Appeal against a decision of the Royal Court given 30 July 2025 ([2025] JRC 197).

[2026]JCA074

COURT OF APPEAL

20 March 2026

Before : Rt Hon James Wolffe KC, JA, President;
Rt Hon Dame Julia Macur JA, and
Mr Samuel Grodzinski KC, JA.

Between	**Geneva Trust Company (GTC) SA**	**Plaintiff and Respondent**
And	**Robert Tchenguiz**	**Defendant and Appellant**

Advocate D. James for the Defendant and Appellant

Advocate J. M. P. Gleeson for the Plaintiff and Respondent

JUDGMENT

MACUR JA:

Introduction

1. Robert Tchenguiz ("the Appellant") appeals against the judgment of 30 July 2025 ("the Judgment") and consequent Act of Court made by the Royal Court of Jersey. The Judgment held the Appellant liable to pay monies to Geneva Trust Company (GTC) SA, formerly known as Rawlinson & Hunter Trustees SA ("the Respondent"), in a sum yet to be determined, pursuant to a deed of indemnity dated 14 April 2014 ("the Indemnity").

2. Advocate James appears on behalf of the Appellant. Advocate Gleeson appears on behalf of the Respondent. Both advocates appeared at first instance. Acknowledging the diligence expended in preparation of the written cases, we commend both for the realistic focus each brought to bear when making their oral submissions upon the salient points of appeal.

3. This is the judgment of the Court. For the reasons we set out below, we allow the appeal.

Background

4. The context of the proceedings below, and to this appeal, are conveniently summarised in paragraphs 5 to 10 of the Judgment and in the Recitals to the Indemnity respectively.

5. The Judgment states as follows:

> ***"5. In August 2007, there was a restructuring of the Tchenguiz Family Trust (the "TFT") whereby assets and liabilities were transferred from the TFT to the TDT. The assets of the TDT were to be held primarily for the benefit of the Defendant and his family. The trustees of the TDT at that time were Investec Trust Company Guernsey Limited and Bayeux Limited (together "I & B").***
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> ***6. Complex loan and related arrangements were entered into by the trustees of the TDT, which involved subsidiary companies of the TDT (the "BVI Companies") and Kaupthing Bank HF ("Kaupthing"). In particular, the BVI Companies loaned monies upstream to the trustees of the TDT.***
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> ***7. Defaults in the loan arrangements occurred during the financial crash and Kaupthing exercised its security. This ultimately led to the appointment of liquidators over the BVI Companies and the issue of multiple sets of proceedings before the Royal Court of Guernsey and elsewhere.***
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> ***8. In March 2010 proceedings were issued by I & B (the "Loans Proceedings" and later called the "Proofs Proceedings") by which I & B sought determinations as to whether, in their capacity as trustees of the TDT, they had incurred any liability to the BVI Companies. On 22 April 2010, the liquidators of the BVI Companies demanded repayment of the loans from I & B as trustees of the TDT.***
>
> ***9. In July 2010, GTC was appointed as trustee of the TDT (and other trusts) in place of I & B and, as a result, became a party to the Loans Proceedings and to other proceedings before the Guernsey court in its capacity as trustee. GTC did not at any time hold the assets of the TDT. This was because it was realised that, if the trustees of the TDT were held liable to***

the BVI Companies, the TDT would be insolvent given the size of the loans from the BVI Companies. The Guernsey court had ordered that the assets of the TDT should be held by receivers pending the outcome of the relevant litigation. Accordingly, GTC was dependent for payment of its fees and disbursements (including legal costs) upon informal funding arrangements whereby the Defendant and other trusts for the benefit of the Defendant and his family would fund GTC, including in respect of its involvement in the Loans Proceedings and other Guernsey proceedings (known respectively as Guernsey 2, Guernsey 3 and In Re E).

10. On 6 December 2013, Sir John Chadwick, Lieutenant Bailiff, sitting in the Royal Court of Guernsey, handed down his judgment in the Loans Proceedings ("the Chadwick judgment"). He held, amongst other matters, that despite the fact that the TDT was a Jersey law trust and the existence of Article 32 of the Trusts (Jersey) Law 1984 limiting the personal liability of trustees, I & B were personally liable to repay the loans from the BVI Companies, but they could have recourse to the assets of the TDT for this purpose. He also made substantial costs orders against GTC. The judgment therefore had two major consequences. First, it confirmed that the liabilities of the TDT exceeded its assets; second, it created a personal liability on the part of GTC to pay the costs orders. Because the liabilities of the TDT exceeded its assets, this meant that GTC would probably be unable to recover from the assets of the TDT the costs (or a substantial part thereof) which it had to pay pursuant to the costs orders."

6. The Recitals to the Indemnity continue the chronology:

> ***"(A) R&H is the current trustee of the Tchenguiz Discretionary Trust (the "TDT");***
>
> ***(B) R&H is the Fifth Defendant in proceedings commenced in the Royal Court in Guernsey) with file number 1462/2010 between (1) Investec Trust Guernsey Limited and (2) Bayeux Trustees Limited as Plaintiffs and (1) Glenalla Properties Limited; (2) Thorson Investments Limited; (3) Eliza Limited; and (4) Oscatello Investments Limited as the First to Fourth Defendants and Third Parties (the "Loans Proceedings");***
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> ***(C) On 6 December 2013, judgment of the Royal Court in the Guernsey Loans Proceedings was handed down by Lieutenant***

Bailiff Sir John Chadwick. The Royal Court dismissed R&H's defence, counterclaim, and third-party claims and made costs orders against R&H (the "Costs Orders");

(D) On 20 January 2014, R&H filed an appeal against the order dated 6 December 2013. The Guernsey Loans Proceedings are currently pending in the Guernsey Court of Appeal and R&H's appeal is presently listed to be heard by the Court of Appeal in June 2014;

(E) R&H is party to proceedings in relation to the TDT commenced in the Royal Court in Guernsey with file number 1505/2010 and proceeding under the description "In re T"("Guernsey 2");

(F) R&H is the plaintiff in a claim against Investec Trust (Guernsey) Limited and Bayeux Trustees Limited pending in the Royal Court in Guernsey with file number 1793/2013 ("Guernsey 3");

(G) R&H is party to proceedings in relation to the TDT commenced in the Royal Court in Guernsey with file number 1570/2010 and proceeding under the description "In re E" ("Re E);

(H) RT has agreed to indemnify R&H, whether acting in its personal capacity or as trustee of the TDT, in relation to the Loans Proceedings, Guernsey 2, Guernsey 3 and Re E, together with all and any other proceedings which have been or may be commenced in Guernsey and which relate in any way to the TDT (together the "Guernsey Proceedings") on the terms and conditions set out in this Deed."

7. The terms of the Indemnity provide, so far as is relevant:

"2. INDEMNITY

2.1 RT agrees and undertakes to R&H that he will at all times indemnify and keep indemnified R&H in its personal capacity, in its capacity as trustee of the TDT, and in any other fiduciary capacity in relation to the TDT, from and against:

2.1.1 all liability for legal costs in relation to all and any of the Guernsey Proceedings irrespective of whether such liability was incurred prior to or after the date of this Deed including:

(A) the legal costs of any other party to any of the Guernsey Proceedings for which R&H has been or may be found liable (including, for the avoidance of doubt, any liability pursuant to the Costs Orders); and

(B) any legal costs which R&H has incurred or will or may in the future incur in relation to the any of the Guernsey Proceedings (irrespective of whether or not Beddoe relief has previously been, or is or may in the future be, obtained); and

2.1.2 all claims and demands arising from any judgment in favour of any other party to any of the Guernsey Proceedings which may be made on R&H.

2.2 RT agrees that R&H shall be at liberty to apply any payments made under this Deed of indemnity in such order as R&H in its absolute discretion thinks fit including in the following order (which shall apply in the absence of any decision to the contrary by R&H): first, any liabilities incurred by R&H in its own name or personal capacity; secondly to any liabilities incurred by R&H as trustee of the TDT, or in any other fiduciary capacity in relation to the TDT for which it does not otherwise have any Right of Recourse; and finally to any other liabilities incurred by R&H as trustee of the TDT, or in any other fiduciary capacity in relation to the TDT.

2.3 This indemnity does not affect or prejudice any rights that R&H might otherwise have against any other person or against the assets of the TDT to claim for or be indemnified against the costs, charges, expenses and liabilities incurred by it in or incidental to the Guernsey Proceedings.

2.4 RT shall, at any time, promptly upon request by R&H, execute over all or any of the assets he may at that time own (and which are not already the subject of a charge or other encumbrance), a first fixed charge (which so far as relates to freehold or leasehold property in England & Wales shall be a charge by way of legal mortgage), a legal assignment or such other security as R&H shall request, in favour of R&H (or its nominee) in such form as R&H shall

require. RT shall promptly take all such actions as R&H may reasonably require for the purpose of creating, perfecting or maintaining the security created or intended to be created pursuant to this clause [2.4] including the obtaining of any necessary consent (in form and content satisfactory to R&H) to enable his assets to be mortgaged, charged or assigned pursuant to this clause [2.4].

2.5 RT is entitled to be subrogated to the rights of R&H in relation to any liability discharged by it under this indemnity and R&H, to the extent of any amount paid by RT under this indemnity, must, at the request of RT, take all steps to enable RT to recover from any other person the amount paid by RT and, if required by RT, lend its name to any actions RT may commence provided always that all costs, charges and expenses in connection with such steps and actions are borne by RT.

…

GOVERNING LAW JURISDICTION AND SERVICE OF PROCESS

5.1 This Deed and any dispute or claim arising out of or in connection with it or its subject matter, existence, negotiation, validity, termination or enforceability (including non- contractual disputes or claims) shall be governed by and construed in accordance with English law."

8. The present proceedings were commenced in the Royal Court by the Respondent against the Appellant in September 2018 to enforce the Indemnity. The claim is for an amount which the Respondent claims to have incurred by way of legal costs in connection with the Loans Proceedings (referred to in Recital (B) of the Indemnity) in Guernsey. By amended Particulars of Claim dated 12 February 2020, the Respondent claimed that the Indemnity "took effect as a contract as a matter of English law, for which R&H gave consideration as pleaded at paragraph 7(7)(a) and (c) below, whether or not it was technically a deed as a matter of English law…". The reference to Paragraph 7 (7)(a) and (c) is in error and should be a reference to paragraph 7(6)(a) and (c) which refers to the Respondent herein acting to its detriment in continuing the appeal to the Guernsey Court of Appeal, and thereafter in the Privy Council and continuing in the conduct of other litigation, and being unaware that the Appellant had not personally signed the Indemnity, which exposed them to costs incurred.

9. The proceedings in the Royal Court were adjourned by consent on three occasions between March 2020 and March 2021 and thereafter stayed pending the outcome of the 'Proofs Proceedings' (formerly the 'Loans Proceedings'). However, in September 2023 the Respondent successfully applied to lift the stay.

10. On 9 July 2024, the Loans Proceedings were compromised and a consent order, endorsed on behalf of the Appellant and the Respondent, was approved and sealed by the Royal Court of Guernsey on 9 July 2024 ("the Consent Order"). The Appellant had been joined to the proceedings as an Intervening Party.

11. The terms of the Guernsey Consent Order, with sub paragraph numbering added by us for the purpose of this judgment and to accord with that of the Royal Court, so far as relevant provide that:

> ***"***
>
> ***1. …***
>
> ***2. AND WHEREAS in pursuance of the 30 June 2023 Order, I&B lodged an updated proof of debt dated 29 September 2023 in the sum of £33,076, 154.27 (Updated I&B Proof of Debt), and GTC lodged an updated proof of debt dated 29 September 2023 in the sum of £2,122,132.63 (Updated GTC Proof of Debt)***
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> ***3. AND WHEREAS by an Act of Court dated 3 October 2019 (the Transfer Order), a total sum of £41,500,000 (subsequently reduced to £36,726,550.99 by a Consent Order dated 22 November 2019) (the Preserved Sum) was placed by the Joint Receivers into various Blocked Accounts (as defined in the Transfer Order) to satisfy third-party creditor claims, including the claims reflected in the Updated I&B Proof of Debt and the Updated GTC Proof of Debt;***
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> ***4. AND WHEREAS the Plaintiffs have claimed all legal costs incurred by them in the proceedings covered by the Limited TDT Indemnity (as defined below) in the I&B Updated Proof of Debt including costs the subject of any cost order made or that may be made in their favour up to and until 29 September 2023;***

5. AND WHEREAS I&B have agreed in principle (and subject to contract) to accept a sum to be paid out of the relevant Blocked Account, in full and final settlement of the amounts claimed in the Updated I&B Proof of Debt (the I&B Settlement Sum);

6. AND WHEREAS GTC has agreed in principle to accept a sum of £1.2m to be paid out of the relevant Blocked Account, in full and final settlement of the amounts claimed in the Updated GTC Proof of Debt (the GTC Settlement Sum) (and for the avoidance of doubt without prejudice to any sums due and claimed against the current trustee of the TS Settlement by GTC as former trustee of the TS Settlement);

7. AND WHEREAS as a condition of GTC's acceptance of the GTC Settlement Sum, Fort Trustees Limited in its capacity as trustee of the TDT (Fort) hereby agrees to indemnify GTC for costs orders made or which may be made against it and in favour of the Plaintiffs in Civil Actions 1462 (including but not limited to the Proofs Proceedings), 1505 (Guernsey 2 Proceedings), 1627 (Delivery-Up Proceedings), 1793 (Guernsey 3 Proceedings), and 1971 (TDT Documents Proceedings), including any appeals therein (the Limited TDT Indemnity);

8. AND WHEREAS as consideration for the Limited TDT Indemnity and the parties' consent (as reflected in this Order) to the payment of the GTC Settlement Sum and the dismissal of the Updated GTC Proof of Debt, GTC hereby irrevocably consents to the payment of the I&B Settlement Sum out of the relevant Blocked Account;

9. AND WHEREAS GTC undertakes to the Court and to the other parties that it will not pursue any of the parties hereto for costs or any other claim relating to, arising from or otherwise connected to the facts and matters alleged in these proceedings (including the Proofs Proceedings), the Guernsey 2 Proceedings, the Delivery-Up Proceedings, the Guernsey 3 Proceedings and / or the TDT Documents Proceedings, or any other proceedings involving the TDT;

…

12. AND WHEREAS nothing in this order prevents or precludes GTC from pursuing any claims it has or may have as former trustee against any

other trust including the Tchenguiz Settlement (the GTC TS Claims) or from the GTC TS Claims being settled from assets the TS receives from the TDT by way of settlement of TS claims against the TDT or otherwise.

BY CONSENT IT IS ORDERED THAT

1. The Updated GTC Proof of Debt shall be dismissed upon the payment of the GTC Settlement Sum …

2. Upon the dismissal of the Updated GTC Proof of Debt:

a. GTC shall be discharged from the Proofs Proceedings and the action herein be discontinued against GTC, save that as and until the payment of the I&B Settlement Sum is made, such discharge does not release GTC from its liability under any costs orders against GTC already made in favour of the Plaintiffs in any proceedings involving the TDT;

b. Save as fer provided for in this Order, GTC shall have no further claim to any of the assets of the TDT whether held by the Joint Receivers or otherwise; and

c. the consent of GTC shall not be required for the purposes of paragraph 14 of the Transfer Order.

3. The Variation Application be adjourned with no order as to costs and shall be withdrawn by GTC upon GTC's receipt of the GTC Settlement Sum.

4. Upon the dismissal of the Updated GTC Proof of Debt, there shall be no order as to costs of these proceedings (including the Proofs Proceedings) as between GTC and any other party to these proceedings, save that and subject to paragraph 2a above this order shall not affect (i) the costs orders made in favour of the Plaintiffs against GTC in any proceedings involving the TDT and the Plaintiffs' right to enforce those orders against GTC or otherwise rely on those orders in the Proofs Proceedings (including in connection with the Updated I&B Proof of Debt), or (il) the costs order made in the Inspection Application in favour of the Fort against GTC on 15 March 2024.

5. Liberty to apply."

The sum of £1.2 million referred to in the Consent Order ("the Settlement Sum") was paid to the Respondent. £854,055 was appropriated by the Respondent to payment of its own fees (which were part of their claim in the Loan Proceedings) and the remainder applied towards the Respondent's claim for legal fees. That left a balance, which the Respondent continued to claim against the Appellant under the Indemnity in the present proceedings.

12. In his Re-Re-Amended Answer dated 22 November 2024, the Appellant challenged the validity of the Indemnity. He denied that it had been signed by him or on his behalf with his implied or explicit authority. He maintained he had no reason to offer such an indemnity. Further, the Appellant denied that the "Alleged Indemnity constitutes or takes effect as a contract that binds Mr Tchenguiz, or is evidence of a contract between him and GTC whose subject-matter is for indemnification in respect of the Guernsey proceedings involving the TDT and defined therein, [since]:

    (a) He gave no consent to any such contract being formed;

    (b) No person, including Ms Geraghty [the Appellant's personal assistant and the putative signatory of the Indemnity], had his express or implied authority to conclude any such contract."

13. Alternatively, the Appellant contended that if the Indemnity was found to be valid, the Respondent was making an impermissible attempt at double recovery, since (i) in respect of the Guernsey 2, Guernsey 3 and Re E proceedings (as referred in Recitals (E) to (G) of the Indemnity), the Respondent had no outstanding liability for costs to be recovered under the Indemnity, (ii) in respect of the Loan Proceedings, the Judicial Committee of the Privy Council had held that the Respondent's liability was qua trustee and not in their personal capacity, (iii) and the Loan Proceedings were compromised pursuant to the Consent Order.

14. The Respondent, in its amended pleading, filed almost six months after the Consent Order, contended that pursuant to the terms of the Consent Order dated 9 July 2024 (the "Consent Order"), GTC recovered the Settlement Sum in full and final settlement of the amounts claimed in the Updated Proof of Debt (as referred in Recital (2) of the Consent Order). Any full and final settlement, it said, should be taken in the context of the Loan Proceedings. GTC was accepting the Settlement Sum in full and final settlement of its claims in the Loan Proceedings, as against the relevant trusts and with amounts owed to it being paid out of the "Blocked Account". The Loan Proceedings concerned an insolvency process, analogous to that of a *désastre*, involving the

filing of proofs of debt, objections and replies to objections, in respect of each creditor's right to indemnification from the assets of the relevant trusts and did not concern or determine any rights that GTC and the Defendant may have *inter se* under the Indemnity. The Loan Proceedings were therefore, argued the Respondent, not concerned with the Indemnity and did not expressly or impliedly waive any rights GTC has under the Indemnity as against the Defendant.

15. The Respondent further averred: (a) that the Consent Order is not and cannot be interpreted as i) having extraterritorial effect outside of the proceedings to which it related or ii) barring GTC from making any claims against the Defendant outside of that jurisdiction (i.e., Guernsey) under the Indemnity; and (b) that the interpretation which the Appellant seeks to place upon the Consent Order is in direct contradiction of the commercial purpose of the Indemnity, which was for the Defendant to indemnify GTC in respect of any shortfall arising from claims that GTC had in respect of its legal costs (as defined in the Indemnity) in relation to the TDT/Guernsey Proceedings. Had the Defendant wished to secure the release of any obligations arising under the Indemnity, by way of the Consent Order, he should have sought to have inserted clear wording into the Consent Order which would have had that effect.

The Royal Court

16. The matter came on for hearing before the Royal Court in March 2025. Paragraph 2 of the Judgment summarises the case as it stood at that time:

> ***"On its face, the Indemnity purports to be signed by the Defendant but, following expert handwriting evidence, it is now accepted that the Defendant did not personally sign it. GTC's claim is maintained on the basis that the Indemnity was signed with the actual authority of the Defendant, alternatively that he is estopped on various bases from denying the validity of the Indemnity. If it is enforceable, issues then arise as to whether the claim was settled pursuant to a consent order made in proceedings in the Royal Court of Guernsey and as to the correct quantum of the claim."***

17. The Royal Court found as a fact that Sara Geraghty ("SG"), the Appellant's long serving personal assistant and *de facto* office manager since January 1995 (terminating in February 2016), had signed the Indemnity by impersonating the Appellant's signature. Further, she then signed the Indemnity as an attesting witness.

18. In paragraph 74 of the Judgment, the Royal Court identified the issues that it had to decide as:

(i) Did SG sign the Indemnity with the actual authority of the Defendant?

(ii) If not a valid deed, does the Indemnity nevertheless take effect as a contract?

(iii) Is the Defendant estopped from denying that the Indemnity takes effect as a deed?

(iv) If SG did not have the actual authority of the Defendant to sign the Indemnity in his name, is he nevertheless estopped from denying that the Indemnity is binding upon him pursuant to one or more of the doctrines of estoppel by representation, by silence or by negligence?

If the Indemnity is otherwise enforceable, what is the effect of the consent order dated 9 July 2024 made in the Proof Proceedings in the Guernsey Royal Court? Does it extinguish or curtail GTC's right to claim under the Indemnity?

19. The Royal Court did not find the Appellant, or the Respondent's former director Richard Hillier, or Respondent's current director and controlling shareholder Rodney Hodges, to be satisfactory witnesses in various respects and indicated that its approach to their evidence was to *"treat it with caution unless consistent with or supported by the contemporaneous documents."*

20. As to the first issue, the Royal Court acknowledged in paragraph 169 of the Judgment that there was no direct evidence as to the circumstances in which SG came to sign and send to the Respondent the Indemnity in May 2014. However, based upon circumstantial evidence, the Royal Court held that she signed and sent the Indemnity with the "actual authority" of the Respondent. The Royal Court gave comprehensive reasons for that finding in paragraph 171 of the Judgment:

> ***"(i) It is common ground that from the beginning of its trusteeship in July 2010, GTC did not have access to the assets of the TDT and was reliant on the Defendant to arrange payment of GTC's fees and expenses, including legal expenses. …***
>
> ***(ii) … things changed following the Chadwick judgment in December 2013, as a result of which GTC became personally liable for a substantial costs order. All the documentary evidence before us is consistent with GTC (through Mr Hodges in particular) being concerned at this and seeking an indemnity from the Defendant in respect of their legal costs, including the costs order made against it in the Chadwick judgment.***

[reference to relevant documents follow in sub paragraphs (a) to (i)]

(iii) On 8 May and again on 15 May, Mrs Boyer sent chasing emails to Ms Mayne as well as to SG requesting that the three indemnity letters be signed by the Defendant. It follows that Ms Mayne, as in-house legal adviser to the Defendant, was aware that there were three indemnities to be signed, i.e. the Indemnity and the SFO Indemnities.

(iv)…[On] 21 May, …a telephone call from Ms Mayne to Herbert Smith asking for a copy of the draft of the Indemnity, which is sent to her by email at 14.02. It is to be inferred therefore that she was giving attention to the Indemnity. …at 16.33 (…UK time), SG emails a signed copy of the Indemnity to Mrs Boyer. Importantly, she copies this with the attachment to the Defendant who is in Monaco. Mrs Boyer, immediately upon receipt, forwards the email and attachment, inter alia, to Mr Hillier enquiring whether, given that it appeared to be in draft form, it had been agreed at the GTC end. Mr Hillier replied saying "I think Rodney agreed this with Herbert Smith".

(v) Having received the Indemnity, Mrs Boyer then chased Ms Mayne, copied to SG and Mr Hillier, for the SFO Indemnities. On 23 May, SG consulted Ms Martin about the SFO Indemnities as described above and then emailed the Defendant at 12.13 saying " got these checked by Nicole who said there is nothing controversial, but I need to get them to Alizee today". … at 13.34, SG sent Mrs Boyer copies of the two SFO Indemnities which she had signed. There then followed the various exchanges concerning the way the SFO Indemnities had been signed, …, and in due course the versions of the SFO Indemnities signed by the Defendant personally were produced.

(vi) On the Defendant's case, SG signed both the Indemnity and the SFO Indemnities in his name without his authority. Yet, despite this, she copied the Indemnity, signed by her, to the Defendant at the same time as she sent it to Mrs Boyer. She also sent the SFO Indemnities to the Defendant on 23 May clearly, in our judgment, seeking his approval, but then, according to the Defendant, signed and sent the SFO Indemnities to Mrs Boyer despite having received no response from him and therefore no authority to sign them.

(vii) We regard it as inconceivable that, if she did not have his authority, SG would have copied the Defendant into the email sending the signed Indemnity to Mrs Boyer on 21 May. … by sending him the Indemnity which she had signed (on his case without authority) she was clearly at high

risk of her improper conduct being discovered. Similarly, on 23 May, she emailed him in advance to inform him that the SFO Indemnities needed to be sent out to Mrs Boyer. That seems inconsistent with her then signing them without his authority. This is particularly so bearing in mind Mrs Boyer's evidence, which we accept, that SG was terrified of the Defendant and would check everything with him. …

(viii) Furthermore, no satisfactory reason has been put forward as to why SG would sign the Indemnity and the SFO Indemnities without authority. The only explanation put forward by the Defendant was that perhaps it was to please or gain favour with Mrs Boyer …The idea that, simply to please Mrs Boyer, she would sign three important legal documents in the Defendant's name without his authority is simply not credible.

(ix) Whilst the idea of a personal assistant impersonating the signature of her employer with his consent is unusual, we take account of the fact that it is not disputed that in this case it has occurred in the past. … the Defendant said that SG was authorised by him to sign administrative documents …and that from time to time he would expressly approve, upon reviewing a document and/or receiving advice by his legal team, SG to sign other more advanced documents on his behalf on an ad hoc basis. … the fact that, with his authority, she has impersonated his signature on previous occasions makes it less unlikely than would otherwise be the case that the same occurred on this occasion.

(x)… any misunderstanding as to which indemnity she was signing would not, on the Defendant's case, explain why she thought she could sign that indemnity without the Defendant's authority. … SG copied her email to Jo Rickard informing her that the Indemnity had been signed to Ms Mayne which suggests that Ms Mayne had been involved with the Indemnity which SG had sent to Mrs Boyer. Ms Mayne would undoubtedly have known that this was the Indemnity relating to costs in Guernsey for the TDT rather than an SFO Indemnity for the TDAT and NS1 Trusts. In our judgment, a more likely explanation is that, in emailing Jo Rickard of Shearman and Sterling, SG simply sent her email to the wrong firm of solicitors and forgot which firm was acting in relation to the SFO matter and which in relation to the Guernsey litigation and the Indemnity. Either way, whilst we have taken this point into account, it does not detract from or outweigh our view on all the other evidence that SG had been authorised by the Defendant to sign the Indemnity.

(xi) We reject the Defendant's evidence that he never authorised SG to sign the Indemnity in his name. …

…

(xiv) We are also satisfied from the evidence of Mrs Boyer and Mr Hodges (which in this respect is consistent with the contemporaneous documents) as well as that of Mr Hillier … that neither Mrs Boyer nor anyone else in GTC had any suspicion that the Indemnity was not signed by the Defendant. We find that the reason it was not referred to immediately when GTC instituted its proceedings in October 2017 was not that it had not been signed at that stage or that GTC suspected that it had not been signed by the Defendant. We accept the explanation that Mr Hillier was not involved at that stage and that the Indemnity had been misfiled in the NS1 folder."

21. However, the Royal Court found at paragraph 191 that, "Whilst on our finding that SG signed the Indemnity with the actual authority of the Defendant, it is implicit that he also authorised her to send it to GTC, there is no suggestion that he gave actual authority for her wrongly to represent that the 'deed' was not only signed by him or on his behalf but that it had also been duly witnessed by someone different from the signatory".

22. The Royal Court received expert evidence of English law on the effect of estoppel in these circumstances. It was common ground between the experts that:

"a. where the instrument does not on its face comply with the formalities required by s1 of the [Law of Property (Miscellaneous Provisions)] Act [1989], there can be no estoppel.

b. where the defect relates to attestation (or any other defects which do not offend the essential policy of s1), subject to (a) above, the principle of estoppel is capable of applying."

23. The experts also agreed that "estoppel will not operate, (notwithstanding that its constituent elements have been established) if the estoppel would unacceptably subvert the public policy of a statute or rule of law. Whether this answer is made good, in the case of an estoppel against denying that a statutory requirement has been fulfilled depends on the nature of the enactment, the purpose of the provision and the social policy behind it".

24. The experts disagreed on whether, and in what circumstances, there could be estoppel where the deed did not comply with the statute and was not signed in accordance with the statutory requirements of s1(3), (4) and (4A). There were two significant authorities relevant to estoppel in relation to s1 of the Law of Property (Miscellaneous Provisions) Act 1989 ("1989 Act"), namely Shah v Shah [2002] QB 35 and Briggs v Gleeds [2015] Ch 212. The Royal Court preferred the opinion evidence of the Respondent's expert witness.

25. Having made the finding that SG signed the Indemnity with the Appellant's actual authority, as indicated above, the Court determined that there was a 'valid' signature in accordance with section 1 (2)(b)(i) and (4)(a) of the 1989 Act as amended, "in that SG had signed in the name of the Defendant with his authority" but that the Indemnity had not been validly attested because SG had witnessed her own signature. However, the document on its face, complied with the requirements of a deed in that there was a signature of the principal and there was a signature of an attesting witness. In reliance on Shah, and subject to the issues of reliance and red flags, the Royal Court held that the Appellant was estopped from denying the validity of the Indemnity. The Royal Court did not accept the Appellant's submissions as regards 'red flags' or 'reliance'.

26. Regardless of the expert conflict relating to the validity of the Indemnity and estoppel, there was common ground between them that, if the Indemnity failed, it could nevertheless be enforceable as a contract if GTC provided consideration for the Appellants ostensible guarantee to indemnify GTC in the terms of the Indemnity. (Issue 2). The Respondent took issue with the Appellant's pleading denying the existence of a contract. The Royal Court addressed the Respondent's challenge in paragraphs 177 to 180 of the Judgment, and upheld it, but nevertheless went on to deal with the issue on its merits.

27. The Appellant contended that the terms of the agreement it held to be represented by the terms of the Indemnity, had been reached after the Respondent had commenced appeal proceedings in which it had a personal interest and so was bound to continue. In these circumstances, the agreement involved the Respondent in providing past consideration, which was no consideration unless three conditions were fulfilled: (i) "the act must have been done at the request of the promisor"; (ii)"it must have been understood that payment would be made", and, (iii) "the payment, if it had been promised in advance, must have been legally recoverable." (See Chitty on Contracts 35th Edition Chapter 6).

28. The Royal Court determined that GTC had indeed provided consideration for the Indemnity, summarising its reasons in paragraph 187 of the Judgment:

"(i) Although litigation costs had already been incurred prior to the signing of the Indemnity (and were therefore past consideration), GTC continued with the appeal and therefore continued to incur legal costs and potential exposure to adverse costs orders against it. [Future consideration]

(ii) …some further steps were taken in connection with Guernsey 2 after the Indemnity and therefore GTC again would have incurred legal costs and exposed itself to potential adverse costs orders.

(iv) … the appeal was vital from the point of view of the beneficiaries of the TDT (including the Defendant). The result of the Chadwick judgment was that I&B were liable to the BVI Companies but could recover that liability from the assets of the TDT. Because of the size of the liability to the BVI Companies, the TDT was effectively worthless so far as the beneficiaries were concerned. It was therefore very much in their interest that the appeal should continue with a view to overturning the Chadwick judgment on these aspects.

(v)… [a]''but for' reliance is not a requirement for consideration to be found in the case of a unilateral contract. …

(vi) Furthermore, as stated at 6-033 of Chitty: "An act done before the promise was made can be consideration for the promise if three conditions are satisfied. First, the act must have been done at the request of the promisor; secondly, it must have been understood that payment would be made; and thirdly, the payment, if it had been promised in advance, must have been legally recoverable." In the court's view, these three conditions are satisfied in the present case. As to the first, the Defendant clearly wished GTC as trustee of the TDT to appeal against the Chadwick judgment and therefore to incur legal costs. As to the second, we have already found that, as stated by Mr Hillier, it was always informally understood that the Defendant would reimburse GTC as trustee both for its fees and for its legal costs. And as to third, an agreement to indemnify for future legal costs would clearly have been legally recoverable. …"

29. This disposed of the case, subject to the Consent Order and quantum, but the Royal Court went on to find that if its finding on issue 1 was in error then it would find SG had ostensible authority to represent the Indemnity as that of the Appellant and the Appellant would be estopped from denying the indemnity, by reason of his negligence or silence in alerting the Respondent of the defects in the Indemnity.

30. Issue 5 concerned the Consent Order. The Royal Court held that the Consent Order did not bar the Respondent from pursuing the Appellant for costs in accordance with the Indemnity. Its reasoning is contained in paragraph 246 of the Judgment:

> ***"(i) Given that the Consent Order was made by the Guernsey Royal Court in the Proofs Proceedings, we begin with the nature of those proceedings as an important part of the factual matrix. They involved a contest between various creditors as to how the assets of the TDT should be distributed as between those creditors. It was, as stated above, a form of quasi-insolvency process. It does not involve a claim by GTC against the Defendant or any of the other parties; they were simply competing creditors claiming against the (insufficient) assets of the TDT.***
>
> ***(ii)Turning to the wording of the Consent Order, we begin with the operative part of the Consent Order. In our judgment this does not assist Advocate James. It merely states, in effect, that GTC's claim in the Proofs Proceedings is dismissed and that GTC can bring no further claim against the TDT assets. There can be no real ambiguity about what it says. The order is indeed what one would expect in proceedings concerned with the allocation between creditors of the assets of TDT when GTC has agreed to accept a particular sum in full and final settlement of its claim against those assets. The operative part of the Consent Order says nothing about and cannot be construed as suggesting that GTC is prevented from continuing quite separate existing proceedings against the Defendant personally. Its effect is on its face confined to dismissing GTC's claim against the TDT assets and ensuring that it has no further claim to any such assets.***
>
> ***(iii) … the 6th Recital, with its reference to GTC accepting the sum of £1.2m 'in full and final settlement of the amounts claimed in the Updated GTC Proof of Debt' …has to be read in the context of this being an order made in order to settle the Proofs Proceedings. GTC's claim in those proceedings was to be paid the sum stated in the Updated GTC Proof of Debt (£2.1m) out of the assets of the TDT; this was what the proceedings were about. GTC was therefore accepting the sum of £1.2m in full and final settlement of that claim i.e. its claim to be paid out of the assets of the TDT. GTC was bringing no claim against the Defendant in the Proofs Proceedings and therefore settling its claim in those proceedings cannot reasonably be construed as settling a claim against the Defendant which was not before the Guernsey court and did not relate to any claim against the TDT assets.***

(iv)… The existence of a particular clause in a quite separate agreement cannot realistically assist in construing an order of the Guernsey court relating to the settlement of proceedings before that court which have nothing to do with the separate agreement. The fact that the effect of the Consent Order, if construed as submitted by GTC, would be to render the right of subrogation conferred by clause 2.5 of the Indemnity of no practical use cannot be a convincing reason for construing the Consent Order other than in accordance with the language used and the factual matrix.

(v) …On its face, [the 9th Recital] is widely drawn. But in our judgment, it must again be construed in the context of being part of an order of the court made to settle by agreement GTC's claim against the TDT assets. In our judgment, properly construed it does not extend to preventing GTC from seeking to enforce the Indemnity. We would summarise our reasons on this aspect as follows:

(a) As already stated, the 9th Recital is contained in a Guernsey court order settling specific Guernsey proceedings. The proceedings related solely to claims (including by GTC) to be paid out of the TDT assets. It would on the face of it be surprising if claims against other persons not related to the TDT assets were to be precluded by a Recital to such an order when the operative terms of the order do not so provide.

(b) The present proceedings arise in a different jurisdiction and were in existence well before the Consent Order. Again, it would be surprising if, merely by way of a Recital in Guernsey proceedings, the parties intended in effect to settle these very different proceedings in this jurisdiction where the claim is brought against the Defendant under a document which was not relevant to the Guernsey Proceedings.

(c) While the Indemnity is a primary obligation (unlike a guarantee) and not therefore dependent for its enforceability on GTC not being able to recover its fees and costs from the TDT assets, the commercial purpose of the Indemnity, as is apparent from its face and as we have found, was to protect GTC against legal costs incurred or awarded against it in the Guernsey Proceedings. This protection was thought to be necessary because it was anticipated that the TDT assets would be insufficient to pay all the liabilities. In those circumstances, GTC

would be unable to recover all its legal costs from the TDT and the important effect of the Indemnity would be that in those circumstances GTC could look to the Defendant for payment of its costs. GTC would not therefore be out of pocket.

(d) Given the commercial purpose of the Indemnity, it would be completely contrary to that purpose for acceptance of a lesser sum in the Proofs Proceedings because of an insufficiency of trust assets (thereby leaving a shortfall) to have the effect of preventing reliance on the Indemnity in the very circumstances in which it was intended to have effect. In our judgment, clear wording would be expected in order for the Consent Order to have this effect and the 9th Recital does not contain such clear wording

(e) In our judgment, read in context, the 9th Recital is intended only to prevent claims against other parties which relate to or arise from or are otherwise connected to the claims against the TDT assets. That does not cover the Indemnity which is a personal claim against the Defendant unrelated to the TDT assets.

(f) If the Proofs Proceedings had proceeded to trial and the Guernsey court had held that GTC's claim against the TDT assets succeeded only to the extent of £1.2m rather than £2.1m (because of the application of the pari passu principle and the limited assets available), it is hard to conceive that this could possibly have prevented GTC from claiming for the shortfall under the Indemnity. We do not see that the mere fact that GTC accepted the £1.2m by agreement rather than pursuant to a court decision and in the course of that agreement said that it was accepting that sum in full and final settlement of the amounts in its claim in the Proofs Proceedings can be said to have the dramatic effect, as contended by the Defendant, of preventing GTC from claiming for the shortfall in respect of legal costs against the Defendant pursuant to the Indemnity."

31. The Royal Court made clear that it had reached these conclusions without reference to an affidavit which was before it which exhibited various communications, including without prejudice communications, concerning the negotiation of the settlement which was embodied in the Consent Order. However, no exception had been taken to the admissibility of those documents, and the Royal Court considered them as a check upon the conclusion which it had reached.

Having identified various documents relating to negotiations between the Appellant and Respondent in paragraph 250 of the Judgment, the Royal Court concluded that there was "nothing in the correspondence which suggests that the Defendant and GTC had reached an agreement whereby GTC agreed to release any liability of the Defendant under the Indemnity in exchange for the receipt of £1.2m from the TDT. On the contrary, the exchanges referred to above suggest that the present proceedings were not to be included. Accordingly, there is nothing in the material which has been produced to us which casts doubt on the interpretation of the Consent Order which we have reached without reference to such material."

The Appeal

32. The Notice of Appeal asserts:

1. There was no proper and lawful basis for the finding that the Appellant gave actual authority to SG to impersonate his signature;

2. There was no proper and lawful basis for finding that the Indemnity took effect as a contract;

3. There was no proper and lawful basis for finding that SG had ostensible authority to represent that the Indemnity had been validly executed by the Appellant;

4. There was no proper and lawful basis for finding that if SG did not sign the Indemnity with actual authority, that the Appellant is nonetheless estopped from denying the validity of the Indemnity.

5. Mistake in the construction of the terms of the Consent Order.

33. The Respondent seeks to uphold the judgment of the Royal Court for the reasons given in the Judgment. In relation to Grounds 1 to 4, the Respondent contends: "This appeal is in reality a barely (if at all) disguised attempt to re-litigate a number of issues of fact or mixed fact and law before the Court of Appeal, presumably in the hope that the inevitably narrower focus of the appellate court will disguise and distort the much wider context which was available to the Royal Court and which resulted in its rejecting RT's defences." As to Ground 5, the Respondent contends that the Notice of Appeal makes clear that the Appellant does not suggest that the Royal Court made any error of principle with respect to the correct approach to the construction of the Consent Order. The Appellant accepts, says the Respondent, that the approach is essentially

the same as that applied to contracts but simply invites the Court of Appeal to adopt "a more literalist approach to construction…"

Discussion

34. The Respondent does not challenge the proposition that if this Court determines Ground 5 in favour of the Appellant then the validity of the Indemnity, or contract to indemnify, would be irrelevant; as would the issue of whether the Appellant was estopped from challenging the validity of the Indemnity. For the reasons given below, we conclude that the undertaking given by the Respondent to the other parties (as well as to the Court) in the Recital (9) of the Consent Order precludes the Respondent from pursuing the claim against the Appellant contained in the present proceedings.

35. There was and is no issue but that, in the face of the disagreement between the Appellant and the Respondent as to the meaning of the Consent Order, the Royal Court should interpret the order like a contract; see Marett v Marett [2008] JLR 384 at [37]. The Royal Court referred to Wood v Capita Insurance Services Limited [2017] AC 1173 at [10] – [13] to identify the "correct approach" on the interpretation of contracts, on the basis that it had been accepted as being equally applicable in Jersey by the Court of Appeal in Trico v Buckingham [2020] JCA 067 at [57].

36. Whilst the Royal Court made explicit reference to Wood, as one of "a number of recent cases on the interpretation of contracts", the factors emphasised by Lord Neuberger in Arnold v Britton [2015] UKSC 36 at [15] to [17] remain pertinent, namely:

> ***"15. When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean…***
>
> ***16. For present purposes, I think it is important to emphasise seven factors.***
>
> ***17. First, the reliance placed in some cases on commercial common sense and surrounding circumstances … should not be invoked to undervalue the importance of the language of the provision which is to be construed. The exercise of interpreting a provision involves identifying what the parties meant through the eyes of a reasonable reader, and, save perhaps in a very unusual***

case, that meaning is most obviously to be gleaned from the language of the provision. Unlike commercial common sense and the surrounding circumstances, the parties have control over the language they use in a contract. And, again save perhaps in a very unusual case, the parties must have been specifically focussing on the issue covered by the provision when agreeing the wording of that provision.

18. Secondly, when it comes to considering the centrally relevant words to be interpreted, I accept that the less clear they are, or, to put it another way, the worse their drafting, the more ready the court can properly be to depart from their natural meaning. That is simply the obverse of the sensible proposition that the clearer the natural meaning the more difficult it is to justify departing from it. However, that does not justify the court embarking on an exercise of searching for, let alone constructing, drafting infelicities in order to facilitate a departure from the natural meaning. If there is a specific error in the drafting, it may often have no relevance to the issue of interpretation which the court has to resolve.

19. The third point I should mention is that commercial common sense is not to be invoked retrospectively. The mere fact that a contractual arrangement, if interpreted according to its natural language, has worked out badly, or even disastrously, for one of the parties is not a reason for departing from the natural language. Commercial common sense is only relevant to the extent of how matters would or could have been perceived by the parties, or by reasonable people in the position of the parties, as at the date that the contract was made. …

20. Fourthly, while commercial common sense is a very important factor to take into account when interpreting a contract, a court should be very slow to reject the natural meaning of a provision as correct simply because it appears to be a very imprudent term for one of the parties to have agreed, even ignoring the benefit of wisdom of hindsight. The purpose of interpretation is to identify what the parties have agreed, not what the court thinks that they should have agreed. …Accordingly, when interpreting a contract a judge should avoid re-writing it in an attempt to assist an unwise party or to penalise an astute party.

21. The fifth point concerns the facts known to the parties. When interpreting a contractual provision, one can only take into account facts or circumstances which existed at the time that the contract was made, and which were known or reasonably available to both parties. …"

37. We start from the premise that in so far as the construction of the Consent Order requires our consideration of its factual context, this process involves questions of mixed fact and law. We afford due deference to the relevant findings of the Royal Court. We accept the findings of fact which we have recorded in paragraphs 16 to 31 above.

38. However, the essential task which we must address is to ascertain the meaning of the words of the Consent Order, read in the relevant context, and, specifically, to determine whether the undertaking recorded in Recital (9) encompasses the present proceedings. Arnold v Britton emphasises that it is the text to be interpreted which is the primary focus of attention. The meaning of the text is, usually, to be ascertained from the language which the parties have agreed, read in the relevant context.

39. Textually, we have found it difficult to identify rival meanings within the express wording of the Recitals, in particular in relation to Recital (9). The Consent Order is obviously the product of an agreement between several parties, all legally represented as indicated by the various professional signatories. The Respondent has demonstrated no lack of clarity, ambiguity or incoherence in the wording of the Recitals taken in the context of an overall settlement.

40. Recital (9) commits GTC not to *"pursue"* any of the parties *"for costs or any other claim relating to, arising from or otherwise connected to the facts and matters alleged in"* various proceedings, including the Guernsey Loan Proceedings. The natural reading of the commitment not to *"pursue"* such claims encompasses the continued pursuit of an existing claim and not only the initiation of a new claim (and Advocate Gleeson did not suggest otherwise).

41. The Respondent's claim in the present proceedings is a claim for indemnity against legal costs incurred by GTC in the Guernsey Loan Proceedings pursuant to the Indemnity. Whilst it is, juridically, a claim for indemnity, in substance it is a claim for payment of *"costs" "relating to, arising from or connected to the facts and matters alleged in"* the Guernsey Loan Proceedings; indeed it is a claim for the legal costs incurred in those proceedings.

42. Further, although the Consent Order was made in the Guernsey Loan Proceedings, and represented a settlement of those proceedings, as acknowledged by Advocate Gleeson, it is evident from the Recitals to the Consent Order that the parties were dealing with other outstanding litigation. That is, objectively viewed, the Recitals to the Consent Order reveal that the parties to the proceedings had wider parameters in mind and were not restricting themselves, only to settling the extant Guernsey proceedings.

43. We do not regard it to be "surprising", nor wrong in principle, that the Recitals to the Consent Order incorporate reference to other litigation. On the contrary, the clear and unexceptional objective of all the parties was evidently to compromise other litigations. There is nothing inherently surprising that these terms of the parties' agreement are recorded in the Recitals to the Consent Order. Put another way, the Guernsey Court, in the operative part of the Consent Order would have had no power to order the Respondent to give the undertaking recorded in Recital (9); but there could be no objection to the parties recording that undertaking in a Recital.

44. Neither do we find it surprising that the Respondent gives, on the face of it, a worldwide undertaking. There is no legal restriction to prevent it from doing so, nor is it intrinsically incompatible with an objective desire to compromise connected litigation. Significantly in this regard, "carved out" from Recital (9), which provides the relief from claims, are specified proceedings identified in Recitals (6) and (12). Had the Respondent wished to exclude the proceedings which are the subject of this appeal from the ambit of the undertaking, it would have been open to it to do so expressly.

45. In this respect we also note that Recital (7) provides that the Respondent is to be indemnified by Fort Trustees Limited in its capacity as trustee of TDT, for costs orders made or which may be made against it in certain civil actions, namely 1462 "including but not limited to the Proofs Proceedings", 1505 (the Guernsey 2 Proceedings), 1627 (the Delivery Up Proceedings), 1793 (the Guernsey 3 Proceedings) and 1971 (TDT Document Proceedings) including by reference to the Limited TDT Indemnity. That is, it appears that due regard has been afforded to the issue of the Respondent's costs.

46. The proceedings against the Appellant were already on foot when the Consent Order was entered into. Indeed, the stay had recently been lifted. The parties may be assumed to have had them in their contemplation when they agreed the terms of the Consent Order. They were each professionally advised. They chose to frame the Recital (9) in very wide terms which, objectively viewed, encompass the present proceedings.

47. We do not agree with the Royal Court that, "read in context", the Recital (9) is intended only to prevent the Respondent's claims against the other parties not including the Appellant, or that the Appellant's ostensible personal Indemnity is not "otherwise connected to the claims against the TDT assets." This fails to give effect to the plain words used in Recital (9) and may reasonably be described by the Appellant as an attempt to rewrite the Consent Order to save the Respondent from what may have been a 'bad bargain'. It appears to us that the Royal Court has confined itself too narrowly to the "operative part of the Consent Order" and to the commercial purpose of the Indemnity. It has not focused squarely on the language of the undertaking in the Recital (9) and

the terms of the undertaking recorded in that Recital. For the reasons we have set out above, the natural interpretation of that language encompasses the present proceedings.

48. The Royal Court reached its conclusion upon the Consent Order without consideration of the contents of the 35th affidavit of Ms Martin sworn on 18 February 2025, but "looked at it in order to see if there is anything in it which shows that our construction of the Consent Order is erroneous." We do not endorse that approach and reject Advocate Gleeson's submissions that we should have regard to ancillary correspondence between the Appellant and Respondent regarding the ongoing proceedings and predating the Consent Order to interpret the Consent Order. In any event, no Respondent's Notice has been served seeking to uphold the Royal Court's decision on any alternative basis.

49. We uphold Ground 5, and consequently the appeal succeeds.

50. This determination obviates the need for us to address Grounds 1 to 4 at all. Nevertheless, for the avoidance of doubt, we indicate that we would have dismissed the appeal on Grounds 1 to 4, for the brief reasons which follow.

51. Advocate James indicated at the outset of his submissions that the Appellant takes umbrage that he should be disbelieved on his oath, but the thrust of the argument on the first ground of appeal is that the Royal Court relied upon speculation as opposed to circumstantial evidence when it decided that SG had actual authority to sign the ostensible deed under review. Advocate James singles out sentences in paragraph 171(viii) of the Judgment (see [20] above) to highlight the Royal Court's expressed incredulity of the Appellant's possible explanation for why SG had signed the 'draft' Indemnity as demonstrating the "less than clear line between speculation and circumstantial evidence".

52. We do not accept that last proposition, nor the argument that the Royal Court engaged in speculation to arrive at its conclusion. Speculation is nothing more than guesswork. Circumstantial evidence arises from a combination of findings of fact relating to the issue in question and from which a tribunal may legitimately draw common sense inferences.

53. There is no doubt that the Respondent, as Plaintiff, bore the burden of proving its case on the balance of probabilities. Seen in total isolation, some of the Royal Court's comments in paragraph 171(vii) and (viii) may suggest that it was for the Appellant to disprove the inference. However, that would be to ignore the articulated and careful analysis of the findings of facts upon which the Royal Court embarked to arrive at its conclusion to base such comments.

54. Realistically, acknowledging the well settled principles repeated in Volpi v Volpi [2022] 4 WLR 48, Advocate James does not attempt to challenge the Royal Court's findings of fact as to the circumstances in which the draft Indemnity came to be circulated, chased up and apparently concluded. Many of those findings are based upon contemporaneous documents. Further, the Royal Court determined Alizee Boyer ("AB") who was employed by GTC as a trust officer and dealt with various trusts held for the benefit of the Appellant under the supervision of various directors to be an honest and reliable witness who had no reason to "tailor or embellish" her evidence and did not do so. She gave evidence that that "SG was terrified of the Defendant and would check everything with him. …" (see paragraph 171 (vii) in [20] above). The Royal Court was plainly entitled to draw the inference that SG signed the Indemnity with the Appellant's authority.

55. It follows that we dismiss Ground 1. We do not need to address the counterfactual arguments about ostensible authority.

56. The finding that SG signed the Indemnity with the Appellant's authority does not dispose of the point as to whether the Indemnity is valid as a deed in accordance with the 1989 Act. SG attested in her own name and by her own signature the Appellant's signature which she had impersonated, as the Royal Court found, with the Appellant's actual authority.

57. Section 1(2)b) of the 1989 Act as amended provides that a deed may be executed by a person authorised to execute it in the name or on behalf of the person making it. Section 1(4) provides that it may be signed by a person using the name of the person on whose behalf he executes the instrument. However, (3) (a) (ii) requires attestation of the signature by a witness:

> *"An instrument is validly executed as a deed by an individual if, and only if—*
> *(a) it is signed –*
>
> *(i) by him in the presence of a witness who attests the signature;*
>
> *or*
>
> *(ii) at his direction and in his presence and the presence of two witnesses who each attest the signature; and*
>
> *(b) it is delivered as a deed." (emphasis added)*

58. It follows that SG is precluded from attesting as a witness the signature she made upon the Indemnity in the name and on behalf of the Appellant.

59. As indicated in paragraph 24 above the experts disagreed about the significance of such an illegitimate attestation as a matter of English law. The Royal Court determined the question as a matter of foreign law. As such, its decision is a finding of fact, but it is a finding of fact which falls within "a special category": see Perry v Lopag Trust (No 2) [2023] UKPC 16 at [11]. This was a straightforward dispute arising in the context of English law. There is no direct authority on the specific point. However, we are satisfied that the Royal Court correctly identified the relevant authorities to be Shah and Briggs. Although we are sitting as Jersey judges, all the members of this Court have professional qualifications in the law of England and Wales. In the circumstances of this case, we find that we can apply our own "legal skills and experience" to analyse the foreign law and are at no disadvantage in carrying out that analysis.

60. The ratio of the Court of Appeal's judgment in Shah is contained in paragraphs 29 to 33:

> ***"29. I bear in mind the clarity of the language of section 1 (2) and (3) and also that the requirement for attestation is integral to the requirement for signature in that the validity of the signature is stipulated to depend on the presence of the attesting witness. I also accept that attestation has a purpose in that it limits the scope for disputes as to whether the document was signed and the circumstances in which it was signed. The beneficial effect of the requirement for attestation of the signature in the manner specified in the statute is not in question. It gives some, but not complete, protection to other parties to the deed who can have more confidence in the genuineness of the signature by reason of the attestation. It gives some, but not complete, protection to a potential signatory who may be under a disability, either permanent or temporary. A person may aver in opposition to his own deed that he was induced to execute it by fraud, misrepresentation or, as was unsuccessfully alleged in the present case, duress and the attestation requirement is a safeguard.***
>
> ***30. I have, however, come to the conclusion that there was no statutory intention to exclude the operation of an estoppel in all circumstances or in circumstances such as the present. The perceived need for formality in the case of a deed requires a signature and a document cannot be a deed in the absence of a signature. I can detect no social policy which requires the person attesting the signature to be present when the document is signed. The attestation is at one stage removed from the imperative out of which the need for formality arises. It is not fundamental to the public interest, which is in the***

requirement for a signature. Failure to comply with the additional formality of attestation should not in itself prevent a party into whose possession an apparently valid deed has come from alleging that the signatory should not be permitted to rely on the absence of attestation in his presence. It should not permit a person to escape the consequences of an apparently valid deed he has signed, representing that he has done so in the presence of an attesting witness, merely by claiming that in fact the attesting witness was not present at the time of signature. The fact that the requirements are partly for the protection of the signatory makes it less likely that Parliament intended that the need for them could in all circumstances be used to defeat the claim of another party.

31. Having regard to the purposes for which deeds are used and indeed in some cases required, and the long-term obligations which deeds will often create, there are policy reasons for not permitting a party to escape his obligations under the deed by reason of a defect, however minor, in the way his signature was attested. The possible adverse consequences if a signatory could, months or years later, disclaim liability upon a purported deed, which he had signed and delivered on the mere ground that his signature had not been attested in his presence, are obvious. The lack of proper attestation will be peculiarly within the knowledge of the signatory and, as Sir Christopher Slade observed in the course of argument, will often not be within the knowledge of the other parties.

32. In this case the document was described as a deed and was signed. A witness, to whom the third and fourth defendants were well known, provided a form of attestation shortly afterwards and the only failure was that he did so without being in the presence of the third and fourth defendants when they signed.

33. Having considered the wording of section 1 in the context of its purpose and the policy consideration which apply to deeds, I am unable to detect a statutory intention totally to exclude the operation of an estoppel in relation to the application of the section or to exclude it in present circumstances. The section does not exclude an approach such as that followed by Sir Nicolas Browne-Wilkinson V-C in TCB Ltd v Gray [1986] Ch 621. For the reasons I have given the delivery of the document, in my judgment, involved a clear representation that it had been signed by the third and fourth defendants in the presence of the witness and had, accordingly, been validly executed by them as a deed. The defendant signatories well c knew that it had not been signed by them in the presence of the witness, but they must be

taken also to have known that the claimant would assume that it had been so signed and that the statutory requirements had accordingly been complied with so as to render it a valid deed. They intended it to be relied on as such and it was relied on. In laying down a requirement by way of attestation in section 1 of the 1989 Act, Parliament was not, in my judgment, excluding the possibility that an estoppel could be raised to prevent the signatory relying upon the need for the formalities required by the section. In my judgment, the judge was correct in permitting the estoppel to be raised in this case and in his conclusion that the claimant could bring an action upon the document as a deed."

61. The Court in Briggs v Gleeds [2015] Ch 212 was bound by the Court of Appeal's decision of principle. Newey J (as he then was) addressed the issue in paragraph 40 of his judgment:

"It is evident from Shah v Shah |2002] QB 35 that there are circumstances in which a person can be estopped from denying that a document was executed in accordance with the requirements of section 1 of the 1989 Act. It is also apparent from Pill LJ's judgment that attestation is less crucial than signature. On the other hand, Pill LJ did not decide that estoppel can be used in response to every sort of failure to comply with the 1989 Act. To the contrary, he expressed his conclusion narrowly: he was unable to detect a statutory intention "totally" to exclude the operation of an estoppel in relation to the application of section I or to exclude it "in present circumstances". It seems fair, moreover, to infer that Pill LJ would not have considered estoppel applicable if the defendants had not even signed the "deed". In Pill LJ's view, "a document cannot be a deed in the absence of a signature" and the public interest lies in the requirement for a signature."

62. Newey J concluded in paragraph 43 that:

"…estoppel cannot be invoked where a document does not even appear to comply with the 1989 Act on its face or, at any rate, cannot be so invoked in the circumstances of the present case. My reasons include these:

(i) To state the obvious, Parliament has decided that, for an individual validly to execute a deed, he must sign "in the presence of a witness who attests the signature". That requirement has an evidential purpose: as Pill LJ noted in Shah v Shah [2002] QB 35, para 29 it "limits the scope for disputes as to whether the document was signed and the circumstances in which it was signed" and "gives some, but not complete, protection to other parties to the

deed who can have more confidence in the genuineness of the signature by reason of the attestation". As Pill LJ further noted, the requirement also "gives some, but not complete, protection to a potential signatory who may be under a disability, either permanent or temporary" The Law Commission thought, too, that the need for attestation would "emphasise to the person executing the deed the importance of his act" (see para 8.3(i) of the Law Commission's Working Paper Transfer of Land: Formalities for Deeds and Escrows (1985) (Law Com No 93)).

(ii) Fulfilment of Parliament's and the Law Commission's objectives would be undermined, potentially to a serious extent, if estoppel could be invoked in circumstances such as those in the present case.

iii) Shah v Shah shows, of course, that a person can sometimes be estopped from denying due attestation. The document with which the court was concerned in that case appeared, however, to be valid. Accordingly, Pill LJ said that failure to comply with the formality of attestation should not in itself prevent a party into whose possession "an apparently valid deed" has come from alleging that the signatory should not be permitted to rely on the absence of attestation in his presence. He also spoke of "an apparently valid deed" in the next sentence of his judgment.

(iv) The "deeds" at issue in the present case are not "apparently valid". It can be seen from each document that it was not executed in accordance with the 1989 Act. This distinction from Shah v Shah is a significant one. If estoppel can be invoked in relation to documents that are not "apparently valid", the documents cannot necessarily be taken at face value. "[A]s far as possible", however, "it should be clear on the face of the document whether or not it has been validly witnessed": see para 8.3(i) of the Law Commission Working Paper. That is especially so since the validity of a deed can matter for many years, and those considering "deeds" long after they have been executed may well have no personal knowledge of the circumstances in which they were executed and access to little or no contemporary correspondence.

(v) If estoppel were available in circumstances such as those in the present case, a party to a "deed" who had not himself executed the document in accordance with section I of the 1989 Act could choose whether or not the

document should be treated as valid. If it turned out to be in his interests to

disavow the document, he could do so. If, on the other hand, the document proved to be advantageous to him, he could invoke estoppel. To take an example close to the facts of the present case, if a "deed" provided for a pension scheme to become money purchase rather than final salary, an employer who had signed without having his signature witnessed could wait and see whether the change was, in the event, beneficial to him.

(vi) Section 1 of the 1989 Act was in part designed to achieve certainty. It could, however, have the opposite consequence if estoppel were available in circumstances such as those in the present case. The effectiveness of a "deed" that had not, on the face of it, been validly executed could be left in doubt."

We, like the Royal Court, find no disagreement between the two authorities on the principle of law, and find that the outcome in Briggs was fact dependent. It appears to us that the issue between the experts in this case was whether SG's signature as witness to her authorised impersonation of the Appellant's signature was, as the purported attestation, a *nullity ab initio*. If so, then the situation which arose was akin to the Briggs case. Conversely, the Respondent's expert concentrated upon the Indemnity appearing valid on its face, as was the situation in Shah. Only the Appellant and SG could know that it was not as it appeared.

63. We bear in mind the findings of fact that not only did SG have the Appellant's actual authority to sign the Indemnity on his behalf, but also that the Appellant knew that she had also attested that signature, for he was copied into the email which appended the ostensible deed. Further, the Respondent was acquitted of any knowledge or wilful ignorance of the default. These findings of fact are unimpeachable. We therefore conclude that the Appellant would be estopped from denying the validity of the Indemnity. The Royal Court were entitled to find that there is no affront to public policy in doing so in the circumstances of this case. On the basis of the findings made by the Royal Court it would be an affront to justice to permit the Appellant to take exception, on this technical ground, retrospectively and opportunistically, to the validity of the Indemnity, when he has been found to have full knowledge of the deficiency and expected the Respondent to rely upon the Indemnity.

64. In the alternative, the experts agreed that the Indemnity could be enforced as a contract, provided that the Respondent gave consideration for the Appellant's promise.

The Appellant's first challenge on the issue of consideration is to the Royal Court's case management decision on the sufficiency of his pleading in answer to the Respondent's amended Particulars of Claim asserting that there was a contract (see paragraphs [8] and [12]

above). The point is unarguable. This was a case management decision open to the Royal Court on the facts and was not unreasonable. In any event, the Royal Court proceeded to determine the Appellant's challenge to the existence of a contract on its merits.

65. As to this issue, we note that the terms of the Indemnity, whether by deed or contractual agreement, refer to costs to be and already incurred. If the terms of the Indemnity only referred to the costs and expenses already incurred there would be no question but that this would be past consideration. However, in the circumstances of ongoing proceedings, as here, a guarantor may provide valuable future consideration by agreeing to cover expenditure already incurred to ensure the future benefit to be obtained. That is, it would have been open to the parties to have agreed that the Appellant would indemnify the Respondent for costs already expended in consideration of the Respondent continuing in the appeal. It matters not that the Respondent would likely have continued to pursue the appeal regardless.

66. In any event, we agree with Advocate Gleeson, the Appellant's arguments depend upon a pedantic and unrealistic interpretation of the Royal Court's judgment. We consider that the Royal Court were entitled to find that the three conditions which found what is effectively a claim in quantum meruit arose from the facts as found.

67. Consequently, but for our decision regarding Ground 5, we would have dismissed the appeal.

Authorities

Geneva Trust Company (GTC) SA v Tchenguiz [2025] JRC 197.

Shah v Shah [2002] QB 35.

Briggs v Gleeds [2015] Ch 212.

Chitty on Contracts 35th Edition Chapter 6.

Marett v. Marett [2008] JLR 384.

Wood v Capita Insurance Services Limited [2017] AC 1173.

Trico v Buckingham [2020] JCA 067.

Arnold v Britton [2015] UKSC 36.

Volpi v Volpi [2022] 4 WLR 48.

Perry v Lopag Trust (No 2) [2023] UKPC 16.