

## Cains' Judgment Journal: *Comment from Cains on Isle of Man Judgments*

### Declaratory Relief – Beneficial Interest

---

#### Cains' Comment

Declaratory Relief: When considering whether to grant a declaration or not, the Court had to consider justice to the claimant, justice to the defendant, whether the declaration would serve a useful purpose and whether there are any other special reasons why or why not the court should grant the declaration.

### Cannon v Montpelier (Trust and Corporate) Services Limited (in liquidation), Civil – Chancery Procedure, 13 February 2025

---

In this case, the Court addressed a dispute over the beneficial ownership of a share in Knockdon Limited. The Claimant sought a declaration that this share was held in trust for the Denise Cannon Discretionary Settlement. The case revolved around the informal engagement between the parties, Montpelier (Trust and Corporate) Services Limited, during a time of financial crisis in Ireland.

The Claimant explained that her family had a distant personal relationship with Mr. Gittins, the sole member and director of Montpelier. This connection led to an informal arrangement without formal contracts or fees for advice. However, she later discovered

that Mr. Gittins had registered himself as the beneficial owner of Knockdon Limited, a position she strongly disputed.

Montpelier (Trust and Corporate) Services Limited, represented by its Joint Liquidators, remained neutral in the case, while Mr. Gittins, as a Noticed Party, supported the Claimant's request for declaratory relief.

The Court relied on Rule 10.21 of the 2009 Rules of Court (“the Rules”), which allows binding declarations even if no other remedy is sought. The Claimant had to prove her beneficial interest, as established in previous legal principles, including *Stack v Dowden* [2007] UKHL 17.

Deemster<sup>i</sup> Arrowsmith referred to several precedents, including *Sabri v Montpelier*, 1 December 2023 (unreported) and *Financial Services Authority v John Edward Rourke* [2001] EWHC 704 (Ch). These cases emphasised that the Court must consider justice to all parties, the usefulness of the declaration, and any special circumstances.

In this case, the Court found that the Claimant acted in good faith and that the informal engagement was consistent with her claims. The unique structure of the arrangement and the lack of competing claims supported the declaration. The Court concluded that the share in Knockdon Limited should be declared beneficially owned by the trust, serving a useful purpose and avoiding injustice.

This judgment highlights the importance of clear agreements and documentation in financial arrangements, even when dealing with trusted connections. It also underlines the Court's role in ensuring justice and resolving disputes over beneficial ownership.

The judgment can be found at: <https://www.judgments.im/content/J3316.htm>

# Indemnity Costs in Trust Dispute

---

## Cains' Comment

Indemnity costs: The Court summarised that clear drafting and concise submissions could have prevented this costly trust dispute.

## Group Eleven v Parrot, Civil – Chancery Procedure, 20 February 2025

---

The case addressed the issue of costs following a reserved judgment handed down on 2 December 2024. The dispute was about the administration of *Apple Trust 2011*, which was found to be improperly constituted. In this case, Group Eleven (IOM) Limited, held funds on a resulting trust for the Defendant, Mr Nicholas Parrot. The Court ordered the transfer of these funds to Mr Parrot and addressed the issue of costs in this judgment.

Deemster Corlett said that the case on costs was straightforward and therefore, the length of written submissions from both parties was not necessary.

The Court found in Mr Parrot's favour, as it was proven that the Apple Trust 2011 was never properly established. The litigation stemmed from Group Eleven not having the necessary documentation in place. The Deemster rejected their argument to delay the costs decision until the conclusion of separate negligence litigation, emphasising that the current case stood on its own.

Given the circumstances that led to the dispute, Group Eleven was denied the usual indemnity for costs from the trust fund. However, the Court stopped short of awarding indemnity costs to Mr Parrot, as Group Eleven's conduct did not meet the high threshold of being "unreasonable to a high degree." Ultimately, they were ordered to pay the Defendant's costs, to be assessed on a standard basis if no agreement was reached.

The judgment can be found at: <https://www.judgments.im/content/J3321.htm>

## Relief from Sanctions – failure to pay security for costs

### Cains' Comment

Relief from Sanctions: The Court upholds strict compliance with order for security for costs, rejecting substitute of ATE policy for cash payment in relief application.

### Ballacorey Wheat Limited & Other v Brown & Others, 26 February 2025, Civil – Ordinary Procedure<sup>ii</sup>

This judgment dealt with a relief from sanctions application made by Ballacorey Wheat Limited (“BWL”) after their claims were automatically struck out for failing to pay security for costs by the deadline of July 29, 2024. The application was governed by Rule 2.59 of the Rules, which aligns with the principles established in the English case *Denton v TH White Ltd.*, where a “three-stage test” was used to assess relief from sanctions, which the Court applied in this case:

1. **Assessing the seriousness and significance of the breach:** BWL conceded that their failure to meet the deadline was serious and significant enough to engage Rule 2.59. The Court agreed, as the breach impacted the procedural progress of the case.
2. **Considering whether there was a good reason for the default:** The argument for the delay was said to be caused by the death of BWL’s ultimate beneficial owner and underestimating the time required to obtain After the Event (ATE) insurance. However, the Court found these reasons insufficient, especially as the ATE insurance was not part of the original order, and the Claimant had already been granted an extended payment period.
3. **Evaluating all the circumstances of the case:** BWL emphasised that there was no trial date that would be prejudiced by granting relief and that their application was made promptly after securing ATE insurance coverage. The Court acknowledged these points but noted BWL’s failure to comply with the original order, lack of disclosure of its financial position, and unilateral focus on substituting ATE insurance for cash payments. This conduct was deemed bordering on contemptuous.

Deemster Corlett concluded that the ATE policy was insufficiently robust to provide equivalent protection to cash payments into Court. As a result, the relief from sanctions was denied, and the claims remained struck out.

***Please note that this note does not constitute legal advice but is provided as non-reliance guidance only. For more information on Isle of Man Litigation Law, please contact:*** Robert Colquitt or Tara Cubbon-Wood

---

#### Reference:

<sup>i</sup> The term used to refer to judges in the Isle of Man judiciary.

<sup>ii</sup> Peter Clucas and Tara Cubbon-Wood, acting for the Fifth Defendant (Barclays Bank PLC), although not a party to the application under consideration in the judgment

Jorden Rafferty-Gough, Associate

Cains is the trading name of Cains Advocates Limited, an incorporated legal practice in the Isle of Man. Registered company number 009770V. A list of all the directors' names is open to inspection at Cains' registered office: Fort Anne, Douglas, Isle of Man, IM1 5PD.