



Neutral Citation Number: [2023] EWHC 962 (Ch)

Case No: PT-2022-000236

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

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

Date: 3 May 2023

Before:

MASTER MCQUAIL

Between:

JANE WILMOT-SMITH

Claimant

- and -

(1) HUGH PATRICK BURSTALL

(2) DAVID JOHN ROBERT WILMOT-SMITH

Defendants

Alex Troup instructed by **Human Law** for the **Claimant**
Tom Stewart Coats instructed by **Reynolds Porter Chamberlain LLP** for the **First Defendant**
Sarah Harrison instructed by **Clarion** for the **Second Defendant**
Hearing dates: 14 March 2023

Approved Judgment

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MASTER McQUAIL

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Master McQuail:

1. This Part 8 claim is brought by Jane Wilmot-Smith (**Jane**), who is a residuary beneficiary of the estate (**the Estate**) of her uncle, Nicholas Wilmot-Smith (**the Deceased**). The defendants are a solicitor, Hugh Patrick Burstall (**Mr Burstall**) of Burstalls of Hull, and one of Jane's brothers, David Wilmot-Smith (**David**), who are the executors and trustees of the Deceased's estate. By the claim Jane seeks disclosure of certain documents pursuant to CPR 64.

History

2. The Deceased was a farmer. He died on 4 May 2001. He left a will dated 15 March 1994 by which he left his residuary estate to his brother's four children, Jane, David, Richard Wilmot-Smith KC (**Richard**) and Charles Wilmot-Smith (**Charles**) in equal shares.

3. The IHT return was dated 7 August 2001. Probate was granted to Mr Burstall and David on 4 September 2001. The net Estate was sworn at just over £3.59 million. The property assets of the Estate were the Deceased's farm at Gunby Hall in Yorkshire and a rental property with a total value of nearly £2.3 million. The Estate also included a share portfolio worth around £1 million, the value of the Deceased's farming business, some cash in bank accounts and household contents.

4. The residuary beneficiaries agreed to continue to run the Deceased's farming business in partnership (**the Partnership**). David was the managing partner. He lived rent-free at Gunby Hall and was paid a salary. A partnership agreement was signed by the residuary beneficiaries on 17 September 2010; this provided that the Partnership was deemed to have carried on business from the date of the Deceased's death. The agreement referred to the initial capital being £50,000 plus the balance of the Deceased's capital account at his death. A further deed was signed by the residuary beneficiaries and David's wife on 18 April 2011 the effect of which was to constitute David's wife a partner and to divide David's profit share equally between David and her.

5. During the currency of the Partnership David says that there were annual meetings at which the partnership accounts were discussed. He says that no issue was raised by Jane about the accounts before the dissolution of the Partnership. That evidence is not contradicted by Jane.

6. At all material times there were two parallel entities in existence: the Estate and the Partnership. Jane, David (or David together with his wife), Richard and Charles were entitled to a one quarter share of each. Mr Burstall was primarily responsible for the Estate and its bank account and the preparation of Estate accounts while David was primarily responsible for the Partnership and its bank account and the preparation of Partnership accounts. The Partnership used Estate assets for the purposes of its business. In practice monies received by Mr Burstall were credited to the Estate account, monies received by David were credited to the Partnership account.

7. The Partnership was wound up in 2011-2012 and Gunby Hall and the remaining Estate assets were sold in 2012-2013.

8. Over the years the Estate, including in specie shares of the farming business, was distributed to the residuary beneficiaries so that by the time of the final distribution in June 2016 each had received £1,349,532.45. Mr Burstall produced final Estate accounts which he signed on 22 June 2016 showing that the net distributable Estate was some £5.4 million.

9. Beginning in 2013 Jane, Richard and Charles raised concerns about David's conduct in managing the financial affairs of the Partnership and the Estate.

10. Jane instructed Taylor Vinters, solicitors, in 2013 and that firm wrote to Burstalls and David seeking information about the administration of the Estate and the winding up of the Partnership on 3 July 2013. Mr Burstall replied on 29 July 2013. Among other matters he enclosed a copy of the Partnership accounts for the year to 5 April 2012 and explained his understanding that accounts for all previous years had been produced and distributed to the partners.

11. The other residuary beneficiaries instructed Mr Teckoe of Haines Watts accountants to review the partnership accounts to investigate concerns about David having mis-managed the Partnership's financial affairs. On 11 February 2014 Mr Teckoe reported by letter to Richard that having investigated he was broadly satisfied that the partnership accounts reflected the books and there was nothing untoward.

12. On 17 July 2014 Richard wrote to David complaining that he had overdrawn from the partnership account and that he had mixed estate and partnership funds and requesting that he resign as managing partner and executor and hand over the Partnership bank account to Burstalls and also requested that he preserve all documents relating to the Estate and Partnership.

13. A meeting took place on 30 July 2014, attended by Mr Burstall and the four residuary beneficiaries, at which concerns about David were aired. As a result, David agreed to retire as an executor, although no formal steps were taken to confirm that retirement.

14. Included in the bundle is an exchange of emails between David and his then solicitors, Rollitts, reporting that he had taken the partnership books to Haines Watts' Oxford offices for the purposes of their report and that the books had been returned to Burstalls to be available for inspection.

15. On 28 September 2015 Haines Watts reported at the request of Payne Hicks Beach, solicitors, who had been instructed by the residuary beneficiaries other than David as to partnership matters. It is apparent that Haines Watts had been supplied with partnership accounts for the purposes of their investigation.

16. On 17 May 2015 David's son Andrew wrote to Payne Hicks Beach, explaining what David had already produced by way of partnership records, being partnership invoices going back to April 2009 which had been examined by Haines Watts and cash books of which Jane was believed to have copies. The letter reported that David could give no more information: "further demands for information however formal will not recover what no longer exists."

17. On 24 August 2016 Payne Hicks Beach wrote to David's children recording Jane's dissatisfaction with the answers to enquiries and reserving her position but stating "my client has come to the conclusion that there is little point pursuing this matter with yourselves further."
18. On 7 March 2017, TA Matthews, solicitors instructed by Jane, wrote to Mr Burstall making 21 requests for information and documents. The letter was accompanied by 9 appendices of documents, including the Partnership accounts or extracts from them for a number of the years of its existence.
19. Burstalls provided a detailed response, with documents enclosed, on 19 April 2017.
20. On 31 May 2017 TA Matthews sent a further letter setting out 14 numbered requests for clarification and documents.
21. Mr Burstall again provided a detailed response on 21 June 2017 and sent TA Matthews a full set of the executors' bank statements and confirmed that the Deceased had had two bank accounts both disclosed in the Estate accounts one a Barclays account with account number ending 901 not paying interest and a second account that had earned a modest amount of interest only.
22. On 27 March 2019 Jane wrote a 10-page letter complaining about various aspects of alleged misconduct by Mr Burstall in connection with the Estate.
23. Included in the response dated 7 June 2019 was the information that Mr Burstall had asked Stephenson & Son, the selling agents, what had happened to the proceeds from the sale of entitlements associated with Lot 6a Gunby Hall and was awaiting a response.
24. Jane also made complaints to both the SRA and the Legal Ombudsman. There is no record of any complaint being upheld.
25. On 13 December 2019 Human Law, solicitors instructed by Jane, wrote to Burstalls. The letter refers to a concern that David had "illegally" taken money from partnership and to a belief that the "alleged fraud" may have taken place soon after the Deceased's death in 2001. The letter threatened proceedings for an inventory and account.
26. On 21 January 2020 Burstalls responded to what the firm considered to be the only previously unanswered query by confirming that the proceeds of the Deceased's Swire Pacific Limited shares had been credited direct to the executors' account on 12 June 2003. The letter enclosed printed copies of the 50 separate client ledger accounts opened during the administration.
27. On 12 March 2021 Human Law sent a letter before action to Burstalls and to David. The letter explained that Mr Muggridge, a forensic accountant, had been instructed to report which he had done in a letter of 2 February 2021. That letter recorded that Mr Muggridge had been requested to review the estate accounts (ignoring

partnership matters as far as possible) and had been provided with Burstalls' client ledger reports, which were said to have been produced under cover of a letter of 24 March 2016 (which letter was not in the hearing bundle). The letter before action identified a number of issues with the Estate accounts of which the following issues remained live by the time Jane issued her claim:

- (i) a possible failure to account for the proceeds of the Deceased's Swire Pacific Limited shares in an amount of £33,714;
- (ii) apparently missing Swire Pacific Limited dividends and other possible missing dividends;
- (iii) the possibility that because the net asset value introduced to the farming partnership of £228,774 was higher than the £69,163.00 stated value of the farming assets (Mr Muggridge's adjusted figure was £73,283.03) the value of farm assets might be overstated by some £155,536. It was apparent from this section that Mr Muggridge had been unable to refer to a balance sheet at date of death; and
- (iv) there was no record of the sale of the 34.68 entitlements attached to Lot 6a Gunby Hall either in the estate accounts or the relevant ledger.

28. Mr Muggridge's attention would appear not to have been drawn to the exchange of letters between TA Matthews and Burstalls in 2017, during the course of which correspondence Mr Burstall explained in a letter of 19 April 2017 how the funds transferred to the Partnership account were calculated and which explanation TA Matthews accepted by their letter of 31 May 2017.

29. The letter before action went on to request the following classes of documents (and others, no longer in issue by the time of issue of the claim):

- (i) records of the Deceased's share portfolio and its disposal as well as dividends;
- (ii) income tax returns for the Deceased and the Estate;
- (iii) client ledger reports from 4 May 2001 to 31 May 2001;
- (iv) correspondence relating to the disposal of the entitlements for Lot 6a Gunby Hall;
- (v) copies of the IHT400 and any corrective account and calculations; and
- (vi) evidence of the balance sheet at the date of death.

30. Clarion, solicitors instructed by David responded on 22 April 2021, explaining that their client was not in possession of estate information, that was a matter in Mr Burstall's control.

31. Burstalls' response of 30 April 2021:

- (i) enclosed tax returns for 2006, 2007, 2008 and self-assessment statements of account issued in 2003 and a letter to HMRC of 19 September 2013;
- (ii) enclosed the IHT forms submitted and letters to CTO of 19 November 2001, 20 November 2001, 13 December 2002, 15 February 2005 and 2 June 2006. The IHT forms included (a) the Redmayne Bentley date of death probate valuation for the shares and (b) within the claim for relief for loss form IHT35 a schedule of proceeds of sale of the shares;

- (iii) explained that copies of ledger accounts had already been supplied and that there had been no entries before 1 June 2001, but enclosed the executors' first bank statement for the period 14 May to 8 June 2001; and
- (iv) enclosed a copy of the letter to Stephenson's dated 19 May 2019 seeking information about the entitlements to which no response had been received.

32. In a further letter of 7 August 2021 Mr Muggridge summarised possible losses, in relation to matters still pursued at the date of the claim, as follows:

- (i) Swire Pacific share sale £33,715;
- (ii) farm assets £155,535;
- (iii) dividend income £10,925; and
- (iv) Lot 6a entitlements £13,000.

33. By letter dated 22 October 2021 Human Law sent a copy of a further letter from Mr Muggridge dated 14 October 2021 in which he set out the categories of document he considered should be produced (in terms which are closely echoed in the words of the Claim Form) as follows:

- (i) estate income tax returns;
- (ii) share sale and purchase and dividend records;
- (iii) correspondence relating to Lot 6a Gunby Hall;
- (iv) bank statements for account ending 091 from two months prior to date of death until closure; and
- (v) records pertaining to the partnership.

34. On 6 January 2022 Burstalls responded again explaining that they had supplied all the tax returns, repeated that details of all sales of shares were contained within the estate accounts, requested clarity as to what correspondence relating to Lot 6a was requested and enclosed a further copy of the letter to Stephenson's of May 2019. Once again, the letter pointed Human Law in the direction of David and his accountant in relation to the Partnership accounts.

35. On 11 January 2022 David and Mr Burstall signed forms of authority to allow Jane to obtain bank statements for account number ending 091 (Human Law's drafting error for 901) for the period 1 January 2001 to its closure on 24 September 2001.

36. On 21 January 2022 Human Law wrote to Burstalls again. This letter included the complaint that the £27,000 proceeds of the Swire Pacific shares were paid via the executors' account to the partnership account and that this was objectionable because there were 5 partners as opposed to four residuary beneficiaries, notwithstanding that David and his wife co-owned what had been David's quarter.

The Claim

37. Jane issued her claim on 22 March 2022. By it she seeks disclosure of five categories of documents which reflect the documents which Mr Muggridge identified in his letter of 14 October 2021 as follows:

- (i) copies of all estate income tax returns from date of death to date;
- (ii) a detailed record of shares held by the executors, any sales, and purchases from date of death to date and a register of dividends received;
- (iii) detailed correspondence regarding the disposal of Lot 6a Gunby Hall;

(iv) bank statements for account number 80884901 from two months prior to the date of death to current date (or date of closure whichever is earlier). If account 80884901 was not connected with the Deceased's farming business, then confirmation whether another bank account was used for this purpose and, if so, details and provide bank statements for the same period as account 80884901; and

(v) records pertaining to the partnership. At the very least, partnership accounts for the year ending 5 April 2001 and every year from the year ended 5 April 2003 onwards. Ideally, in addition, copies of the partnership accounting records from 2001 to date, comprising cash books, bank statements (accepting that the Estate bank account was used for a period of time, and we have those statements), supporting invoices and receipts and partnership tax returns.

38. On 6 May 2022 Burstalls wrote to Human Law enclosing:
- (i) the 2006, 2007 and 2008 tax returns, being the only ones Mr Burstall believed had been submitted;
 - (ii) the schedule of shares held by the Deceased prepared in January 2007 and the explanation that a claim had been submitted for the net loss and enclosing a further copy of the form IHT35, including the schedule of proceeds of the shares, and the explanation that the dividends were listed in the previously disclosed ledger accounts
 - (iii) the correspondence file relating to the sale of Lot 6a Gunby Hall;
 - (iv) copy bank statements for account ending 901 until closure on 24 September 2001 and an explanation of what happened to the funds in the account and a reminder that Jane had already been sent a full set of copy statements for the Executors' bank account; and
 - (v) a copy of the draft accounts for the Deceased's business to 5 April 2001 and the explanation that the only partnership accounts on file were a draft for the period ending 31 July 2014 and referring Jane to David in that regard.

Evidence

39. Jane's claim is supported by her witness statements dated 21 March 2022, 20 May 2022 and 12 January 2023. The First Defendant relies on his witness statements dated 1 December 2022 and 20 February 2023. The Second Defendant relies on his witness statements dated 26 April 2022 and 9 February 2023.

40. The exhibited documentation is voluminous and covers much ground travelled and re-travelled in the administration of the Estate and the Partnership and the pursuit by Jane of enquiries in the 22 years since the death of the Deceased.

41. Jane's evidence includes wide-ranging allegations of dishonesty and fraud against David, without providing the proper particularity required were such allegations to be pleaded in a claim against him.

Tax Returns

42. Human Law first requested Estate tax returns by letter dated 12 March 2021. Mr Burstall first enclosed the returns for the years ending 2006, 2007 and 2008 with the letter dated 30 April 2021. His first witness statement explained that he understood these to be the only returns submitted for the Estate.

43. In answer to Human Law's complaint that the returns were incomplete, Mr Burstall explained that, as there was no income tax to declare, several pages of the standard form did not need to be completed and stated:

"In this Estate, all the income was received under deduction of tax and any gains arising on the sale of property would have been dealt with in the Partnership tax returns. Accordingly, there was nothing to declare. I did not retain copies of the pages which had not been filled out, and therefore disagree that any information was "*missing*".

44. Following issue of Jane's claim Mr Burstall discovered that, contrary to his previous understanding, he had submitted tax returns from 2002 to 2011, but was unable to locate copies. On contacting HMRC he was told by letter dated 27 January 2023 that due to the passage of time no copies were held. Mr Burstall also gave Jane authority to obtain the relevant returns from HMRC.

45. It is Mr Burstall's position that since there was no income tax to declare the returns that have not been located would reveal nothing useful.

46. Jane's concern in this respect has been to ensure that all dividend income received from the Deceased's share portfolio was properly accounted for.

47. By the date of the hearing Jane's position was that the enquiry as to the tax returns had run its course, but maintained that the executors' failure to keep proper records amounted to a breach of duty, that David has not answered an outstanding question about dividends received from the Swire Pacific Limited shares and that the request for this class of documents would have been unnecessary had Mr Burstall carried out a proper search before the claim was issued.

Shares/Dividends

48. Mr Burstall's position is that he has provided all available documents in relation to the Estate's shares and dividends.

49. The information was provided:

- (i) in the listing of shareholdings in the Estate accounts (provided to Jane in 2016);
- (ii) in the valuation of Redmayne Bentley, the instructed brokers, enclosed with the IHT return (provided to Jane in April 2021);
- (iii) in the schedule of proceeds of sale within the claim for relief for loss form IHT 35 (provided to Jane in April 2021 and again in May 2022);
- (iv) in the 2007 schedule (provided to Jane in May 2022); and
- (v) in the printed copies of the Estate client account ledgers (provided to Jane possibly as early as March 2016, according to Mr Muggridge, but certainly no later than January 2020).

50. By letter of 4 December 2001 Mr Burstall reported to Jane the sale of all the English stock.

51. So far as the Swire Pacific shares are concerned, the Redmayne Bentley valuation includes the 9,858 Swire Pacific shares at £3,351.72.

52. Mr Burstall explained in his response to Human Law dated 21 January 2020 that the Swire Pacific share sale proceeds were credited to the executors' account on 12 June 2003 and then transferred to the Partnership account. This position would appear to have been accepted by Human Law in their letter of 21 January 2022, albeit they maintained their complaint that the inclusion of David's wife as a partner was prejudicial to Jane's position.

53. On 15 February 2005 Mr Burstall reported to the CTO the net receipt of £27,000 for the Swire Pacific shares, after costs associated with the transaction and enclosed a payment of the IHT underpaid. That letter was provided to Jane with Burstalls' letter of 30 April 2021.

54. In addition, Mr Burstall exhibited two further documents to his second witness statement:

(i) a fax dated 27 February 2003 from Computershare, the Hong Kong registrars for Swire Pacific confirming the deceased's holding of 9858 shares and confirming all dividend warrants had been presented for payment and that no outstanding dividends or bonuses were due; and

(ii) a letter dated 3 March 2003 to David reporting that a grant had been extracted in Hong Kong and enquiring if David had received any dividends.

55. The remaining anomaly is the Laidlaw shares for which a dividend appears in the Burstalls' Ledger but for which there appears to be no record of a sale.

56. Jane maintains that the Executors should provide documents showing the ownership of the Laidlaw shares, relating to the sale of the Swire Pacific Shares and explain what shares were sold by Bentley Redmayne to produce the figure of £979,783.55 shown in the estate accounts.

Lot 6a Gunby Hall

57. Mr Burstall's position is that he has provided all available correspondence relating to the sale of Lot 6a. He provided the file to Jane on 6 May 2022. In Jane's second witness statement she sought clarification in relation to the sale not of Lot 6a but of its entitlements.

58. In his second witness statement Mr Burstall explained that Stephenson had been chased and had found correspondence relating to the sale in 2012 showing most of the entitlements had been sold leaving an unsold final balance of 0.38 entitlements. There was also a Stephenson statement addressed to the Partnership showing a net remittance of £8,719.21. Stephenson explained that since the entitlements were owned by the farming business the matter had been dealt with through David.

59. Jane's position at the hearing was that the only remaining query as to the fate of the outstanding 0.38 entitlements is too modest to pursue further.

Bank Statements

60. Mr Burstall's recollection is that the Deceased used his personal account for his farming business. The balance in that account number ending 901 at the date of death was £72,404.87 and that is the figure shown in the Estate accounts (but wrongly numbered 091). The second account mentioned in the estate accounts had a balance of

some £200. There is nothing to suggest that there was any further account rather than a misnumbering.

61. Mr Burstall disclosed all the statements for the Deceased's account number ending 901 until its closure on 6 May 2022.

62. The letter of authority to obtain bank statements referred to account 091. Jane's evidence is that the bank has been unable to assist, but whether because of the passage of time or because account 091 does not exist is not explained by her.

63. Jane accepts that this line of enquiry can be taken no further. She complains that it is regrettable that the statements for account number ending 901 were not disclosed earlier.

Partnership Records

64. Jane's concern in this respect has been to verify the figure of £69,163 included in the Estate accounts as representing the value of the Deceased's business at the date of death.

65. After the claim was issued Mr Burstall disclosed the Deceased's draft trading accounts for the year ending 5 April 2001 which have revealed how that figure was derived. At the hearing Jane's counsel accepted that those accounts had originally been sent to Jane under cover of a letter dated 4 December 2001.

66. Jane seeks no further disclosure in this respect.

The Law

67. Trustees have a duty to keep proper records and account to the beneficiaries: *Lewin on Trusts (20th edition)* [21-031 to 21-039]. In *RNLI v. Headley* [2016] EWHC 1948 (Ch) Master Matthews (as he then was) explained that a trustee's duty to account is not merely a duty to provide financial statements. It is a duty to account for what the trustees have done with the trust assets. He pointed out that the right to an accounting and to see trust documents as part of it, is an aspect of the court's inherent jurisdiction to supervise and if appropriate intervene in the administration of a trust, in reliance on *Schmidt v Rosewood Trust Ltd* [2003] 2 AC 709, PC. He observed that the Court's jurisdiction to order disclosure of documents extends to what the beneficiary needs "to appreciate, verify and if need be, vindicate their own rights."

68. In *Schmidt v Rosewood Trust Ltd* [2003] 2 AC 709, it was recognised that the Court exercises a discretion when it determines whether, what and how disclosure should be made to a beneficiary. *Lewin* at [21-030] explains that similar principles apply in relation to beneficiaries of an unadministered estate.

69. *Lewin* further explains at [21-038]

"Ordinarily a beneficiary may seek reasonable information and supporting documents about transactions concerning the trust property and property owned by companies owned by the trust entered into by or with the authority of the trustees. While the trustees must give accurate information, they need not answer never-ending lengthy and voluminous enquiries as to the state of the

trust beyond what is reasonable having regard to the trustees' time and resources available to respond to such inquiries.”

70. *Lewin* at [21-100] says this:

“The cost of drawing up accounts in the usual way is a proper trust expense (and therefore chargeable as an expense by the trustees). However, the costs of answering detailed questions about the state of the trust and providing other information and documents relating to the trust, should be borne by the beneficiary seeking it.

71. No limitation period applies to claims for an account in common form against a trustee: *Lewin* at [50-044] citing *Henchley v. Thompson* [2017] EWHC 225 (Ch) where Chief Master Marsh stated:

“even a lengthy delay in requesting an account may be of limited assistance to the trustee, in the absence of a release, because without an account the beneficiaries do not know what has happened to the trust income and assets”.

Position at the Date of the Hearing

72. The extent to which Jane maintained that any order should be made on her Claim it was for David:

(i) to answer the question posed to him in 2003 whether he received any dividends from the Swire Pacific Limited shares;

and for both defendants to disclose documents:

(ii) showing the ownership of the Laidlaw shares;

(iii) relating to the sale of the Swire Pacific Limited shares;

(iv) to explain what shares were sold by Bentley Redmayne to produce the figure of £979,783.55

Or file a witness statement verified by statement of truth confirming that such documents do not or no longer exist.

73. It was Mr Burstall's position that he has provided all the documents he is able to provide and no order should be made against him since it would be made in vain. Jane has delayed unreasonably in bringing her claim, which has resulted in some documents and information becoming unavailable. The delay has also caused prejudice to Mr Burstall because the Estate has been distributed and he has had no fund available to meet the costs of answering Jane's correspondence or to defend the claim. Mr Burstall also says that the evidence shows that Jane has had a huge amount of information about the Estate and certainly sufficient to hold the Executors to account should she wish to do so. Mr Burstall says that in any event he should not be deprived of his indemnity.

74. It was David's position that Jane had extensive information and documentation in relation to the Estate and the Partnership when she commenced the claim and seeks yet further documents in circumstances where the defendants say that 21 years after the death of the Deceased, they are unaware of any more documents. David also says that Jane has been less than frank in her approach. In particular it is clear that Jane must have had substantial Partnership documentation over the years. She was sent the Partnership accounts annually and, had access to cash books and bank statements. David made clear that he had no other documents concerning the Estate and the Partnership other than documents Jane already was given. Jane's solicitors accepted

that he had no further documents in 2016. Nothing has been achieved by joining him as a defendant.

Analysis and Conclusions

Partnership Documents

75. Jane was a partner in the Partnership. David's evidence is that there were annual partnership meetings and before those meetings draft partnership accounts were circulated giving the partners the opportunity to discuss the accounts. He says that Jane did not raise any queries on those accounts before the Partnership was wound up in 2011-2012.

76. The terms of Mr Teckoe's reports, the enclosures to the TA Matthews correspondence and the 2014-2015 arrangements made for such partnership books as David still had to be made available for inspection demonstrate that Jane has had access to the Partnership accounts and substantial Partnership documentation, including all such Partnership books and papers as were still in existence by 2014. Her then solicitors accepted in 2016 that there was nothing further to be disclosed.

77. Jane's instructions to Mr Muggridge expressly requested that he ignore Partnership matters as far as possible. It is therefore surprising that Jane's second witness statement states that "the Partnership accounts are sought by the Forensic Accountant." The explanation that follows is that in order to ascertain whether all the Deceased's business assets were transferred into the Partnership, the Partnership accounts and Estate accounts were insufficient as apparent justification for her request for further Partnership documentation.

78. By the date of that second witness statement the draft trading accounts to the date of the Deceased's death and the bank statements for account ending 901 had been supplied. Those documents are what have sufficiently satisfied her inquiry as to the transfer of assets from the Estate to the Partnership such that further disclosure is not pursued.

Conclusion as to Partnership Documents

79. The wide-ranging claim for disclosure of Partnership documentation should never have been brought in order to resolve the issue of the transfer of assets. Jane has or has had access to the Partnership accounts and she knew, and by her solicitors accepted, as long ago as 2016 that David had provided all Partnership documentation which was then still in existence and has always known that Mr Burstall would never have had underlying Partnership documentation. The documents that resolved her enquiry were Estate documents.

Estate Documents

80. Jane's wide-ranging requests for large classes of documents and her unfocused witness statements have made the task of identifying the document or documents which would satisfy any particular enquiry challenging. Mr Burstall has been subject to a litany of enquiries and requests for documentation which he has sought to answer in correspondence and in answer to the present proceedings. As a result of Mr Burstall's responses Jane has been supplied with an enormous amount of estate information and documentation. To the extent that documentation is no longer available or retrievable the reason is the passage of many years. Apart from queries about two identified

shareholdings and the main sale of Estate shares by the brokers, Jane does not further pursue her requests.

81. Before she commenced the present claim Jane was in possession of sufficient documentation to formulate a claim against the defendants, as executors of the estate, for any breach of trust that she considered worth pursuing and thereby vindicate her rights. Instead, Jane brought this claim seeking documentation.

Bank Statements

82. The request for bank statements was met in May 2022. Nothing further is sought.

Lot 6a entitlements

83. The request in relation to Lot 6a should have focussed on the entitlements and Stephenson's records, not the conveyancing or correspondence file. Mr Burstall provided the documentation to satisfy Jane's inquiry with his second witness statement, after pressing Stephenson for a response. Nothing further is sought.

Income Tax Returns

84. The request for the income tax returns is not further pursued. It is now apparent for which years income tax returns were filed, but it has also become apparent that the income tax returns that are no longer available would shed no further light on Jane's underlying inquiry.

Record of Shares/Dividends

85. The fate of the Swire Pacific Limited shares, including their sale in 2003, have been explained as far as possible by the terms of Mr Burstall's second witness statement and all relevant documents produced. It is fanciful to suppose that any order requiring that either defendant produces any further documentation or answers any inquiry, in David's case about dividends he may have received 20 years ago, or signs any witness statement in this respect will produce information that would enable Jane to vindicate rights of which she is not already aware, if she considers them worth vindicating.

86. As to the request that any further explanation is given what shares were sold by Bentley Redmayne to produce the figure of £979,783.55. The Schedule in the IHT 135 gives the only answer that is now likely to be available and Burstall explained as long ago as 30 April 2021 that they were having difficulty locating the contract notes for the sale of the investments and associated documentation.

87. To require Mr Burstall or David to produce any further documentation or witness statement in relation to the Estate's shares would go beyond that which is reasonable having regard to the time that might need to be expended on further searches and the lack of resources available to them, the Estate having been distributed. The likelihood of any further information being found as a result is negligible. Jane's enquiries have been lengthy and voluminous and need now to come to an end.

Conclusion as to Estate Documents

88. In the circumstances I decline as a matter of my discretion to make any order for the production of any further Estate documentation.

Judgment

89. This judgment will be handed down by email and a remote consequential hearing will be fixed in due course