was a wrong conclusion for the third defendant to reach. Rather, I conclude from the terms of the third defendant's witness statement that he reached that conclusion independently of the Trustees and that it was, at least, potentially, correct.

14. In November 2020 the claimants and the third defendant agreed that an amount of £625,000 would be paid to the third defendant and he would be forgiven trust loans up to £50,000 - the payment out and forgiveness to represent his entire interest in the Trust. This deal was to be structured by the Trustees appointing shares in Adara to the third defendant, and Adara then buying them back with the third defendant then ceasing to be a beneficiary of the Trust. The agreement was reached at mediation and documented in a mediation agreement (**the Agreement**).

15. In 2021 the Trustees produced to the Hanspaul Beneficiaries a suite of documentation intended to effect the separation of the third defendant's interest in accordance with the Agreement and to effect the Trustees' retirement from the Trust and their replacement by the claimants.

16. Unfortunately, the documents have not been agreed and finalised. The third defendant has not been paid out and no funds have been introduced to fund the remaining liabilities of the Trust, including the Trustees' unpaid costs.

The Present Positions of the Claimants and the Trustees

17. The claimants' position as appears from the case summary agreed between the claimants and the Trustees is that:

> (i) the Trustees' continued involvement in the administration of the Trust is detrimental to the interests of all the Hanspaul Beneficiaries and they should be removed;
>
> (ii) the Trustees' original proposals, including their proposal to wind up the Trust, are not in the best interest of the Hanspaul Beneficiaries;
>
> (iii) the Trustees' recent proposals involve a disproportionate allocation of costs to them;
>
> (iv) the Trustees have generated significant and avoidable costs for the Trust and depleted Trust funds in a manner which is detrimental to the interests of the Hanspaul Beneficiaries;
>
> (v) the court should appoint the claimants and the third defendant, if he so wishes, as new trustees;
>
> (vi) the court should give directions to give effect to the claimants' proposals or such other directions as the Court sees fit to resolve the issues currently in dispute so that the Trust and Adara can be administered by the Hanspaul family without external interference;
>
> (vii) the court should give such other directions as are required to achieve the clean break desired by the Sehmi and Hanspaul families and to enable the third defendant to effectively exit the Trust;

(viii) the directions can and should be given to the claimants as new trustees in place of the Trustees; and

(ix) the claimants have agreed, in principle, to the third defendant's requests to receive a sum of money in lieu of his beneficial interest in the Trust and thereafter be excluded from the Trust and, consequently his position as set out in paragraph 19 below is no longer relevant.

18. It is the Trustees' position as appears from the same document that:

(i) they are seeking to achieve an equitable and final position between the beneficiaries as a whole (including the Sehmi family beneficiaries) in accordance with the terms of the original resolution of the dispute between the families;

(ii) the claimants' proposals and the relief sought do not achieve a fair outcome for all beneficiaries, would disadvantage the third defendant and do not reflect the clean break principles, which risks further litigation between the Sehmi and Hanspaul families;

(iii) the proposals tabled by the Trustees from the outset were designed to meet or exceed the relief sought by the claimants and have been developed to meet the claimants' subsequent requests, where consistent with those principles of equity and finality;

(iv) the Trustees have offered to engage in binding arbitration or expert determination to conclude the practical steps required to achieve the agreed approach;

(v) the Trustees have made it clear to the claimants that any resolution of the issues they have raised can be agreed without prejudice to any argument the Claimants wish to pursue against the Trustees in connection with the costs the Trustees have incurred since proceedings were issued; and

(vi) the appointment of new independent trustees would incur disproportionate and unnecessary time and costs at the expense of the Trust. They would be reliant on the claimants' cooperation and may find themselves in no different position to the current Trustees.

The position of the third defendant

19. The case summary records that it was agreed between the parties that the third defendant would not participate further in the proceedings and would not attend the hearing before me. It also records that his witness statement, signed at a time before the Agreement was reached set out his position as follows:

(i) he considered that appointment of the claimants as trustees would make his exclusion permanent and would result in further litigation; he did not wish to be appointed as a trustee himself;

(ii) he had no confidence that the directors of Adara (following the Trustees' resignation) would act in accordance with his interests and had no desire to participate in the running of Adara; and

(iii) he wanted the Court to allow the Trustees to remain in office and to give directions to enable them to exercise their discretion in the way they intend.

The Law

20. Section 41(1) of the Trustee Act 1925 provides:

"The court may, whenever it is expedient to appoint a new trustee or new trustees, and it is found inexpedient difficult or impracticable so to do without the assistance of the court, make an order appointing a new trustee or new trustees either in substitution for

or in addition to any existing trustees or trustees, or although there is no existing trustee.

21. The test to be applied by the court when asked to remove a trustee is, as explained by Chief Master Marsh, as he then was, in *London Capital & Finance PLc (In Administration) v Global Security Trustees Limited* [2019] EWHC 3339 at [19], and that it:

> "starts with the decision of the Privy Council in *Letterstedt v Broers* (1884) 9 App Cas 371 . The test is a simple one. The court considers the welfare of the beneficiaries. The applicable criteria, as they have been developed over the years, were summarised recently by me in *Long v Rodman* [2019] EWHC 753 (Ch) at [19] – [26] and in *Schumacher v Clarke* [2019] EWHC 1031 (Ch) at [18] to [21]."

22. In *Long v Rodman* the Chief Master explained (in the context of the similar jurisdiction under section 50 of the Administration of Justice Act 1985) at [19] that:

> "The discretion under section 50 is to be exercised in a pragmatic way."

23. He went on at [20]

> "At the hearing the court has to consider first, whether the circumstances are such that the discretion is engaged, secondly whether an order should be made under section 50 and, thirdly, if so, what order is appropriate. I would add that it will only rarely be necessary for an application under section 50 to result in a trial because it is usually not normally necessary to make findings in relation to disputed issues of fact for the purposes of dealing with the application."

24. At [21] the Chief Master referred to his summary of the relevant principles in the case of *Harris v Earwicker* [2015] EWHC 1915 (Ch):

> "i. It is unnecessary for the court to find wrongdoing or fault on the part of the personal representatives. The guiding principle is whether the administration of the estate is being carried out properly. Put another way, when looking at the welfare of the beneficiaries, is it in their best interests to replace one or more of the personal representatives?
>
> "ii. If there is wrongdoing or fault and it is material such as to endanger the estate the court is very likely to exercise its powers under section 50. If, however, there may be some proper criticism of the personal representatives, but it is minor and will not affect the administration of the estate or its assets, it may well not be necessary to exercise the power.
>
> "iii. The wishes of the testator, as reflected in the will, concerning the identity of the personal representatives is a factor to take into account.
>
> "iv. The wishes of the beneficiaries may also be relevant. I would add, however, that the beneficiaries, or some of them, have no right to demand replacement and the court has to make a balanced judgment taking a broad view about what is in the interests of the beneficiaries as a whole. This is particularly important where, as here, there are competing points of view.
>
> "v. The court needs to consider whether, in the absence of significant wrongdoing or fault, it has become impossible or difficult for the personal representatives to complete the administration of the estate or administer the will trusts. The court must review what has been done to administer the estate and what remains to be done. A breakdown of the relationship between some or all of the beneficiaries and the personal representatives will not without more justify their replacement. If, however,

the breakdown of relations makes the task of the personal representatives difficult or impossible, replacement may be the only option.

"vi. The additional cost of replacing some or all of the personal representatives, particularly where it is proposed to appoint professional persons, is a material consideration. The size of estate and the scope and cost of the work which will be needed will have to be considered."

25. The Chief Master went on to explain at [25]

"The court will never remove a trustee lightly. The court will always wish to consider the application in light of all the circumstances, with the welfare of the beneficiaries firmly in mind. If there has been misconduct by the trustees, it is likely that an order for removal will be made. On the other hand, the fact that the beneficiaries have fallen out with the trustees is likely to be insufficient on its own."

26. At [68] of the same case the Chief Master said this:

"It is not the role of the court on hearing an application under section 50 necessarily to make findings of wrongdoing. It is clear however, that where the beneficiaries are able to make out complaints that warrant further investigation, the continued tenure of the administrator becomes untenable unless the complaints are trivial. It seems to me that the issues in the letter from Macfarlanes meet that threshold requirement. They are certainly not trivial complaints and they place Mr Long in a position in which he has conflicts of interest that make it inappropriate for him to remain in office."

27. Finally at [71] he said this:

"To be fair, the issues of whether Mr Long should be replaced and, if so, by whom are easily conflated. They are, however, separate issues. In parentheses, I remark that it is possible to envisage circumstances in which the court considers it is in the best interests of the beneficiaries to remove an administrator but declines to exercise its discretion to do so because no suitable alternative can be found, or replacement needs to be deferred. However, in general the jurisdiction needs to be approached in stages."

The Relevant History

28. The evidence in the witness statements deals with events ranging over a number of years. I was taken to a lot of material going to matters in dispute between the parties as to what has happened in the past and why and who might be at fault. I have taken account of that history and the submissions made to me about it by both Mr Burton and Mr Dumont. However, resolution of any factual inquiry about alleged wrongdoing by the Trustees, which is denied, is not for me on this occasion. It is not of any benefit to the parties for me to make detailed findings as to historic disputes.

29. The key relevant matters apparent from the evidence are that since the date of the Agreement the Trustees have been negotiating with the claimants to secure two objectives:

(i) the implementation of the buy-out of the third defendant; and thereafter

(ii) their own removal and replacement by the claimants.

There is an ancillary matter which is the need for the proper costs of the Trustees to be paid.

30. It is said by the claimants that the following are grounds for removing the Trustees:

(i) the Trustees' determination to liquidate the Trust against the wishes of the claimants;

(ii) causing a deadlock in the Trust;

(iii) threatening to deadlock Adara
(iv) threatening to petition the companies court;
(v) breaching or threatening to breach the Rochmill Shareholder Agreement;
(vi) destroying the relationship of trust and confidence between the claimants and the Trustees;
(vii) disrupting the business of Adara;
(viii) conflicts of interest;
(ix) preferring the interests of the third defendant over the claimants;
(x) confounding the intentions of the settlors of the Trust;
(xi) charging excessive fees, costs and expenses;
(xii) a failure to apply to the court for directions;
(xiii) retaining money belonging to Adara;
(xiv) the wish of the claimants that the Trustees be removed;
(xv) removal being essential for the interests of the claimants and the due administration of the Trust.

31. The Trustees' deny that there has been any misconduct or wrongdoing by them and say in relation to the criticisms of their conduct that are made:

(i) the Trustees' preference was to wind up the Trust but, in light of the claimants' preference for the Trust to continue, a solution has been alighted upon and agreed by the claimants with the third defendant, which does not prefer the interests of any beneficiary over others, which would enable the Trust to continue without any deadlock in the Trust, albeit in a way which would not be in line with the Settlors' expectations;
(ii) provided the claimants carry out the Agreement with the third defendant and provide funds necessary to secure the Trustees' costs any future deadlock in Adara or any petition to the companies court will be unnecessary. There was nothing objectionable in the Trustees giving consideration to their rights and remedies as shareholders which, in practice, led to the Agreement being reached;
(iii) since the Trustees resigned as directors of Adara shortly after the claim form was issued the alleged disruption of the business of Adara cannot be maintained as a valid criticism;
(iv) the allegation that excessive charges or expenses have been incurred is met by the Trustees' willingness to reach finality without prejudice to any argument the claimants wish to pursue in connection with costs incurred since issue of the claim form;
(v) the retention by the Trustees of money belonging to Adara was pursuant to a board resolution. The monies were returned shortly after the Trustees resigned as directors;
(vi) the Trustees dispute that they can be fairly criticised for failing to apply to the court for directions, it was a matter under consideration by them at the time the Part 8 claim form was issued by the claimants;

The Nature of the Trust Assets

32. When the Trustees were appointed in 2015 the main trust asset was a majority shareholding in a family company. Following the demerger with the Sehmi family the only remaining significant asset of the Trust is a minority shareholding in Adara, in respect of which dividend income is not paid. One practical difficulty in the administration of the Trust is its lack of liquid funds. The accounts to March 2023 show that the remaining cash of some £30,000 is insufficient to meet liabilities already accrued.

33. The claimants complain bitterly about the Trustees' costs and disbursements, including the costs of seeking advice about exercising their rights as minority shareholders in addition to their powers as trustees to obtain relief or remedies to enable the administration of the Trust to be moved forward.

Implementation of the Agreement

34. The second defendant has explained at length in her witness statement of 21 March 2023 the sequence of steps taken by the Trustees to negotiate with the claimants and agree with them a suite of documents effective to separate out Rajdeep's interest (in accordance with the Agreement), to effect the retirement of the Trustees and the handing-over to the claimants of the remaining Adara shares, once funds have been provided by Adara or the claimants. The matters in issue include the indemnities required to ensure fairness and the elimination of the risk of further litigation between the Sehmi family and the Hanspaul family. She says no drafting points have been raised by the claimants in relation to those indemnities which are, in the same form as agreed with the Sehmi side of the family. She explains that the claimants have failed to engage with the process and that the preferred and most tax efficient means of paying out Rajdeep requires a tax clearance application and some further amendment of the documentation which will incur costs that the Trust simply does not have.

35. The second defendant concludes that the Trustees are left with a choice of:
(i) holding the shares on a "wait and see" basis;
(ii) appointing the shares out to the Hanspaul Beneficiaries contrary to their wishes and the Agreement leaving the Trust unable to settle its liabilities; or
(iii) endeavouring to force a purchase of the Trust's shares by the first claimant.

36. She recognises that none of these options is attractive, but they are the only possibilities absent cooperation from the claimants. She notes also that the option of appointing alternative professional trustees would be very expensive, even if it were possible to find a professional willing to step into the shoes of the Trustees.

37. The claimants on the other hand say that all that needs to be done is for them to be appointed as trustees, subject to such directions as are necessary to pay out Rajdeep and exclude him from the Trust. However, they have not provided a comprehensive set of such directions for consideration by the Trustees or the Court. The claimants' position was most recently set out in a schedule provided by the second claimant in March 2023. That schedule includes proposals that would require the third defendant to contribute to various costs thereby reducing his entitlement to payment pursuant to the Agreement. The schedule also refers to the provision of indemnities in a form "usually provided" to outgoing trustees but without supplying any draft. The claimants make no proposal for how the costs that will need to be incurred by the Trust in finalising matters would be met and suggest no practical arrangements for the Trustees to secure their entitlement to proper costs either by way of any retention of trust property or by any other means.

Discussion and Conclusions

39. Unless and until the Agreement is fully executed or the third defendant consents to some variation of it which is then fully executed, I do not consider the third defendant's position to be irrelevant as suggested by the claimants. Rather, I consider that the court must be astute to safeguard his interests as a beneficiary.

40. Insofar as the original basis of the application to remove the Trustees was that there was a disagreement about the exercise of the Trustees' dispositive powers it is now entirely undermined by the fact of the Hanspaul Beneficiaries having entered into the Agreement, which the Trustees have worked towards implementing.

41. Insofar as the application for removal is now pursued on the basis of misconduct or wrongdoing by the Trustees I do not conclude that the criticisms made of the Trustees by the claimants, even if established as constituting wrongdoing, are such as to endanger the assets of the Trust or affect the administration of the Trust to the extent necessary to implement the Agreement and thereafter effect the replacement of the Trustees by the claimants.

42. The trustees are professional people who have continued to engage constructively with the claimants to resolve the issues in the Trust, notwithstanding the criticisms levelled at them. The suggestion that they are hostile to the claimants to an extent that renders their removal necessary before the third defendant is fully protected by being bought out is not sustainable.

43. The fact that draft documentation has been provided by the Trustees, for discussion with the claimants, which would achieve their own removal makes any suggestion that the Trustees are clinging on to office for its own sake also not sustainable.

44. The Trustees have achieved a significant part of that which it was intended by their appointment would be achieved, namely the near complete separation of the Sehmi and Hanspaul family interests, what little remains to be done requires the collaboration of the claimants.

45. I am not persuaded that the claimants' have made out their claim that the relationship between the claimants and the Trustees is broken down or that that there are such alleged conflicts of interest to an extent that it is essential that removal take place to enable the due administration of the Trust.

46. In the absence of collaboration from the claimants in moving forward the finalisation of the necessary documentation and the provision of liquid funds, the Trustees have been in a near impossible position and cannot in my judgment be fairly criticised for taking advice about company law remedies available to minority shareholders and exploring the possibility of acting upon that advice

47. The Trustees have taken steps to ensure that Rajdeep was not in practical terms excluded from benefitting from the Trust because he is not an active participant in the family business. They have sought to engage collaboratively with the claimants to preserve the Trust as the claimants wished.

48. I must first of all decide whether the case for the removal of the Trustees is made out by the claimants. If it is I must decide who should replace them, where the only candidates for possible appointment are the claimants themselves.

49. I am not satisfied in all the circumstances of this case that the Trustees should be removed. Removal is not in the interests of the beneficiaries as a whole before the third defendant's interests are effectively and finally separated from the claimants' interests by certain arrangements for payment of the sum due under the Agreement to him. Until that

time there is a need for the Trust to have an independent trustee or trustees to protect him as a beneficiary against, for example, the claimants' suggested renegotiation of his entitlement under the Agreement by seeking to make him share in further costs. The interests of the beneficiaries as a whole require that there be an independent trustee or trustees for the time being.

50. Even if I had concluded that the Trustees in this case should be removed from office in the best interests of the beneficiaries and the administration of the Trust, I would have declined to exercise my discretion to do so because no suitable alternative solution has been proposed. The claimants, whose interests are in direct conflict with those of the third defendant until his buy-out is achieved, are plainly not suitable and no independent professional willing to act has been identified or seems likely to be identified, even if the costs of such an appointment could properly be justified.

51. While I cannot order that the claimants make any payment into the Trust to enable the Trust to pay the amounts necessary to secure the third defendant's buy-out, it may be that the claimants will eventually conclude that that is what needs to be done to move matters forward.

52. I will dismiss the claimants' claim.