

IN THE ROYAL COURT OF JERSEY
(Samedi Division)

BETWEEN	DOROTHY AUDREY BRAKSPEAR	First Plaintiff
	ALISON SHANE BOWLER	Second Plaintiff
	IAN DONALD BRAKSPEAR	Third Plaintiff
AND	NEDGROUP TRUST (JERSEY) LIMITED	Jersey Trustee

AFFIDAVIT OF DOROTHY AUDREY BRAKSPEAR

I, DOROTHY AUDREY BRAKSPEAR, am the First Plaintiff and a natural person, 83 years old, born on 26 July 1934 and I currently reside in Northampton, England with Alison, make oath and say as follows

The Plaintiffs

1. The Second Plaintiff is Alison Bowler (“Alison”) who is a natural person, 57 years old, born on 14 January 1962 who currently resides in Northampton, England. Alison’s husband Andrew has terminal lung cancer and between her full time day job and caring for him, leaves her no time for anything else, which is why I am the main author of this affidavit.
2. The Third Plaintiff is Ian Brakspear (“Ian”) who is a natural person, 59 years old, born on 29 December 1957 and currently resides in Durban, South Africa. Ian intended to be and at all material times was led to believe by the defendant, that he was the settlor of Westley trust and that he had declared a trust on the particular terms he had relayed to ***Nedgroup Trust (Jersey) Limited***.
3. The Plaintiffs are unrepresented litigants and laypersons who have lived most of our lives in Africa, and are totally unfamiliar with Jersey trust and case law. Over the past years we have applied ourselves to reading up on Jersey trust law, but to us as laypersons, large areas remain a mass of impenetrable legalese and special terminology, which we have often found difficult to follow, and at times incomprehensible.
4. I humbly request that should the Court, when reading this affidavit, find that there are errors that

it takes this into consideration. Similarly please excuse the occasional repetition of facts, which we have as found difficult to avoid. I have attempted as best I can to “*signpost the specific allegation/claims*” in this affidavit so that they can be read in conjunction with the Order of Justice as per the Order of Court dated 5 July 2017.

5. All the Plaintiffs are now indigent because of the actions of the Jersey Trustee and thus unable to afford advocates advice or legal representation, in addition we have had to expend our own time and our very limited resources on collecting the evidence to establish a pattern of fiduciary dishonesty and deceit within the greater Nedgroup companies.

THE DEFENDANT

6. Nedgroup Trust (Jersey) Limited (the “**Jersey Trustee** ”) is a company is a incorporated in Jersey whose registered address is 31 Esplanade St Helier Jersey JE1 1FT. The Jersey Trustee is licensed by the Jersey Financial Services Commission to conduct trust company business. Between 1 June 2001 and 14 December 2004 the Jersey Trustee was called Gerrard Trust (Jersey) Limited and between 14 December 2004 and 25 October 2012 the Jersey Trustee was called Fairbairn Trust Limited.
7. In advertising material from Jersey Trustee, it holds itself out as being a ‘**Professional Trust Company**’ and having expertise in the areas of trust company business.
8. The Westley Trust deed is dated 5 May 2004 (the “**Westley Trust**”) and although signed by the Jersey Trustee does not bear the Common Seal of the Jersey trustee. It is a Declaration of Trust and governed by Jersey law. The Jersey Trustee was the trustee of the Westley Trust. (**EXHIBIT 1**)
9. Alison and myself are the named beneficiaries in the Westley Trust deed and Ian was the settlor.
10. At no point in time in all the years of the Westley trust existence were any of Alison or I contacted by the Jersey Trustee to inform us that we were beneficiaries, or to explain to us our rights in the trust deed, and indeed of the trustee’s duties towards us. And the Jersey Trustee never sent any trust account to us until legal action was threatened in 2009.
11. The purpose of the structure for the BVI Company and Declaration of Trust was done under the advice and guidance of the Jersey Trustee to Ian, to allow Ian to invest money he held offshore into a 85 hectare wine farm wine farm (the “**Farm**”) with two other partners in South Africa. The secondary purpose was to assist if possible, Alison and I to obtain residency in South Africa.
12. This matter involves complex multi-tiered offshore structure (uncovered in 2016 in the **Panama Papers**) which was never requested by, and never explained to any of the Brakspear’s as settlor of, or beneficiaries of, the Westley trust - which we submit is dishonest and maybe fraud.

RELATED ENTITIES (Order of Justice Para's 6 – 16)

13. Nedgroup Private Wealth Limited is a Jersey Bank (the “**Jersey Bank**”) whose address is 31 Esplanade, St Helier, Jersey, JE1 1FB. Until December 2004, Jersey Bank was called Gerrard Private Bank (Jersey) Limited wherein it changed its name to Fairbairn Private Bank (Jersey) Limited. The Jersey Bank is licensed by the Jersey Financial Services Commission to conduct deposit-taking business. The Jersey Trustee is a wholly owned subsidiary of the Jersey Bank.
14. Fairbairn Trust Company Limited (“**the Guernsey Trustee**”) is a company incorporated in Guernsey whose registered address is Fairbairn House, The Rohais, St Peter Port, Guernsey GY1 3LT. Since 18 October 2012 the Guernsey Trustee has been called Nedgroup Trust Limited. The Guernsey Trustee is a sister company to the Jersey Trustee. At all material times Fairbairn Trust Company Limited was and is the trustee of the JAM Brakspear Overseas Trust.
15. JAM Brakspear Overseas Trust (“**Brakspear Trust**”) is a discretionary trust governed by Manx law. At all material times the trustee of Brakspear was **the Guernsey Trustee**. The beneficiaries of Brakspear Trust included, at all material times, the Plaintiffs. As of 31 December 2004 the assets of Brakspear Trust amounted to some £1.584 million.
16. Jersey Bank (IOM) Limited (the “**IOM Bank**”) was previously known as Gerrard Private Bank (IOM) Limited. IOM Bank was a company incorporated in the Isle of Man under company number 032816C and was the banker to the Guernsey Trustee. The IOM Bank was a distinct and separate legal entity to the Jersey Bank. IOM Bank was dissolved on 20 September 2012. **Jersey Trustee at all material times fails entirely to distinguish between IOM Bank and Jersey Bank when referring to each and I believe that this is not accidental.**
17. Westley Holdings BVI Limited (“**Westley Holdings**”) is a company that Ian paid for personally in total fees of £4050 on 31 March 2004. It was incorporated in the British Virgin Islands with company number 591405 and its registered address was Akara Building 24 De Castro Street Wickhams Cay 1 Road Town Tortola British Virgin Islands.
18. The shares in Westley Holdings were supposed to be held by a nominee shareholder for Ian, under a declaration of trust.
19. According to the Jersey trustee accounts, Westley Trust purportedly owned the shares in the Westley Holdings. The Plaintiffs are unable to verify how the shares of Westley Holdings came into the Westley trust as there was no fully paid up purchase of the shares of Westley Holdings by the Westley Trust fund as required under the *BVI International Business Companies Act (CAP291)* nor were they settled on the trust by a settlor.
20. However documents from the Panama Papers obtained by the Plaintiffs in 2017, which include the Westley Holdings share register, clearly identify the beneficial owner to be **Gerrards Nominees (Jersey) Limited** and not the Jersey Trustee, a fact never disclosed to any of the Plaintiffs or to any

Court by the Jersey Trustee.

21. In all the years of Westley Holdings existence we and the Directors of the underlying companies in South Africa; have never been informed who the directors of Westley Holdings directors were, when they resigned and who replaced them, they have never communicated to any of the Plaintiffs or the underlying company directors in any form or manner whatsoever and never played any role in managing the South African underlying companies and the Farm.
22. Money Box Investments 0012 (Pty) Limited ("**Money Box**") is a company incorporated in the Republic of South Africa with company number 2004/002945/07. The shares in Money Box are wholly owned by Westley Holdings. Ian was the sole director of Money Box.
23. West Dune Properties 5 (Pty) Limited ("**West Dune**") was a company incorporated in the Republic of South Africa. At all material times, the shares in West Dune were 60% owned by Money Box. Ian was a director of West Dune.
24. Southern Palace Investments (Proprietary) Limited ("**Southern Palace**") was a company incorporated in the Republic of South Africa. At all material times, the shares in Southern Palace were 60% owned by Money Box. Ian was a director of Southern Palace
25. A company incorporated pursuant to the laws of South Africa, called Cross Atlantic (Proprietary) limited, ("**Cross Atlantic**"), owned the other 40% of the issued share capital of West Dunes and Southern Palace.
26. Later the interests of Cross Atlantic were acquired by Money Box, which then came to own 100% of West Dunes and Southern Palace. This was after third plaintiff uncovered a fraud committed by the directors of Cross Atlantic, involving the original purchase of the property and then subsequently another fraud in the operations of the farm.
27. First Rand Bank ("**FRB**") was the South African lender to West Dune that provided the balance of the purchase monies for the Farm, secured by a mortgage over the Farm (the "**FRB Mortgage**").

ACCESS TO INFORMATION

28. The Jersey Trustee refusal to provide the Plaintiffs access to supporting vouchers, receipts etc. for the Westley Trust accounts, which the Jersey Trustee wrote up and supporting resolutions, highlights **an chronically unequal access to information**, and this inequality leaves us (and this Court) at the mercy of Jersey Trustee, whose integrity is entirely at question.
29. In 2009 some 5 years after the fact we, the Plaintiffs and as affected parties have been supplied with some inter-company agreements (all falling under the greater Nedgroup group) between Jersey Trustee and Jersey Bank, and Guernsey Trustee and Jersey Bank, **some of which were unsigned and/or undated and therefore at best legally questionable?**

30. Critically there are no agreements in existence between Guernsey Trustee and Jersey Trustee and not one agreement involving a South African company or any member of the Brakspear family with the Jersey trustee. Nedgroup entities are the only signatures on both sides of all the trust agreements given to us, in the filings to the Courts and the only signature on the Westley Trust deed; it is in other words Nedgroup vs. Nedgroup who then use Brakspear trust and Westley Trust funds to cover up their own egregious and dishonest breaches of trust.
31. During July 2004 Ian, West Dune's and Cross Atlantic were involved in the purchase of the Farm. Below is a summary of documents we have been provided by the Jersey Trustee from 2009 onwards

DEALINGS WITH TRUST PROPERTY (Order of Justice Para's 17 – 32)

32. A Bank loan lending facility of up to ZAR 4 million from the Jersey Bank to the Jersey Trustee of the Westley Trust (the "**Jersey Bank Loan**"). The Jersey Bank Loan was for a term of two years and bore interest on the principal sum at a rate of LIBOR + 1%. (**EXHIBIT 2**)
33. A Guernsey Trustee resolution dated 7 May 2004
- a. provide security from Brakspear Trust to the IOM Bank as security for the Jersey Bank Loan; and
 - b. enter into a Deed of Charge with the IOM Bank in respect of liabilities to the IOM Bank. (**EXHIBIT 3**).
34. It is clear from the Guernsey Trustee resolution above that it was providing security in the course of administration of the Brakspear Trust which was supporting the activities of three of its designated beneficiaries and was not in any way part of a loan agreement to any entity.
35. On 12 May 2004 Ian supplied the Jersey Trustee with tax advice from Price Waterhouse Coopers (PwC) explaining *Foreign Exchange Control Laws of South Africa*. The law stated that foreign loans required prior South African Reserve Bank approval before any loan can be made. PwC advised that the purchase of the shares in the South African company was the preferred option to introduce capital into South Africa (**EXHIBIT 4**).
36. In May 2004 Westley Holdings received an interest free, unsecured loan with no set repayment date of ZAR 3,914,218 million from its "shareholder" (the "**Shareholder Loan** "), The "shareholder" is not named and which was used to invest in the shares of Money Box as per the PwC advice in Para 35 above
37. A counter-indemnity dated 26 May 2004 between Jersey Trustee and the Jersey Bank. In the counter-indemnity Jersey Trustee agreed to pay to the Jersey Bank promptly on demand all liabilities owing to the Jersey Bank only (the "**Counter Indemnity**") (**EXHIBIT 5**).

38. An undated and unsigned Guarantee and Indemnity. The Guernsey Trustee agreed to indemnify the Jersey Bank from the assets of the Brakspear trust for any loss that might arise to the Jersey Bank from the Jersey Trustee 's default on the **Jersey Bank Loan only** (the "**Brakspear Guarantee and Indemnity**") (EXHIBIT 6).
39. Miraculously for the first time a signed copy of the Brakspear Guarantee and Indemnity appeared on 4 October 2012 in an email from Bedell Cristin, some 8 years after it was originally supposed to be signed and some 5 years after the Guarantee and Indemnity was called upon to pay out **£446,649**. It was signed, not by the **contractually named representative of Jersey Bank** a "**Mr David Stearn**" who had left Jersey Bank in 2011 but another current employee. There must be a legal question mark of some magnitude surrounding this document. (EXHIBIT 7).
40. A signed and sealed but undated Deed of Charge over cash wherein Guernsey Trustees in its capacity as trustee of the Brakspear Trust entered into a deed of charge over cash with IOM Bank ("**the Charge**"). The Charge supported only obligations and liabilities that Guernsey trustee of Brakspear Trust owed to **IOM Bank only** an entirely different legal entity to the Jersey bank (EXHIBIT 8).
41. A letter dated 26 May 2004 from Westley Holdings to the Jersey Bank (contrasting with the board resolution below in paragraph 46 stating the loan was only received on 28 May 2008), authorizing the payment of ZAR 3,9million to South African attorneys trust account who were acting for both Cross Atlantic and Money Box in the purchase of the Farm. (EXHIBIT 9).
42. A Letter of Guarantee for £550,000 dated 7 June (EXHIBIT 10), which was
- written on IOM Bank letterhead
 - to be governed and interpreted under IOM law,
 - that the parties irrevocably submit to non-exclusive jurisdiction of the High Court of Jersey
 - signed for and on behalf of Jersey Bank
43. On 5 July 2004 West Dune and Southern Palace purchased the Farm for ZAR 20,9 million through two transactions - the usufruct for a 9 year lease for ZAR12 million (Southern Palace) and the purchase of the bare dominium for ZAR for 8,9 m (West Dunes).
44. Money Box loaned its share premium of ZAR 3,9 million to West Dune in order for West Dune to use as a deposit on the purchase of the Farm combined with another ZAR 3,9 million loan from Cross Atlantic for a total of ZAR7, 8 million.
45. The balance of the purchase price for the Farm of ZAR13, 1 million was provided by First Rand Bank Limited ("**FRB**") in South Africa. The debt was secured by way of a mortgage over the Farm (the "**FRB Mortgage**"). Ian signed a personal surety for West Dune's liabilities to FRB dated 18 May 2004. (EXHIBIT 11).

46. A belated Westley Holdings Board Resolution dated 18 November 2004, which resolved to ratify the acceptance of the interest free Shareholder Loan referred to in paragraph 41 above and to ratify the purchase of shares into Money Box ("**Money Box Share Investment Resolution** ") (**EXHIBIT 12**). This was in alignment with the PwC advice in Para 35 above. Thus no South African Bank approval was required or sought for an offshore loan into either Money Box or West Dunes. Money Box then loaned the ZAR 4 million to West Dunes in order for it to invest in the Farm.
47. A further loan agreement dated 4 October 2006 (the "**Replacement Jersey Bank Loan**"). The Jersey Bank Loan above was superseded and replaced by another lending facility agreed between the Jersey Bank and the Jersey Trustee. This Replacement Jersey Bank Loan was for a sum of £415,000. This sum was inclusive of the balance on the Jersey Bank Loan to date and of unpaid accrued interest. The Replacement Jersey Bank Loan was for a term of two years and bore interest on the principal sum at a rate of LIBOR + 1%. (**EXHIBIT 13**).
48. The 2004 Guarantee was superseded by a further bank guarantee dated 26 September 2006 ("**the 2006 Jersey Guarantee**") (**EXHIBIT 14**). It is clear that the 2006 Guarantee was provided to First Rand by Jersey Bank and not by IOM Bank. Notwithstanding this, the 2006 Guarantee was issued on the basis of the arrangements ancillary to the 2004 Guarantee, including the Deed of Charge whose security was confined to Guernsey Trustee obligations to IOM Bank and did not encompass any obligations to Jersey Bank.

SELF-DEALING

49. In the **Jersey Bank loan** above at Para 32 Jersey Trustee borrowed **ZAR 4 million (approx. £340,817)** at **LIBOR plus 1% for 2 periods of 2 years each** from its parent **Jersey Bank**. **Jersey Trustees** or the "shareholder" then onward lent this money in the **Shareholder loan** as in Para 36 above to **Westley Holdings** (whose directors were also the trustees of Westley Trust) on the following terms - **interest free, no set repayment date and with no security to be provided from the borrower.**
50. No reasonable person borrows **£340,817** at an interest cost and a set repayment date only to lend that same **£340,817** out to a third party interest free and with no set repayment date. **Would the Jersey trustee have acted the same way with their own money?** This action shows Jersey trustees acting without exercising even the most basic duty of care to others, in fact I would go so far as to say they acted with complete disregard to the duty of care which I believe is tantamount to **gross negligence.**
51. In this manner the Jersey Trustees had strongly prejudiced the sustainability of the Trust, and therefore its beneficiaries, since they were at all times aware the Westley Trust would have no income resulting from the loan to Westley Holdings or also that the Trust had no other source of income and yet the Trust was obliged to meet the interest expense of Libor plus 1%.
52. The beneficiaries were unable to pick up on this **loss making investment for the trust**, because the

Jersey Trustee never sent us any trust accounts. From the perspective of the Jersey Bank the borrower (Westley Trust) had a real chance of defaulting given this structure but of course the bank, by virtue of being a related party to both the Westley and Brakspear Trusts was fully indemnified against any losses by the Brakspear Trust **thereby guaranteeing a risk free profit for the Jersey Bank.**

53. Ian, however was operating the under the misapprehension that Brakspear trust had loaned the ZAR 4 million interest free until he received an email from Thomas and Le Pavoux of FTL dated 20 July 2006 explaining that it was a loan from Jersey Bank, which carried an interest rate charge. (EXHIBIT 15). What Mr. Thomas did not tell Ian was that they had onward lent this money to **Westley Holdings interest free**; so he too was unable identify this guaranteed **loss-making investment**. In addition, if one adopts a helicopter view of the entirety of the structure one must further question the actions of the Nedgroup affiliated parties in setting up this structure.
54. In effect by virtue of the incestuous relationships between the Trustees of both the Westley Trust and the Brakspear Trust and Jersey Bank, a structure was created wherein Nedgroup could price for a risk borne entirely by the Brakspear family.
55. If the Jersey Trustee and the Guernsey Trustee had acted in the best interests of the Trusts and the beneficiaries they would have encouraged the Brakspear Trust to grant an interest free loan to Ian and completely omitted Fairbairn Private Bank (Jersey) from the structure. **Not only do the actions of Jersey Trustee and Guernsey Trustee not meet the tests associated with fiduciary relationships but they must come close to a case of unwarranted enrichment by virtue of abusing their fiduciary positions to further advantage their holding company; Jersey Bank.**
56. In sum **the Jersey trustees and the Jersey Bank** slept very well at night, secure in the knowledge that Brakspear Trust would repay the bank **Jersey Bank what ultimately came to £446,649 (approx. ZAR 6,5 million) including interest of £105,832** for a **ZAR 4 million loan** from the Jersey Bank rather than interest free loan from the Brakspear Trust. We submit that Nedgroup through its various entities engaged in **“self-dealing”**, flowing from them acting both as trustees and creditor via its holding company **Jersey Bank**.

BACKGROUND

57. The facts supporting these claims will be presented in chronological order for a number of reasons; firstly to establish the pattern of deceitful behaviour and gross negligence culminating in fraud by the Jersey Trustee. Secondly I am unsure of how much detail must be particularised in relation to fraud, *dol*, deceit and for claims for dishonest and/or fraudulent breaches of trust and fiduciary duty, especially since the facts involves 5 different legal jurisdictions - **Jersey, Guernsey, Isle of Man, British Virgin Islands and South Africa**, making the writing of my affidavit as a layperson extremely difficult.
58. Ian intended to buy a portion of a wine farm (“the Farm”) in South Africa for the purposes of a

property development using funds he had offshore. The structure to invest into development on a wine farm was to be very simple one.

59. However Justin Thomas of Jersey Trustee and Gregory Horton of IOM Bank, advised Ian to purchase an offshore company and to place his South African companies into this offshore company. He could then appoint a nominee shareholder through a declaration of trust (“DOT”) to hold the shares of the offshore company on his behalf.
60. Jersey Trustee further advised that this could be done under a bespoke trust deed and which only needed to be signed by the appointed trustee acting as the nominee shareholder. Justin Thomas and Gregory Horton, advised Ian that with a trust vehicle Ian could play a whole range of tricks in terms of ownership, control and benefit and that a trust can perform it’s “tricks” better than other competing legal entities such as the simple offshore company structure that Ian originally wanted to use.
61. Horton and Thomas informed Ian that when you appoint a Nominee to hold shares on your behalf, your benefits are protected without making your personal details public. Any decision by the trustee regarding any trust property would need Ian’s written consent, as the settlor, as would the transfer of shares, dividend payments etc. Ian was at all times treated as the client and the settlor (**EXHIBIT 16**). Therefore his instructions as the client would be followed at all times and as such he was liable for all the fees and other related cost including all the day to day operating expenses of the Farm, which he subsequently paid. Ian would never have entered into this structure but for the representations made by Horton and Thomas above, and none of the Brakspear family would have paid any monies towards the Farm mortgage and operating costs if we had known the truth.
62. The administrative processes of setting up of the offshore structure were supposed to be quick and easy and to quote Mr. Justin Thomas of Jersey Trustee in his email dated **8 March 2004** (**EXHIBIT 17**) –

“we would be able to have the trust and company structure up and running within five working days”.
63. Ian paid the Jersey Trustee fees of £8810 that included £10 to settle on the trust on 31 March 2004, (**EXHIBIT 18**). This seemed very straightforward but nothing happened in the “*five working days*” as promised by Mr. Thomas
64. Ian was never - at any time point of time - appointed as an agent by the Jersey Trustee or delegated to execute or exercise any of the Jersey Trustees powers - either administrative or dispositive.
65. The financing structure was supposed to be simple as well; the offshore company would make either a loan to a South African company of ZAR4 million (approx.£340,000) or an equivalent investment in the share capital of the South African company, depending on tax advice. Either way

it was to be **one simple accounting transaction each for the DOT and the offshore company.**

66. A guarantee was to be raised from the Brakspear Trust (IOM) in favor of First Rand Bank (South Africa) to help secure further South African financing from First Rand Bank for the purchase of the farm, and in the highly unlikely event the guarantee was called up, funds would be advanced from the Brakspear Trust to First Rand Bank and would be accounted for as a distribution to Ian within the Brakspear Trust. **This too was relatively simple since the Brakspear Trust was supporting the activities of three of its designated beneficiaries through effectively leveraging the beneficiaries existing trust assets.**
67. In the following 6 weeks there was infighting between Guernsey Trustee, Jersey Trustee and the Jersey Bank with emails threatening to report each other to their respective bosses, accusations about commission payments, arguing that the fees for the offshore structure were exorbitant and unnecessary, that the structure was unnecessary, internal allegations by Guernsey Trustee that Jersey Trustee / Jersey Bank was only interested in its fees and not acting in the best interests of their client, arguments over different financing structures and in-house correspondence between certain Nedgroup staff saying the beneficiaries could be put at risk by Nedgroup's actions. This internal communication indicating that the beneficiaries could be at risk only came into our possession in 2012. **(EXHIBIT 19)**
68. Finally in an email by Jersey Trustee, **dated 5 May 2004**, and sent to Ian, the Jersey Trustee responsible for the day to day of Westley trust and Westley Holdings BVI introduced themselves and in a follow up phone call informed Ian that the trust was fully constituted. **(EXHIBIT 20)**
69. What followed in the next 13 years is a horrendous story of Jersey Trustee using its corporate relationship with sister GUERNSEY TRUSTEE (as Trustee of the Brakspear Trust) and the unique ability to conceal and/or mask improper and reckless conduct by virtue of their abusing the fiduciary position of power and control within the Westley Trust.
70. Examples of this abuse of position as Trustees of Westley Trust include
- a) never sending any trust accounts to beneficiaries,
 - b) denying our valid requests for access to material resolutions of the Westley Trust and
 - c) not providing copies of **simple supporting vouchers, receipts or other documents evidencing disbursements and capital transactions/loans in the Westley Trust accounts** which Jersey Trustee as Trustee of the Westley Trust have sworn to in courts in foreign legal jurisdictions
 - d) acting against the best interest of the Plaintiffs and with the intention of avoiding damages claims against them
71. It involves using the provisions of statute intended to prevent fraud, as an instrument for fraud, with one Nedgroup company taking another Nedgroup controlled company to Court in South African and Jersey, using **"liquidation applications"** and a **"subrogation of rights claim"** - all

founded on fictitious loans and transactions that never took place and but all sworn to under oath.

72. The following is a brief overview of false representations from a number of Nedgroup related parties, which were designed to deceive the Courts and to harm the Plaintiff, despite Negropu fiduciary duties; the duty of care and the duty to keep precise and accurate trust records of such transactions. The misrepresentations involving fictitious loans and false transactions, all sworn under oath before various courts, are set out in diagrams contained in **(EXHIBIT 21)**. These misrepresentations include:

- I. The falsely claimed existence of a £400,000 loan from Guernsey Trustee (as trustee for Brakspear Trust) to Jersey Trustee (as trustee for Westley Trust) in May 2004.
- II. The falsely claimed existence of a £500,000 loan from Jersey Bank to Jersey Trustee (as trustee for Westley Trust), in June 2008
- III. The falsely claimed existence of a £500,000 loan from Jersey Trustee (as trustee of the Westley Trust) to West Dunes in South Africa in June 2008.
- IV. The falsely claimed existence of a £340,000 loan from Westley Holdings to West Dunes in South Africa in May 2004.
- V. Jersey Bank being the transferor of a £500,000 guarantee settlement to a South African bank (First Rand Bank) in July 2007.
- VI. Guernsey Trustee (as trustee for Brakspear Trust) being the transferor of £500,000 to Jersey Bank in July 2007 in settlement of the Jersey bank payment in (V) above.

73. None of the above transactions occurred and there are no supporting banking documents, loan agreements or resolutions in any form or manner that the related entities in Nedgroup can produce as evidence in the 6 transactions listed above, **they are pure fiction.**

74. Contradicting absolutely the above-mentioned false representations in Para 72 above are 5 transactions that did actually occur and are proven by Nedgroup own contemporaneous documentation and accounts and for ease of understanding are set out in diagram form **(EXHIBIT 22)**:

- I. The Jersey Bank loan of ZAR 4 million to Jersey Trustee **(EXHIBIT 2)**
- II. The Jersey Trustee Shareholder loan of ZAR 4 million to Westley Holding in the BVI, interest free with no set repayment date **(EXHIBIT 12)**
- III. The Money Box Share Investment Resolution by Westley Holdings BVI of ZAR 4 million into the share capital of Money Box Investments in South Africa in May 2004 **(EXHIBIT 12)**
- IV. Brakspear Trust transferred an amount of £500,000 in July 2007, from its bank account in the IOM to FirstRand Bank in South Africa. **(EXHIBIT 23)**
- V. The Brakspear Trust accounted for the payment to First Rand Bank as a **“distribution”** to lan in the annual Brakspear Trusts accounts for year ending February 2008. This position remains to this day and is a very material fact in understanding the actions by Jersey Trustee that are dealt with below. **(EXHIBIT 24)**

75. Jersey Trustees cannot have it both ways; either the statements sworn to under oath in Para 72 above are false or the Jersey trustee and Guernsey trustees board resolutions and financial statements in Para 74 above are false. **Either way Nedgroup has been caught in a lie and dishonest and deceitful acts.**
76. Nedgroup has persisted for years in making these false statements and continues to do so to this very day, which I contend proves malicious intent.
77. What we have here is a corporate malaise by the Jersey Trustee so cloaked in arrogance; so disdainful of us *"little people"* that Jersey Trustee does not really care one iota about fiduciary relationships. Instead what has occurred is that reckless behavior, inconvenient facts and dishonest actions have been swept under the rug, and material documents omitted by Jersey Trustee.
78. The material omissions and deceit by Jersey Trustee caused a slight change of the facts, which in turn led to a completely different outcome from various Courts as opposed to if the truth was told. This is particularly insidious when done by professional trustees who then direct their efforts and avoid the consequences of their deceit and reckless behavior and seek to blame us – the beneficiaries and laypersons – conduct that is repugnant to the trust concept.
79. From **5 May 2004** and for the **next five years** at all times the Jersey Trustee sought Ian's written permission or approval for any action regarding the Westley Trust property or to release confidential information to a third party, treating him at all times as the beneficial owner
80. The first request by Jersey Trustee (one of many) for written permission or approval by Ian, was sent on **30 June 2004 (EXHIBIT 25)** by Jersey Trustee's Debbie Pilz who asked Ian

"As the information they have requested is highly confidential, I should be most grateful if you would confirm in writing, whether or not you are happy for the Trustees to disclose such information"

At no point in time did Ian have any reason to believe that either or any of Mr. Horton and Mr. Thomas had given him as the **settlor** of Westley Trust, any misleading advice or information relating to the terms of the declaration of trust, its underlying structures and his legal beneficial ownership of them.

81. For 4 years Ian, with the help of Aliosn and myself, paid all the operating expenses of the farm, the legal expenses, rezoning costs, development and planning costs and the mortgage payments out of our own pockets.
82. Ian's management of the farm involved him flying from Durban to Cape Town every second week, sometimes every week (2 hour flight one way) for 4 years, taking him away from his then young children for days on end. This was time spent and expenses paid that we would not have done but

for trusting and following the misleading and negligent advice given by Mr Horton and Mr Thomas at the outset which was that Ian was the beneficial owner of the farm.

83. In April 2005 it was discovered that a fraud had occurred in setting the purchase price of the Farm (the sole asset of Westley trust) Cross Atlantic directors. Ian also conducted a review of the management of the Farm with West Dunes auditors NOLANS. This review revealed that there had been false accounting in respect of the Farm's business and financial misappropriations from it on a large scale by Cross Atlantic directors and the Farm manager. This financial misappropriation was from monies the Brakspear had paid personally for the day-to-day operating cost of the farm. Moreover, it transpired that the Farm's assets were not nearly as extensive as had originally been thought.
84. From April 2005 onwards, Ian in full belief that he was the ultimate owner of the Farm gave up his own personal job and his only source of income, to take over the operations of the farm personally.
85. In October 2005 Ian issued criminal charges against Cross Atlantic directors
86. On 11 July 2006 Ian was successful in getting permission from the Stellenbosch Municipality authorities for 14 hectares of the farm to be rezoned and subdivided **increasing the value of the farm substantially and ultimately the assets of Westley trust (EXHIBIT 30)** notably as this was the first farm in 5 years to be granted such permission.
87. Estate agents valued the 14 hectares alone at ZAR 14 million (approx.£1million). The end result was that considerable interest was generated to purchase the whole Farm. Ian had turned a potential investment disaster due to the frauds by the ex partner and farm manager, into a lucrative business opportunity for property developers for hotel development, housing etc. However the legal battles with Cross Atlantic continued at great expense to Ian.
88. In July 2006 Cross Atlantic and the farm manager took Ian to the Cape High Court (*case No 10815/06*) for a Spoliation Order. The spoliation order was dismissed by the High Court with costs for Ian in October 2006.
89. Ian then had to go back to Cape High Court to obtain an eviction order, which was granted by the Court, against the Cross Atlantic directors and the farm manager, and they were ordered to vacate the farm by **31 May 2007**. Ian personally paid for all the legal fees in these two court cases and the entire operating cost of the farm during this 2-year period – April 2005 to May 2007
90. As well as running the farm, Ian also consulted with various architects and town planners to develop plans for a boutique hotel to be built on a portion of the farm and for the rest of the farm to be subdivided into smaller boutique wine estates. Justin Thomas of Jersey Trustee who was well aware of the time effort and expense Ian was incurring in developing the Farm to reach saleable status, wrote in an email dated 20 July 2006 to Ian.

"I truly wish you well in your endeavors to sell the farm. Lord only knows how you have managed to cope with the stress over the last two years." (EXHIBIT 26)

91. At no point in time did Mr. Thomas inform Ian that Ian had no beneficial or equitable interest in the farm and, in fact quite the contrary he wished Ian *"Well in your [Ian] endeavors to sell the farm"*.

THE TRUSTEE'S NEGLIGENCE IN FAILING TO AMEND THE 2006 GUARANTEE (Order of Justice Para's 34 – 43)

92. In July 2006 Ian asked for the 2004 IOM Guarantee to be renewed.

93. Mr Thomas then requested Ian seeks a further £30,000 from the Brakspear trust so that they could raise a new guarantee for First Rand Bank on West Dunes behalf. In a follow up email on 20 July 2006, Thomas confirmed the telephone conversation and further explained to Ian why the structure and bank lending had to be put into place and not an interest free loan from Brakspear Trust. (EXHIBIT 27)

94. It must be noted that the £30,000 request was not an arrangement or an agreement between Jersey Trustee as trustee of Westley Trust and Guernsey Trustee as trustee of Brakspear Trust but between Ian as a beneficiary of Brakspear trust and Guernsey Trustee as trustee of Brakspear trust. In effect Jersey Trustee were further encouraging Ian to spend his own money ostensibly on the basis he was the beneficial owner of the Farm.

95. On the 3 August 2006 Mr Thomas sent another email and asked Ian if he had arranged the £30,000 from the Brakspear Trust or if he has spoken to Braam Fouche the South African investment advisor for the Brakspear Trust to do so. (EXHIBIT 28)

96. On the 4 August 2006 an Ms Debbie Pilz from Jersey Trustee sent Ian an email asking him if he had arranged the *"additional £30,000"* yet. (EXHIBIT 29)

97. My son Ian, as a beneficiary of Brakspear trust and not as a Director of West Dunes, requested via the South African advisor Mr Braam Fouche that Guernsey Trustee as trustees of the Brakspear Trust release a further £30,000 so that a new guarantee for £500,000 could be issued.

98. The Guernsey trustee Sharon Gaudion wrote back on the 4 August 2006 and stated that Guernsey Trustee would *"require a signed letter from the principal beneficiary (Ian)"* and *"Trustees would not have a problem with granting this loan"* and *"Please clarify that the trustees would be required to increase the guarantee by GBP 30,000 to enable Fairbairn Private Bank to release a further GBP 30,000 to Ian"*. (EXHIBIT 31)

99. Ian then sent a signed letter as a beneficiary of Brakspear Trust on his own letter head and not on

the letter head of any other legal entity, or on behalf of any other legal entity, on 22 September 2006 to the Brakspear trust investment advisor in South Africa as requested by the Guernsey Trustee Sharon Gaudion for the loan to Ian. **(EXHIBIT 32)**

100. On the 9 October 2006 Jersey Bank Jersey issued “2006 Jersey guarantee” to FirstRand Bank in South Africa for £500,000.

101. On 16 March 2007 FRB requested that the form of the 2006 Jersey Guarantee be altered as per FRB’s international requirements. FRB stated that despite request to the Jersey Trustee they had failed to amend the 2006 Jersey Guarantee and the failure to amend the 2006 Guarantee constituted a breach of the terms and conditions of the FRB Mortgage

*“A guarantee dated 9 October 2006 was furnished to us, however it did not comply with FirstRand International prescribed format. **Fairbairn Private Bank was requested to have the guarantee altered** as per FirstRand International requirements. The principal debtor has omitted to furnish us with the requested guarantee This constitutes a breach of the term and conditions of the loan agreement and mortgage bond registered as security for its obligations Despite demand the principal debtor has failed to remedy the breach” **(EXHIBIT 33)***

102. On 18 April 2007 FRB after negotiations between West Dunes lawyer and FRB, FRB agreed not to call on the 2006 Jersey Guarantee subject to a condition that the Jersey Bank, or its wholly owned subsidiary the Jersey Trustee, **(EXHIBIT 34)**

- a. Rectify the wording of the 2006 Jersey Guarantee within 30 days and
- b. That the Plaintiffs pay the monthly mortgage of ZAR166, 000.

103. The Plaintiffs paid the monthly mortgage of ZAR166, 000 as per the agreement with FRB **(EXHIBIT 35)**

104. In breach of its duty of the Jersey Trustee’s duty of care, skill and diligence, the Jersey Trustee failed to rectify the 2006 Jersey Guarantee within 30 days or at all.

105. On 4 July 2007, by reason of the Jersey Trustee’s failure to amend the 2006 Guarantee, FRB called upon the 2006 Jersey Guarantee from the Guernsey Trustee **(EXHIBIT 36)**. However, **2 points are critical at this juncture;**

- a. Firstly the 2004 IOM Guarantee to First Rand in respect of West Dune’s liabilities had lapsed and been superseded by the 2006 Jersey Guarantee issued on 26 September 2006,
- b. Secondly according to FRB communications, the 2006 Jersey Guarantee was not valid due to incorrect wording.

106. On 5 July 2007 the Guernsey Trustee of Brakspear Trust paid £500,000 from Brakspear trust

accounts with IOM Bank to FRB. **(EXHIBIT 23)**

107. This payment was recorded as a distribution of £500,000 from Brakspear trust to the Ian (the “Distribution”) in the Brakspear trust accounts for the year ending 28 February 2008 and the Brakspear trust assets reduced accordingly. **(EXHIBIT 24)**

108. Guernsey Trustee as Brakspear Trustee informed various Brakspear trust beneficiaries of the £500,000 distribution to Ian, by telephone on the 5 July 2007 and then that was followed upon the same day in an email by Ms Gaudion of Guernsey Trustee stating that £913,000 has been paid away from the cash of the Brakspear Trust **(EXHIBIT 37)**. It subsequently turned out that only £500,000 was paid out. At no point in time did Guernsey Trustee indicate in writing or verbally that this was not a distribution or that any third party would be liable to repay the £500,000 back to the Brakspear trust. This position remains until today.

109. The sum of £500,000 that Brakspear Trust paid was classified as a “*permanent provision*” by way of a “*distribution*” to Ian in the Brakspear Trust accounts just as per the advice given by Mr Horton, Mr Thomas and Mr Goddard back in 2004 when setting up the Westley trust structure and emphasized again in July 2006 by Mr Thomas. It was a distribution by the Brakspear trust to a beneficiary of the Brakspear Trust and the Brakspear beneficiaries accepted this distribution.

110. Furthermore Guernsey Trustee’s contemporaneous documentation clearly shows this to be the case and the following facts below are irrefutable:

- i. Guernsey Trustee’s minute dated 7 May 2004 shows that Guernsey Trustee (as trustees of the Brakspear trust) provided security in the course of administration of the Brakspear Trust and not in any way as part of a loan agreement. **(EXHIBIT 3)**
- ii. Guernsey Trustee minute dated 22 September 2006 (as trustees of the Brakspear trust) shows that Guernsey Trustee provided security in the course of administration of the Brakspear Trust and not in any way as part of a loan agreement. **(EXHIBIT 38)**
- iii. Guernsey Trustee financial accounts for the Brakspear Trust for the period ending 29 February 2008 (prepared by Guernsey Trustee as trustees of the Brakspear Trust) account for the payment of £500,000 on 5 July 2007 as being a “Distribution IB”. This amount was included in the £565,000 accounted for as “*Non-Investment transactions - GBP*”. **(EXHIBIT 24)**
- iv. The assets of the Brakspear trust were reduced accordingly in the financial accounts from £1,646,884 in the year ending 28 February 2007, to £1,119,776 in the year ending 29 February 2008, as per generally accepted accounting practises. The financial accounts of the Brakspear Trust for the year ending 29 February 2008 were written up by Guernsey Trustee as trustees of the Brakspear some 8 months after the £500,000 distribution on 5 July 2007,

more than enough time to rectify any transactional mistake should there have been one.
(EXHIBIT 24)

- v. There is no record of a loan of £500,000 to any persons or legal entity in the Brakspear trust accounts for the year ending Feb 2008 or in any subsequent years of the Brakspear Trust financial accounts.
- vi. From the date of the distribution on 5 July 2007 there has never been any communication from the Brakspear Trustee (Guernsey Trustee) to any beneficiary stating that the £500,000 was not a distribution, or that there was an error or that the Guernsey Trustee as trustee of Brakspear Trust had changed their mind regarding the nature of this transaction.
- vii. Given **the import of this I repeat there is no record of any reversal of the “distribution” in any Brakspear trust accounts** in the years subsequent to the initial recording of the distribution to Ian.
- viii. In addition Guernsey Trustee’s trust accounts for the Brakspear Trust in the guarantee periods prior to the £500,000 distribution on 5 July 2007; did not show any contingent liability to Jersey Trustee, Jersey Bank Jersey or any other person in respect of this sum or any other sum. SSAP¹ 18 - defines contingency “*as a condition which exists at the balance sheet date where the outcome will be confirmed only on the occurrence or non-occurrence of one or more uncertain future events*”. **(EXHIBIT 39)**

- 111.** Jersey Trustee as trustee of Westley trust was also aware that the £500,000 was accounted for as a “*distribution*” to Ian, in or around May 2008 Mr. Thomas phoned Ian and asked him how the £500,000 was accounted for in the Brakspear trust accounts and Ian told him as a “*distribution*”.
- 112.** At no time before the “*distribution*” to Ian on 5 July 2007 did Jersey Trustee act or make any statements to the Westley trust beneficiaries or to the Directors of the underlying companies that Jersey Trustee was liable for the repayment of £500,000 to a third party. This too is irrefutable.
- 113.** On 14 May 2008, in internal correspondence from Jersey Trustee (as trustee of Westley trust) and signed by Justin Thomas and Christopher Roscouet, to Guernsey Trustee (in its capacity as trustee of the Brakspear trust) the following is stated; **(EXHIBIT 40)**

“For the avoidance of doubt the trustees do not² recognize any liability due to the JAM Brakspear Trust”,

¹ Statements of Standard Accounting Practice

² Underlining and bold face inserted by Jersey Trustee in the letter to Guernsey Trustee and not by me

114. This internal correspondence confirms absolutely that Jersey Trustee, as trustee of Westley trust owed no monies to Guernsey Trustee as trustee of Brakspear trust. This internal correspondence was written up some 11 months after the “distribution” was paid on 5 July 2007 and some 3 months after the 29 February 2008 financial accounts of Brakspear trust were written up, accounting for the £500,000 payment as a “distribution”.
115. Jersey Trustee have been unable to refute the above facts to any of the Plaintiffs despite many requests to do so.

THE TRUSTEE’S GROSS NEGLIGENCE IN RELEASING CONFIDENTIAL TRUST INFORMATION (Order of Justice Para’s 44 – 50)

116. On or around 19 August 2007, West Dune received an offer to buy the Farm from a South African company for ZAR 37.75m (approximately £2.7m). **(EXHIBIT 41)**
117. Ian, as West Dune’s sole director, notified Jersey Trustee (as trustee of Westley Trust) as to the terms of the offer and that West Dunes had accepted it.
118. During the course of the sale of the Farm, Jersey Trustee as trustee of Westley trust made a **serious breach of trust and confidentiality**, being unable to differentiate between West Dunes lawyer and the lawyer for the purchaser. It gave away **commercially sensitive trust information** to the purchaser’s lawyer.
119. In an email dated 30 November 2007 from Jersey Trustee’s Managing Director and trustee of Westley trust, a Mr Justin Thomas (“Jersey Trustee’s MD”), wrote to both Ian and Mr Bhyat (purchaser’s lawyer) and stated: **(EXHIBIT 42)**

“I am writing to advise you that Fairbairn Private Bank have extended the loan facility granted to Fairbairn Trust Limited as trustee of the Westley Trust (the “Trust”) until 28 February 2008. Interest is being accrued and amalgamated with the principal and as at today’s date, the balance outstanding is £427,401.86.

As you are aware, the Trust does not have sufficient liquid assets to repay the loan unless it receives the proceeds from the sale of the farm. It is important, therefore that the sale is progressed as soon as is reasonably possible as the Bank will not provide a further extension on the loan and will be seeking full repayment on 28 February 2008. If the Trust is not put in funds by this date, the terms of the loan are such that the Bank is able to call upon the cash collateral being held as security for the loan, in order to offset the debt

.I therefore look forward to receiving an update on the sale of the farm as soon as possible, together with the anticipated timeframe for receiving the sale proceeds.”

120. In an follow up email also dated 30 November 2007, the Jersey trustee Mr. Thomas admitted his

error in sending the email containing confidential trust information to the buyers attorney, apologized and that it would do anything to ameliorate the error and help fix things up – it relevantly reads as follows: **(EXHIBIT 43)**

“Once again I can only apologise for our error

....

Please accept my heartfelt apologies and as I said if there is anything I can do to rectify the matter I would be happy to assist.”

- 121.** After having been alerted to the fact that the seller was in a tough position Zamien then withdrew the Offer without explanation and West Dunes subsequently suffered considerable loss.
- 122.** The Plaintiffs believe that the Offer was withdrawn because Zamien was on notice of Westley Trust and therefore West Dunes faced liquidity difficulties (as so eloquently outlined by Mr Thomas in his missive to their lawyer) and that the buyer rationally considered that it could ultimately acquire the Farm in a forced sale at a greatly reduced price.
- 123.** The farm was then put up for auction on 14 June 2008 at the instance of First Rand Bank because Jersey Trustee as trustee of Westley trust had not issued a new guarantee with the correct wording in the 30-day period as required, even though Brakspear family had been paying the monthly mortgage.
- 124.** On or around 14 June 2008, the prospective buyer who had offered ZAR 37.75m (approximately £2.7m) in August 2007, purchased the Farm from West Dune at auction for ZAR 18m.
- 125.** The Plaintiffs held the Westley Trustees responsible for loss suffered as a result of the actions by Mr Thomas of Jersey Trustee, which after settlement of the outstanding mortgage and loan to Money Box would have been **ZAR 20 million (approx. £1,4 million)**. The plaintiff made Jersey Trustee aware of their intention to seek recompense for the loss
- 126.** The Plaintiffs believe that the contrived liquidation of West Dunes (expanded on below) was a dishonest act orchestrated by Jersey Trustee in its capacity of Westley trust to prevent West Dunes or any member of the Brakspear family from making a substantial damages claim against Jersey Trustee for losses suffered as a result of its egregious breaches of trust.

RECALL AND REPAYMENT OF THE JERSEY REPLACEMENT BANK LOAN (Order of Justice Para’s 51 – 53)

- 127.** On or around 29 July 2008 the Jersey Bank recalled the Replacement Jersey Bank Loan from the Jersey Trustee. No basis for the recall is set out and I can find no breach or default in the terms of the Jersey Bank Loan documentation.
- 128.** On 30 July 2008, the Jersey Bank called on the **unsigned and undated Brakspear Guarantee and**

Indemnity and **£446,649** from Brakspear Trust IOM account was deposited into an unknown “*call account*”.

129.The Westley trust accounts for the year ending 28 February 2009 record a settlement of a bank loan of **£446,649** “*from a third party*” and this amount is accounted for as an addition to capital in the financial statement.

130.However by reason of this payment from Brakspear trust, the Replacement Jersey Bank Loan was paid in full and there were no outstanding liabilities by the Jersey Trustee/Westley Trust to the Jersey Bank and the Jersey Bank had suffered no losses. Performance by Brakspear Trust for the unsigned and undated Guarantee and Indemnity had been completed in full.

131.The **£500,000** distribution to Ian and paid to West Dunes directly increased the assets of Westley Trust by a corresponding amount as did the addition to capital of **£446,649**. **No loss or harm was suffered by any entity in the Nedgroup stable of trust companies and banks.**

DISHONEST BREACH OF FIDUCIARY DUTY AND CONSPIRACY TO INJURE (Order of Justice Para’s 54 – 61)

132.In November 2008, before transfer of the farm could take place to the purchaser for ZAR18 million, Ian as Director of West Dunes received an improved offer from a well-known South African businessman Mr Johan Rupert’s company Applemint, to purchase the company West Dunes for ZAR 500,000 and pay West Dunes creditors up to a value of **ZAR 25,000,000 (£1,78 million) (EXHIBIT 44)**. This being despite the fact that the Farm had already been sold by way of auction as dealt with in Para 124 above. **(EXHIBIT 44)**

133.Ian, as West Dune’s sole director, and as Director of Money Box notified Jersey Trustee of the terms of this second Offer and that he as director of Money Box and as an interested creditor in West Dunes was going to accept it.

134.In an email dated 8 December 2008, West Dune’s then lawyer in South Africa, Mr Nico Le Roux, received an email from another South African lawyer named Mr Steven Levetan of Messrs Edward Nathan Sonnenbergs (which was marked “**WITHOUT PREJUDICE**” but cannot be privileged in the present or any proceedings) who stated that he was acting for. **(EXHIBIT 45)**

“Fairbairn Private Bank, Fairbairn Trust Company (Guernsey Trustee) of Guernsey, Fairbairn Trust Limited (Jersey Trustee) of Jersey, Westley Holdings Limited, the Westley Trust, the JAM Brakspear Overseas Trust, the trustees of these two trusts as well as the individuals representing these entities in the various transactions that you and I have discussed”

(Together those entities are referred to as the “*Fairbairn Group*”).

135.The first point to be made here is that the **grouping of individuals and entities under the Fairbairn group is comprised entirely of the related parties** dealt with in this document. The second point is that given the intertwined business relationships dealt with previously (**borrower, lender and banker**), these parties could not have conceivably have had consistent objectives in fiduciary duties to each of their principals. **This is clearly collusion by the Fairbairn Group and its shareholders and a dishonest breach of fiduciary duties by Jersey Trustee and Guernsey Trustee of absolute loyalty to the beneficiary.**

136.The letter further stated that **the Fairbairn Group and its shareholders** would agree to the offer of ZAR 25,000,000 (£1,78 million), provided that (a) they received at least **ZAR 1,000,000 (approx. £71,000)** from the transaction and (b) that Ian and I:

*“...unequivocally waive and abandon any claims which they allege they are entitled to against any of my clients. **This waiver and abandonment must also extend to the shareholders of Guernsey Trustee and Jersey Trustee.** In addition, both Mr Ian Brakspear and Mrs Dorothy Brakspear must confirm that they will not receive any further financial benefits from the two trusts referred to above.”*

137. In its entirety the positions taken by the Fairbairn Group are tantamount to extortion and deceit on trust beneficiaries by a trust company (in the case of Jersey Trustee attempting to subvert the rights of beneficiaries to claim for gross negligence by the trustee being Jersey Trustee itself) and must surely be a first in Jersey – a well respected, strongly regulated international financial centre of long standing.

138.Additionally, the letter also stated that its author was

*“...in receipt of instructions to issue a letter of demand from to West Dune Properties on behalf of **Fairbairn Private Bank** to claim full repayment of the residue of the proceeds of the current sale in order to reimburse **Fairbairn Private Bank** a portion of the monies drawn down on the guarantee which it issued in favour of Rand Merchant Bank for the liabilities of West Dune Properties in the sum of GBP500, 000, and which was drawn down in July 2007.”*

This is of **major import** since it has been shown above **that Brakspear trust and not Jersey Bank** met the guarantee that was called up by First Rand Bank.

139.The consent, release or ratification of a breach of trust, we understand, cannot be induced by illegal and improper demands of Fairbairn Group and its shareholders.

140.**This conduct was not in the interest of the beneficiaries but only in the best interests of the Fairbairn Group and their shareholders.** Jersey Trustee as trustee of Westley trust with fiduciary obligations had a duty not to act in concert with its associate companies and observe strictly the Chinese wall arrangement, which it did not do. **This is tantamount to a conspiracy to defraud**

141. Even worse Jersey Trustee were being deceitful by their involvement in admitting that Westley trust asset West Dunes was indebted to a third party when it was not. This deceit diminished the value of the Westley trust and goes exactly against their fiduciary role in Westley trust. Jersey Trustee acted only in the best interest of itself and the Fairbairn Group.

142. On 12 December 2008 Ian and I instructed West Dunes attorney to inform Defendant attorney that no debt of GBP500, 000 was owed to Jersey Bank by West Dunes, that both of us declined to waive and abandon any claims against the various legal entities, declined to confirm that that we will not receive any further benefits from the Westley trust and Brakspear trust and that West Dunes intended to sue Jersey Trustees for damages and losses for the “admitted” negligence by Jersey Trustees.

143. Immediately after Ian and myself refused to accept the unlawful demands from the Jersey Trustee and of West Dunes intention to sue for damages, the Jersey Trustee commenced legal proceedings on 23 December 2008 in South Africa (proceedings No 16790/2008) to place West Dune into liquidation for the non-payment of fictitious debts owed to the Jersey Trustee.

WEST DUNES CONTRIVED LIQUIDATION- FRAUD BY FALSE REPRESENTATION (Order of Justice Para’s 62 – 82)

144. It is our understanding that there is a number of ways in which fraud can be committed

- a. Fraud by False Representation which false representations “*connotes at the minimum an intention on part of the trustee to pursue a particular course of action, either knowing that it is contrary to the interests of the beneficiaries or being recklessly indifferent whether it is contrary to their interests or not*” (Millet LJ Armitage v Nurse 1998)
- b. Fraud by Abuse of Position which occurs when the defendant occupies a position where he or she is expected to safeguard, or not to act against, the financial interests of another and dishonestly abuses that position with the intention of making a gain or avoiding a loss.

145. On the 19 December 2008 Mr Justin Thomas as director of Jersey Trustee and Mr Greg Horton who claimed he was director of Jersey Trustee, but who was the managing director of the IOM Bank (thus creating a serious conflict of interest) and who was living in the Isle of Man, signed a trustee resolution authorising Nico Theo Botha to make an application for the liquidation of West Dunes “*to prove the Trust and/or the Company’s claims*”, none of which claims were specified in any amount in the resolution dated 19 December or supported by previous trustee resolutions or loan agreements. **(EXHIBIT 46)**

146. On 23 December 2008 Jersey Trustee as trustee of Westley trust filed a Notice of Motion in the High Court of South Africa to liquidate an underlying company West Dunes for a fictitious loan that it had supposedly made to West Dunes for the sum of £500,000 in June 2008. **(EXHIBIT 47)**

147. Given the date chosen to launch the application one must question why the matter was so urgent as to have to be heard two days before Christmas – this smacks of legal chicanery.
148. Given the position taken by Jersey Trustee as outlined in **Para 113 above** wherein they as Trustees informed the Guernsey Trustee that there was no indebtedness between the two trusts arising from the settlement of £500,000 2006 Jersey Guarantee by the Brakspear Trust, this action is simply unbelievable in its audacity.
149. It is also **contradictory** to the “*extortion*” letter dated 8 December 2008, which stated the £500,000 was owed to **Jersey Bank Jersey** – a completely different legal entity.
150. Jersey Trustees have stated in writing at various differing times and with no supporting loan documentation that 2 separate legal entities are owed the same £500,000, which highlights a pattern of deceitfulness.
151. As to the intent of Jersey Trustee in bringing the liquidation application - this is simple one can hurt someone, as much through deceit as through violence and deceit being surreptitious, often brings results that violence cannot. Corporate deceit causes damage on a scale far greater than that of individual crime. Deceit is tempting moreover because it comes so easily at first. One word spoken instead of another, a document backdated so as to deflect inquiry, a false claim made in court, figures altered in a financial statement – these neither call for any physical effort nor arouse immediate suspicion.
152. So having failed at the attempt to agree not to affect any damages claims against Jersey Trustee (arising from the gross negligence of Mr. Thomas), the next best thing to do was to effectively destroy the legal entity that would have to bring the damages claim and this was West Dunes. Legal chicanery and deceit of the first order.
153. To prevent any analytical difficulties we have clearly identified below, the false statements contained in affidavits before the Courts in South Africa and Jersey and in correspondence to the beneficiaries

(A) £500,000 fictitious loan

154. The **fraudulent misrepresentations** by Jersey Trustee in an affidavit to the South African High Court on 19 December 2008 are: **(EXHIBIT 47)**
- a. At Point 10 *“In and during 2004 Jambot (Brakspear Trust) advanced the sum of £400 000 to the Westley Trust. The Westley Trust owns the entire share capital of Westley Holdings Limited (“WHL”), a company incorporated in the British Virgin Islands*
 - b. Then at Point 15 *“In and during June 2008, the Westley Trust lent and advanced the sum of £500 000 to the respondent (West Dunes) at the latter’s special instance and request. This*

amount is due and payable but the respondent is unable to repay it. The claim of Westley trust is unsecured. The current value of the claim of the Westley trust is in excess of R7 000 000."

155. These statements are false and deceitful and cannot be supported by any trustee documentation or signed loan agreement because no such loan was made in June 2008 or prior to that date.

156. Then **further fraudulent misrepresentations** under oath in an affidavit to the South African High Court on 13 March 2009 (**EXHIBIT 48**)

At Point 10 "Although the sum of £500 000 was paid directly by Fairbairn Private Bank (Jersey) to First Rand Bank (South Africa) this payment was pursuant to an agreement between the Westley Trust and Fairbairn Private Bank (Jersey) in terms whereof Fairbairn Private Bank (Jersey) advanced the sum of £500 000 to the Westley Trust"

157. This is also false and deceitful and there are no loan agreements between Jersey Trustee and Jersey Bank, and Jersey Bank did not transfer £500,000 to Jersey Trustee (as trustee of Westley Trust).

158. Then **another fraudulent misrepresentations** under oath in an affidavit to the South African High Court on 17 March 2009 (**EXHIBIT 49**)

At Point 13 "Accordingly, the creditor (Jersey trustee of Westley Trust) borrowed the sum of £500 000 from Jersey Bank (Jersey Bank) which it then advanced to the company (West Dunes). I refer in this regard to NB3 and in particular to the balance sheet at page 3 thereof which refers to "Creditors and accruals" in the sum of £500 000. Note 5 to the financial statements (which appears at page 5 of annexure NB30 reflects the creditor to be Jersey Bank in the sum of £500 000."

159. This statement is deceitful and no legal creditor-debtor relationship exists between Jersey Bank and Jersey Trustee, or between Jersey Trustee and West Dunes, this too is irrefutable and the Westley trust accounts are false. Given that Jersey Trustee compiled the Westley Trust financial statements, **which are not authenticated, dated or signed and thus the author is not identified.** One cannot place any reliance on these accounts, which are clearly false and misleading.

160. It is my understanding that it is well held in law that a transfer of property (**the £500,000 distribution to Ian in July 2007**) is said to be *complete* and *irrevocable* when it is no longer **rescindable or amendable** i.e. when the transferor (**Guernsey Trustee as trustees of Brakspear Trust**) has totally relinquished all dominion and control over that property or that the property is out of control of the transferor (**Guernsey Trustee as trustee of Brakspear Trust**) and has gone beyond the point of no return

161. As far as I can ascertain there is no Jersey or Guernsey law that allows the trustee (**in this**

instance **Guernsey Trustee as trustee of Brakspear Trust**) a specific period of time after a transaction to change their mind regarding the nature of the transaction i.e. the transaction is incomplete until a specific time period has past.

162. Nor can we find any law that allows Guernsey Trustee to convert a **£500,000 distribution** to a beneficiary of that trust, into a **£500,000 undocumented loan** by Jersey Bank to the Jersey Trustee (as trustee of Westley trust) who then again onwards lends the **£500,000 in another undocumented loan** to West Dunes in South Africa -1 ½ years after the original transaction took place.

(B) £340,000 fictitious loan

163. This fraud committed against West Dunes Properties is an exceptional fraud for many reasons. One of the reasons is that it is such an easy fraud to prove.

164. Again to prevent any analytical difficulties I have clearly identified below, **fraudulent misrepresentations** the directors of Westley Holdings Limited (whose directors are the same persons who are the Jersey trustees) made under oath in an affidavit to the South African High Court on 23rd April 2010 are: **(EXHIBIT 50)**

- a. At Point 6 *“The company (West Dunes Properties), which has been placed in liquidation, was at the date of the provisional liquidation and still is, indebted to the creditor (Westley Holdings Limited BVI) in the sum of R3 914 218.37, being in respect of monies loaned and advanced by the creditor to the company at the latter special instant and request (“ the claim”). The claim was to be repaid by the company when it was in a position to do so.*
- b. At Point 13 *“As at the date of the provisional winding-up of the company (West Dunes Properties), the company was indebted to the creditor in the amount of R 3 914 218.37, being the amount loaned and advanced by it to the company on 28 May 2004.*

165. Westley Holdings BVI never entered into a loan agreement with West Dunes for the sum of ZAR 3,914,211 (**£340,817**) or any other sum. This statement is an outright lie and is a fraud on the West Dunes, the Plaintiffs and on the genuine creditors of the West Dunes.

166. To prove this **£340,000** fraud, the Court only needs access the following Westley Holdings contemporaneous documentation given to the beneficiaries and all written up by Jersey Trustee –

- a. The Share Investment Board Resolution (**Para 47 and EXHIBIT 12**) signed on 28 November 2004 by Westley Holdings directors (Mr. Justin Thomas and Mr. Christopher Roscouet - all employees of Nedgroup in Jersey) ratifies the purchases of 100 shares in Money Box Investments South Africa for **ZAR 3,9 million or £340,000**
- b. **Westley Holdings financial accounts** for nine years period (2004 -2013) and recorded under **Fixed Assets** are: *assets of £324,257*, which are described in the Notes to the

Balance Sheet as **“fully paid shares in Money Box Investment (Cost ZAR 3,914,211)”**
(EXHIBIT 51)

- c. **Westley Holdings financial accounts** for the same nine year period – show no loans to West Dunes and **do not record West Dunes Properties as a creditor at any point in time**
- d. This was supported by an affidavit put to the Royal Court of Jersey, dated **11 December 2015** by Mr. Christopher Roscouet (an employee of Nedgroup) who states the following at 34.1 *“ The Westley trust advanced an interest free loan with no specified repayment date to Westley Holdings Limited in the amount of ZAR 3, 914,218.37. The loan was to be used to buy 100 shares in Money Box Investments 0012 (Pty) Ltd (“MBI”, which (at the time) owned 60% (later 100%) of West Dunes Properties 5 (Pty) Ltd (“WD5”). WHL directors retrospectively resolved to approve and ratify the loan on 18 November 2004”* **(EXHIBIT 52)**

167. Further supporting this is the evidence from Money Box Investment’s auditors (NOLAN’S) who in an information sheet for **Money Box** dated 11 June 2010 confirms: **Total premium (Stated Capital) R 3 899 900;** and that 0,25% stamp duty of R 9750 was paid on the issue of those shares. **(EXHIBIT 53)**

168. One must ask why would Jersey Trustee concoct a fictitious loan between Westley Holdings BVI and West Dunes? Given the liquidation of West Dunes the answer is simple.

169. If one assumes the directors of Westley Holdings ‘proved’ this claim in the liquidation process then to the extent concurrent creditors received a final distribution ‘payout’ they would have shared in this. **As shareholders are subordinate to creditors in any liquidation process by ‘converting’ the Westley Holdings asset from shares in Money Box into a loan directly into West Dunes Jersey Trustee significantly improved the financial status of Westley Holdings in the liquidation process.**

170. In addition and more fundamentally this fraud ensured that Jersey Trustee could in effect change their status from being shareholders to that of an unsecured lender and therefore could better justify their actions in bringing the liquidation application against West Dunes since they had in effect moved from being owners to creditors.

171. Finally the fictitious loans of **£500,00** and **£340,817** would have contravened the Foreign Exchange laws of South Africa as outlined in the PwC foreign exchange and tax advice. **Trustees are not allowed to commit, allude to or encourage participation by their trusts in criminal offenses in foreign countries which is what the Jersey Trustee are admitting to by falsely claiming that these fictitious loans existed but with no proof of approval from the South African Reserve Bank**

THE JERSEY TRUSTEE’S FINANCIAL STATEMENT FRAUD IN WESTLEY TRUST ACCOUNTS (Order of Justice Para’s 83 – 100)

172. It is my understanding that false accounting is the dishonest altering, destroying, hiding or

fabricating of account records with a view to gain for one self, or cause loss to another. It also includes providing misleading or deceptive documents or omitting relevant documents when account information is requested.

173. Furthermore it is an uncontroverted fact that the only time trust beneficiaries can review the actions of trustee and have an opportunity to challenge those actions is when the trustee provides an accounting to us as the beneficiaries. Without proper accounting disclosure as to how the trustee has handled the trust affairs, there is little to no chance of a trustee being held accountable and therefore, the trustee's fiduciaries duties can be breached at will without any means of redress. **Jersey trustees have dishonestly exploited the information asymmetry that exists between the parties to cover up their own misfeasance.**

174. In March 2009 Jersey Trustee submitted the Westley trust accounts for the period 1 May 2008 to 28 February 2009 to the High Court of South Africa. **(EXHIBIT 49)** This was the very first time since the Westley trust was constituted on 5 May 2004 (5 years previous) that any beneficiary had sight of any Westley Trust Accounts – and this was in a court case.

175. I want to emphasize that all the Westley Trust and Westley Holdings accounts prepared and presented to date, whether in Court or to the beneficiaries via their Advocates Bedell Cristin, **are not authenticated, dated or signed and thus the author is not identified.**

176. In September 2009 *A O Hall* our ex attorneys in Guernsey requested that the Jersey Trustee send copies of the Westley trust accounts.

177. The Jersey trustee sent accounts for the years ending *April 2005, April 2006, 2006-2008, and February 2009.*

178. The *February 2009 accounts* was an exact copy of the trust accounts put to the South African High Court 6 months earlier in March 2009 and more than enough time for any competent and honest trustee or their accountant to correct any mistake if there were any. **(EXHIBIT 54)**

179. The Westley Trust accounts for year ending Feb 2009 given to the South African High Court under oath in 2009 and sent to Advocates A O Hall of Guernsey 6 months later state the following

1. Fairbairn Private Bank Jersey as being a creditor of Westley trust for £500,000 from 1 May 2006 onwards. This is a fabrication.
2. West Dunes Properties as being a debtor of Westley trust for £500,000 from 1 May 2006 onwards. This too was a fabrication
3. The Westley trust accounts for year ending February 2009 show an addition to capital of £446,649 paid by the Brakspear Trust on 30 July 2008, resulting in the net assets and the Capital account increasing to £272,934 from the previous year negative capital of £177,633.

- 180.** Jersey Trustee has knowingly made a misstatement of fact; Westley Trust was never a creditor of Jersey Bank for £500,000 in May 2006 or any other time.
- 181.** West Dunes was never a debtor of the Westley trust for £500,000 in May 2006 or any other time, in addition there are no minutes, trustee or board resolutions, and loan agreements between the parties or proof of payment by Westley Trust to West Dunes.
- 182.** Evidence that neither Westley Trust or the Jersey Bank paid £500,000 is provided by the transferor Brakspear Trust outgoing IOM Bank SWIFT and that the transferee FRB's incoming SWIFT **(EXHIBIT 23)**
- 183.** The trustee fiduciary duties, duty of care to the beneficiaries, the *JFSC Code of Conduct* and *Article 21(5) Trust (Jersey) Law* all require a registered person to conduct its business with absolute integrity and to keep detailed and accurate records of all business transactions,
- 184.** Jersey Trustee did not act with integrity but the complete opposite. Words used to describe the opposite of integrity are lying, deceitful, dishonesty and corruption.
- 185.** Jersey trustee deliberately prepared the fabricated Westley Trust Annual Financial Statements, which were unsupported by any trustee resolutions and loan agreements. The Jersey trustee then used the false financial statements as evidence in the South African Court to liquidate West Dunes and thus protect itself from a substantial damages claim for their gross negligence.
- 186.** I submit that the only way in law for Jersey Bank to be a "creditor" of Westley Trust in the amount of £500,000 under *Generally Accepted Accounting Principles* was if it had made an actual loan of £500,000 to the Westley Trust and this commercial transaction would only be completed when the £500,000 was advanced to the borrower thereby creating the relationship of lender and borrower between the bank and the Jersey Trustee.
- 187.** Subsequently the only way West Dunes could have become a debtor of Westley Trust was if it had actually received a loan of £500,000 from Jersey Trustee as trustee of Westley trust.
- 188.** Given the magnitude of the amounts involved one would expect that these two loans would have been subject to high degree of contractual formality and yet to date there are no loans agreements or resolutions evidencing the two related loan transactions or proof of payments.
- 189.** It is clear that information contained in the Jersey Trustee prepared accounts for Westley Trust and given to the High Court of South Africa, is false and deceptive, and that they are a dishonest breach of Article 21(5) of the Jersey Trust Law, which states "*A trustee shall keep accurate accounts and records of the trustees trusteeship*"
- 190.** This is accounting fraud by Jersey Trustee and as result of this accounting fraud the Plaintiffs have suffered major financial losses – which in my humble opinion amounts to fraud and theft by

Jersey Trustee on the Plaintiffs, the trust fund and genuine creditors of West Dunes in South Africa.

- 191.** Then in a further cover up of the misrepresentation and evidence of collusion, Jersey Trustee in December 2012 sent the beneficiaries of Westley trust financial accounts for the year ending 30 April 2010. **(EXHIBIT 55)**
- 192.** These 2010 Westley Trust financial accounts written up some 3 years after the Westley trust accounts submitted to the South African High Court and more noticeably after the 2012 Court Case in Jersey has changed dramatically in that the financial accounts for the year ending **30 April 2010** now show that the **£446,649**, which was previously **“added to capital”** in the Westley trust accounts ending 29 February 2009, has been removed and £446,649 added as a **“debt payable”**. The Jersey Trustee never recalled the 2009 accounts and there was no reissue of new accounts for 2009 that would have explained at length on what basis the change from **“addition to capital”** to **“debt payable”** has been affected.
- 193.** In the 2010 Westley Trust accounts the **Capital Account** records a **“Gain on foreign exchange”** of **£209,682** for the **“Jersey Bank Loan”** of ZAR 4 million, an increase of **1832%** on the previous years foreign exchange gain of **£10849**. This is a deliberate dissemination of untrue facts and a plain lie as there was no foreign exchange movement in the **GBP/ZAR** exchange rate that would record such a massive gain.
- 194.** In the 2010 Westley Trust the Balance Sheet **“Debtors and Prepayments”** has increased by **£134,010** from the original **£500,000**. There is no debtor of **£134,010** and is another **false entry** and deliberate dissemination of false information, unsubstantiated by any supporting trust records or vouchers.
- 195.** The 2010 Westley Trust accounts were clearly written up to align the Westley trust accounts with Guernsey Trustees misrepresentation to the Royal Court of Jersey in September 2012. This is irrefutable as the 30 April 2010 Westley Trust financial accounts record a **“Post Balance Sheet Event”** in point 6, which occurred on **10 October 2012** some 2 years and 6 months after the 30 April 2010 financial accounts were supposed to be written up by Jersey Trustee.
- 196.** In order for the Jersey Trustee (as preparers of the Westley Trust 2010 annual financial statements) to have recorded a **post balance sheet event dated 10 October 2012** this required that the 2010 financial statements could not have been approved before October 2012 some 30 months after the end of the financial year. This is at best, appalling administrative behavior and at worst the deliberate use of the defluxion of time in order to concoct a set of accounts which accorded with the views of Jersey trustee sister company Guernsey Trustee.
- 197.** On 3 July 2015 Alison and I wrote a letter to Jersey Trustee requesting the accounts of Westley trust for the years ending 30 April 2005 and 30 April 2006. On the weekend of 11 and 12 July 2015 Alison found the original 2005 and 2006 Westley Trust accounts sent to us in September 2009.

- 198.** On 2 July 2015 some 2 years after the Westley Trust supposedly ceased to exist the final Westley trust accounts for the years ending 30 April 2011, 2012 and 15 March 2013 were issued. **(EXHIBIT 65)**
- 199.** Also sent were the accounts for Westley Holdings for the years ending 30 April 2011, 2012 and 2013.
- 200.** On the 14 July 2015 Advocate Taylor on behalf of Jersey Trustee, replied to our request dated 3 July 2015 and sent us the Westley Trust accounts for 2005 and 2006. At first we did not look through them as we thought they would be exact copies of the accounts supplied to us in September 2009. However a few days later I decided to go through the accounts sent by Advocate Taylor and discovered they had been changed substantially from the original Westley trust accounts supplied to the beneficiaries in September 2009, some 6 years ago. This is more evidence of false accounting fraud by Jersey Trustee. **(EXHIBIT 57)**
- 201.** Material account changes can be found in the altered Westley trust Balance Sheet for the year ending 30 April 2005, sent by Jersey Trustee on 14 July 2015 10 years after the fact.
- 202.** The “original accounts” the Balance Sheet shows “*Current assets*” are “£10 cash in the bank with no debtors and a one creditor which is listed in the notes as *Fairbairn Private Bank Limited* for £358,173 and £950 of loan interest accrual.
- 203.** It is not known what loan generated interest accrual of “£950” or if this is just another in a long line of false accounting entries by the Jersey Trustee.
- 204.** In the “altered accounts”, “*Current assets*” have increased to a whopping £550,010 and there is an appearance of a new debtor West Dunes Properties which apparently owed Westley trust £550,000. In addition Jersey Bank is listed as a creditor of Westley Trust for £550,950 increasing creditors to substantial £909,123.
- 205.** The “altered accounts” for the year ending 30 April 2005 and adjusted 10 years after the fact are pure fiction, there was and never has been any legal creditor – debtor relationship between Jersey Bank Jersey and Westley trust for £550,000.
- 206.** Similarly there never was and never has been any legal creditor - debtor relationship between Westley trust and West Dunes Properties for £550,000. This is very simply false accounting fraud by professional trustees who have direct access to accountants and lawyers so cannot have any excuse for such false accounts.
- 207.** Very importantly from an accounting perspective had the preparers of the initial set of 2005 and 2006 financial accounts (Jersey Trustee) subsequently determined that there were errors in these accounts then there are well defined formalities which involve recalling all copies of the defective

accounts which are followed by the release of the revised accounts which themselves are recorded as 'Revised'.

208. Jersey Trustee and the second sets of Westley Trust 2005 never followed these steps and 2006 accounts do not anywhere refer to having been revised. Revising published accounts is no small matter and certainly not undertaken lightly.

209. It is apparent that the accounts for the years ending April 2005 and April 2006 have been altered to cover up Jersey Trustee's gross negligence and fraud committed on the beneficiaries over the last 13 years. I submit Jersey Trustee have dishonestly breached *Article 21(5) of the Jersey Trust Law*, which states "A trustee shall keep accurate accounts and records of the trustees trusteeship"

210. Finally the Westley Holdings accounts from the year 30 April 2005 to 30 April 2013 and which are also unauthenticated, unsigned and undated do not show West Dunes as a creditor of Westley Holdings for £340,000 (**EXHIBIT 51**) as stated under oath to the South African Court

DISHONEST BREACH OF FIDUCARY DUTY AND CONSPIRACY TO INJURE - FRAUD BY FAILIURE TO DISCLOSE (Order of Justice Para's 101 – 118)

211. Our understanding of "conspiracy" is that co-conspirators deliberately set out to damage without any just cause.

212. On or about 14 September 2012 **Guernsey Trustee as trustee of Brakspear Trust** issued a summons against **Jersey Trustee as trustee of Westley Trust** for payment of £946,649 stating that this amount was due by way of subrogation of FPB Jersey rights against Jersey Trustee, The matter was heard in the Royal Court of Jersey (2012/403) on 21 September 2012. (**EXHIBIT 58**)

213. The Plaintiffs were only notified of this action on the 18 September 2012 and immediately instructed Jersey Trustee to oppose the summons by its sister company Guernsey Trustee for £946,649 as it contained a serious misrepresentations of facts.

214. We also immediately requested that Guernsey Trustee as trustee of Brakspear trustee withdraw the summons.

215. Both Guernsey Trustee and Jersey Trustee refused or chose to ignore the beneficiaries wishes

216. The claim of £946,649 was made up of two parts. The first part being £500,000, which was paid out on 5 July 2007 and recorded in, the Brakspear trust accounts in February 2008 as a "**distribution**" to my son Ian and was not recorded as a loan to any party.

217. The second part of £446,649 was paid to Westley trust on 30 July 2008, and was recorded in the Westley trust accounts in the year ending February 2009 as **an addition to Westley trust capital**

as per the Westley Trust accounts supplied to the South African High Court in 2009 and then 6 months later to advocates AO Hall in Guernsey (**EXHIBITS 49 and 54**)

218. Guernsey Trustee put to the Royal Court in its papers (*also quoted in clause 115 above*), a version of events as to how the monies flowed from and between various entities on 4 and 5 July 2007, the purpose of which was to prove a "**subrogation of rights**".

219. It states at point; **-10.**

"On or about the 4th July 2007 the Letter of Guarantee dated 9th October 2006 was called upon by FirstRand Bank Limited in the sum of £ 500,000. On or about the 5th July 2007 the sum of £500,000 was paid by the Bank to FirstRand Bank limited pursuant to the Letter of Guarantee."

And then at point: **-12.**

"On or about 5th July 2007 the Plaintiff (Brakspear Trust) paid the Bank (Jersey) the sum of £500,000 pursuant to the Guarantee in satisfaction of the Defendants (Jersey Trustee as trustee of Westley trust) liability to the Bank under the Letter of Guarantee"

220. The definition of the "Bank" is given in point 4 in the summons wherein it refers to Gerrard Private Bank (Jersey) Limited and Fairbairn Private Bank Limited as the "**Bank**" and that

"At all material times the Bank was licensed deposit taker carrying on business as a bank in the Island of Jersey"

221. The facts as laid out by Guernsey Trustee were that there were two separate transferors to two separate transferees.

222. The first transferor being Jersey Bank of **£500,000** to the first transferee being the South African bank FRB.

223. The second transferor being Brakspear Trust Isle of Man Bank for **£500,000** to the second transferee - Jersey bank.

224. This was not true, the "**Jersey bank**" was not the transferor to First Rand Bank in South Africa and the "**Isle of Man bank**" was not the transferor to the "**Jersey Bank**".

225. Jersey Trustee's sister company Guernsey Trustee (as trustee of the Brakspear Trust) had to make this **material false statement** to prove the "**right of subrogation**".

226. Jersey Trustee knew this was a material misrepresentation of facts, yet Jersey Trustee did not dispute it to the Royal Court of Jersey, Jersey Trustee remained silent (**Fraud by failing to disclose**). By doing so Jersey Trustee acted in its own best interest and that of its sister company

Guernsey Trustee and not in the best interests of the Westley Trust or its beneficiaries. **This is a dishonest breach of trust and aiding and abetting of a fraud by the Jersey Trustee.**

- 227.** The second payment of £446,649 was paid by Brakspear trust to Westley trust on 30 July 2008 and was recorded as an **“addition to capital of the Westley trust”** by Jersey Trustee in the Westley trust accounts produced in the High Court of South Africa and then 6 months later to advocates AO Hall in Guernsey – more than enough time for any competent trustee or trust accountant to correct any mistakes if there was one.
- 228.** In addition the *“Schedules of Interest”* attached to the Order of Justice (**EXHIBIT 58**) is false information. *“Schedule A”* has interest for a fictitious £500,000 loan totaling £98,657.09. There is was no interest owing for this amount and Westley trust accounts has never recorded any liability for this interest or even as a contingency liability.
- 229.** *Schedule B* also attached to **EXHIBIT 58**, is more false information. The schedule refers to *“Loan Facility”* which was between Jersey Bank and Jersey trustee and had nothing to do with Brakspear trust.
- 230.** Furthermore it refers to an *“agreement of 4% above base of the Banks base rate applicable to loans in South African Rand (SARB repo Rate)”*. No such agreement exists stating this fact about the *“SARB Repo Rate”*.
- 231.** In addition, no exchange control documentation exists from the South African government as required by South African law confirming the South African Reserve Bank approved the alleged loans of £500,000 and £340,000 (now £446,649) complete with repayment dates and interest charges, without which Jersey Trustees have committed a criminal offense in South Africa. **Trustees are not allowed to commit, or allude to, or encourage participation during their administration of trusts in criminal offenses, which is what Jersey Trustees are admitting to by falsely claiming that these loans existed but with no approval from the South African authorities.**
- 232.** Because of the misstatement of facts by Guernsey Trustee, and because of Jersey Trustee silence to Royal Court of Jersey when it had a duty to speak up, an Order of Court was made on 21 September 2012 against Jersey Trustee for payments of £946,649.29 and interest in the sum of £300,102.57 for a total of **£1,244,751** and continuing. (**EXHIBIT 59**)
- 233.** Jersey Trustee silence on material misstatements made by its sister company Guernsey Trustee to the Royal Court of Jersey **perfected the conspiracy to commit fraud** by the various companies in the Fairbairn Group on the beneficiaries of Westley trust and Brakspear Trust. I submit that Jersey Trustee **“silence” to the Royal Court of Jersey** with regard to the supposed facts is fraud also.

234. Both the Jersey Trustee and its sister company Guernsey trustee have exploited the information asymmetry that exists between the different parties and by combining the illusion of disclosure with plain lies and untrue facts have colluded in a fraud.

SHAM TRUST – FRAUD BY ABUSE OF POSITION (Order of Justice Para’s 119 – 147)

235. This serious issue is raised because the Plaintiffs have only in the last 3 years started come to grips with the complexities of what a trust is and more recently what a sham trust is.

236. The terms of Westley trust do not reflect the intentions of Ian in any form or manner whatsoever and we do not know whose terms they are, because Jersey Trustee and Guernsey Trustee have subsequently claimed there are 3 different settlors and finally Jersey Trustee states that there is no settlor.

237. Trustees should be scrupulous in their accounting for initial property and any further property settled on the trust and surely should be bound by the receipt recorded in the trust record and that when it comes to setting up the trust the responsible advisers are fiduciaries who have duty of care and loyalty to the settlor to make full disclosure of all relevant facts known to him.

238. It is our understanding that not bringing the “sham” issue to the Courts attention implies that we accept the terms of the Westley trust deed as being the truth, when we do not. And it becomes a total sham when there is no intention of the apparent settlor to transfer legal ownership and control of their property, no matter how slender the fund, to the trustee Jersey Trustee.

239. We want to make the Court aware that this was the **beginning of a pattern of misleading and deceitful behaviour by Jersey Trustee as fiduciaries of the Westley Trust.**

240. The Defendant has formed a sham trust in that Defendant represented to Ian in various emails

- a. that he was the client and settlor of a Declaration of Trust
- b. that a shelf company would be bought from a BVI agent on behalf the third Plaintiff
- c. that the nominee owner for the Plaintiff’s BVI company would be the Defendant as trustee of the Declaration of Trust
- d. that the declaration of trust would be a bespoke 1 -2 page deed
- e. that the deed would include certain settlor powers and the requirement that the Defendant would always seek Third plaintiff written consent or authority.

241. On the above mentioned advice and upon receipt of an email from the Defendant dated 31 March 2004 (**EXHIBIT 17**), Ian paid £8810 fees (**EXHIBIT 18**) for the following services

- a. £1250 for preparation of Declaration of a Trust
- b. £2000 upfront fees for the annual administration of the trust and preparation and delivery of annual accounts

- c. £1250 for establishing the offshore company and the provision of Nominee shareholders.
- d. £3000 upfront fees for administration of the offshore company and providing the first year annual accounts
- e. £500 legal fees for the trust
- f. £800 legal fees for the offshore company
- g. £10 to be settled on the trust
- h. on receipt of funds (£8810) defendant would be able *“to have the trust and company structure up and running within five working days”*

242. Ian paid the fees of £8810 to the Jersey Trustee on 31 March 2004, however:

- a. The trust and company structure was not set up within five working days of the receipt of funds
- b. There was no bespoke 1-2 declaration of trust deed, instead a 34-page trust deed – containing exemption clauses and clauses which negate positive duties. None of the Plaintiffs were ever aware of their existence and their meaning.
- c. The terms of the Westley Trust do not represent the true terms as represented by the Jersey Trustee to Ian or whoever was settlor .
- d. There was no preparation of the annual trust accounts nor were any ever sent to First and second Plaintiff.
- e. No nominee shareholders were ever appointed to hold Westley Holding shares on behalf of the First Defendant
- f. There was no preparation of the annual BVI Company accounts nor were any sent to the beneficiaries
- g. It has never been explained what these legal fees for the trust and company were for

243. From the settlement of the Westley Trust on 5 May 2004 until 2009, the Jersey Trustees subsequent actions were all in alignment with Para 238 (e) in that the Jersey Trustee sent Ian the trustee’s fee notes, communications in relation to the administration of the Westley Trust and sought Ian written consent or authority concerning the activities of the Westley Trust

244. On **5 June 2009** the Ian as settlor and Alison and I as beneficiaries requested the immediate resignation of the Jersey Trustee. Defendant stated in a letter that it did not recognize the Third Plaintiff as the settlor of the Westley Trust and that it would not resign as only the Defendant had the power to appoint new trustees i.e. in laypersons terms only we can “fire” ourselves. **(EXHIBIT 60)**

245. In a “Discontinued matter” Jersey Trustee filed papers in the Royal Court of Jersey dated **9 December 2011**, stating that *“The sum of £10 which had been provided by Ian on or around 31 March 2004 was returned to him by the Respondent (Jersey Trustee) on 13 May 2004”*. **(EXHIBIT 61)**

246. The £10 was supposedly returned 8 days after the Westley trust was constituted. Ian has no bank or other record of receiving his £10 back and Jersey trustee has no record of any cashed £10 check.

247. This is notwithstanding that Jersey Trustee did not return or even account to the court what happened to the remaining **£8800** Ian paid for the formation of Westley trust and offshore company on **31 March 2004**.

248. In the "Discontinued matter" on 9 December 2011, Jersey Trustee represented by Advocate Taylor of Bedell Cristin answering affidavit at point 7 stated that **Brakspear Trust settled £10 on Westley trust (EXHIBIT 61)**

249. Guernsey Trustee in an undated letter and then again in a letter dated **14 May 2008** stated in writing to Jersey Trustee, **that the trustee of the Brakspear Trust is the settlor of Westley Trust. (EXHIBIT 62)**

250. Guernsey Trustee Guernsey in the same letters mentioned above, state that the Westley Trust deed names **four capital beneficiaries** as being Ian, Alison and my late son Michaels children, Ryan and Matthew (who are to share 1/3) and that the **interest beneficiary** is myself. *(For the record this correspondence only came into our possession in 2012).*

251. This list of beneficiaries is completely different to the list contained in the **Third Schedule to the Westley Deed** administered by Jersey Trustee, which names only **2 capital beneficiaries Alison and myself, and no interest beneficiaries.**

252. These statements by the Guernsey Trustee in 2008 and 2011 contradict the email written on 6 May 2004 **(EXHIBIT 63)** and one day after the Westley trust was constituted) stating

"Now we are no longer being requested to act as settlor we are happy to accept excerpts of the trust deed".

253. In a letter dated **29 November 2011 written by the Guernsey Trustee lawyers, Guernsey Trustee** then give a contrary version of who was settlor, claiming that Guernsey Trustee made a **£10 distribution to Alison for her to settle on the Westley trust as settlor. (EXHIBIT 64)**

254. In Jersey Trustee strike out application in this matter, dated 11 December 2015, at Para 31 **(EXHIBIT 52)** Jersey Trustee states

"The initial settled funds of 10 were transferred to the Westley trust on 12 May 2004 by FTC (Guernsey Trustee) in its capacity as the trustee of the J trust (Brakspear Trust) [533-534]. I understand FTC accounted for this as a distribution to Mrs. Bowler"

This statement by the Jersey trustee is of huge significance as it confirms the Jersey Trustee does not know who the settlor is and has no written instruction outside the trust deed evidencing that a “settlor” declared a trust in the terms of the Westley trust instrument and which has only been signed the Jersey trustee.

255. On 21 July 2016 the Jersey Trustee in **absolute contradiction** to the above statement made under oath and in response to a question of “*Who is the settlor of Westley trust*”, replied in writing (**EXHIBIT 65**) via their attorney that

“Westley Trust is a declaration of trust and has such does not have settlor”

256. So since 5 June 2009 Jersey Trustee and its sister company Guernsey Trustee- both of who are professional trust companies have stated or held out at various different times that the actual **settlor of the Westley trust is:**

- a. Ian - as settlor with certain powers, which as outlined above Jersey Trustee acceded to on many occasions over a 5-year period.
- b. Brakspear Trust
- c. Alison
- d. And In a letter dated 21 July 2016, Jersey Trustee stated that there is no settlor

257. One gets the distinct feeling that one is dealing with compulsive liars. These are professional fiduciary companies who cannot remember which lie they have told to whom.

258. We understand that one of the purposes of these formalities is to create certainty of transactions and prevent fraud, yet Guernsey Trustee and Jersey Trustee have **given contradictory statements in writing as to who is the settlor of Westley trust and who its beneficiaries are.** This is an impossible position to be in, if Jersey Trustee had kept contemporaneous records of the instructions they had received or been given by the **settlor.**

259. On the **7 May 2004** (this is now two days after Westley trust was constituted) Debbie Pilz of Jersey Trustee sent an email to Mr. Goddard of Guernsey Trustee and copied to Mr. Justin Thomas of Jersey Trustee (but not to any person in the Brakspear family), which stated the following

“Following your recent exchange of correspondence with Justin, we should be grateful if you would arrange for the sum of GBP10.00 to be transferred to us by telegraphic transfer This will be treated as a distribution to Mr. IB’s (Ian) sister (Alison) from the JAM B O Trust”.
(Brakspear Trust). (**EXHIBIT 66**)

260. This was **improper if not illegal**, in a number of respects, as Ms. Pilz of Jersey Trustee in Jersey was not a trustee of Brakspear trust, had absolutely no authority to instruct Guernsey Trustee in

Guernsey to make a distribution from Brakspear trust and no authority from Alison to make such request or demand on her behalf.

261. We, as laypersons, can find no authority or case law, which would allow Jersey Trustee Jersey to “instruct” the trustees of Brakspear Trust to make a distribution of £10 to Alison and then to unilaterally create a trust by settling this £10 on the Westley trust **without Alison’s consent or knowledge**.
262. Jersey Trustee Jersey who was neither the trustee nor a beneficiary of Brakspear Trust and had no “legal rights” in Brakspear Trust. This is notwithstanding that Ms. Pilz had written to Ian two days previously (5 May 2004) saying the that Westley Trust had been formed and introduced herself as trustee of Westley trust. This email only came into our possession in 2012
263. I submit that in the terms of trust law, the legal requirement is that in order to constitute the trust the settlor must have rights in the property to be transferred to the trustees and, either before or after the transfer, declare the terms of the trust.
264. It is my understanding that a discretionary trust may come into existence in two ways; first, a trust deed may be signed by a settlor and counter-signed by a trustee acknowledging the receipt of property that is held upon the trusts set out in the deed. Secondly, a person may receive property and execute a declaration of trust stating that he holds that property upon the trusts set out in the deed, and the settlor thereafter can transfer to the trustee further substantial assets to be held as an addition to the existing (in our case the very slender £10) trust fund.
265. This I understand will turn the person contributing the further substantial assets into settlors themselves, in accordance with the definition of settlor contained in *Article 1 (1) Trusts (Jersey) Law ‘a person who provides trust property or makes a testamentary disposition on trust or to a trust’*. This absolutely did not happen and if it did Jersey Trustee should be able to identify the settlor at whose request this was instigated.
266. The narrow **distinction** I believe is that a trust will only be valid if the settlor has **rights in the property to be held on trust and intention to create a trust** at the time of purporting to declare a trust. **The precise moment at which a trust is validly constituted is a matter of significant importance with regard to any actions taken by the trustee.**
267. It is my understanding that the Trusts (Jersey) Law imposes an express obligation on the trustee to keep accurate accounts and records of their trusteeship, including information on the settlor and beneficiaries. Jersey trustee has been grossly negligent and kept no records and then attempted to cover this gross negligence with further dishonesty and deceit
268. The fabrications by Jersey Trustee as to who is the settlor, who had the intention and the date the £10 was settled on the trust, **I submit is the starting point that proves the Westley trust is a sham.**

269. It is, given all the above, **irrefutable that Jersey Trustee executed a “sham” declaration of trust** and gave Ian the false impression that he was a beneficial owner with legal rights and obligations and the DOT was only the nominee shareholder (e.g. *Pilz, Thomas and Horton emails to Ian in 2004, Pilz of Jersey Trustee requesting Ian’s written authority, payments of trust fee notes and formation of companies etc. payments of operating costs, mortgage payments etc. to maintain and preserve the trust assets*).

270. Then 5 years later in 2009 state that Ian was not recognized as the settlor by Jersey Trustee, he had no property or legal rights and thus impossible for him to be the beneficial owner.

271. I suggest to this Court that we have an **extraordinary and unique situation** wherein the **only party to the sham trust was the trustee Jersey Trustee**, who executed the “*declaration of trust*” known as Westley Trust without knowledge, consent or intention of a settlor as described in **Article 1(1) Trust (Jersey) Law**.

272. The only party to the trust instrument, its terms and the settlement of £10 was Jersey Trustee.

273. The conduct in the administration of the Westley Trust by Jersey Trustee subsequent to the creation of the Westley Trust, and as outlined in this affidavit, evidences the intention by Jersey Trustee to give Ian, Alison and myself, the appearance of creating legal rights and obligations which were very different from the actual legal rights and obligations that Jersey Trustee had created at the beginning.

274. Given that Jersey Trustee have in writing stated that **Ian was not the settlor** and that Westley Holdings was paid for on **31 March 2004** by Ian and was incorporated on **14 April 2004**, it is not known how the registered shares in the Westley Holdings came to be settled on the Westley trust if Ian was not the settlor.

275. It is our understanding that there needs to be a transfer of the Westley Holdings shares to the trustees with registration in the name of the Westley trust trustees and which involves an assignment and declaration of trust by the existing beneficial holder of the shares, which was **my son Ian, who had paid £4050** for the BVI based company on **31 March 2004**.

276. **The £4050 paid for Westley Holdings was not a gift from Ian to Westley Trust.** Evidencing this fact are the Westley Trust financial accounts, which show no payments of fees for the incorporation of Westley Holdings or for the purchase of any shares in Westley Holding.

Events subsequent to the filing of our original papers in RCJ in 2015

277. In Jersey Trustee strike out application for this matter (**EXHIBIT 52**) dated 11 December 2015, at Para 34 Jersey Trustee claim there are now two **declarations of trusts** (“DOT”)

278.The first DOT is Westley trust with **Gerrard Trust (Jersey) Limited** as trustee, owns the entire share capital of Westley Holdings BVI. According to Jersey Trustee written correspondence states the DOT does not have a settlor.

279.The second DOT (name of DOT is unknown) with **Gerrard Nominee (Jersey) Limited** (Nedbank) as trustees, owns the entire share capital of Westley Holdings BVI. Jersey Trustee has not provided any copy of this DOT instrument.

280.This raises the very serious question of how is it possible that two separate DOTs' each own the entire share capital of Westley Holdings in the BVI.

281.The **Panama Papers** released in 2016 confirm (unknown to all of us) that **Mossack Fonseca** is the subscriber of Westley Holdings in BVI and who signs an instrument in writing on **5 May 2004** appointing **Justin Gregory Thomas** and **Christopher John Roscouet** in their personal capacities as the first directors of Westley Holdings (BVI). **(EXHIBIT 68)**

282.The inaugural meeting of the Board of Westley Holdings is also held on **5 May 2004**, and the directors being Thomas and Roscouet accept and confirm their appointment by Mossack Fonseca. They then appoint **Gerrard Corporate Services (Jersey)** as Company Secretary and that one ordinary share of USD \$1 be **paid and issued** to **Gerrard Nominee (Jersey) Limited directly**. **(EXHIBIT 69)**

283.The Jersey Trustee knew that ownership would vest in a distinct and separate Nedgroup legal entity from the Jersey trustees because the Westley Holdings Articles of Association **(EXHIBIT 70)** record at Point 11:

"Except as required by law, no person shall be recognised by the Company as holding any share upon any trust"

284.The Jersey trustee knew or should have known that the BVI Company shares could not be held on trust, therefore the trust would never be the nominee owner of the BVI Company under a declaration of trust as it had advised Ian and for which they induced Ian to pay fees upfront.

285.Jersey Trustee also knew or should have known that the Westley trust could not be the legal and beneficial owner of Westley Holding as per the Westley Holdings Articles of Association.

286.The BVI International Business Companies Act at Para.18 states

"No share in a company incorporated under this Act may be issued until the consideration in respect of the share is fully paid"

287.Westley Trust accounts have no record of paying for one issued share of Westley Holdings or of a corresponding reduction in the cash reflecting payment for the issue of one share, so the

statement as presented to the South African High Court that it owned the entire share capital of Westley Holdings was false. **(EXHIBIT 47)**

- 288.** Westley trust accounts show no costs and expenses in forming a BVI company.
- 289.** The register of members for Westley Holdings shows one share been issued and paid for by **Gerrard Nominee (Jersey) Limited on 5 May 2005**, a completely separate and distinct legal entity to the Jersey Trustee. **(EXHIBIT 69)**
- 290.** The minutes of the inaugural meeting confirming the appointment of directors and the register of members for Westley Holdings are then faxed to Mossack Fonseca on **7 May 2004** . **(EXHIBIT 69)**
- 291.** On the 10 November 2006 the Directors Thomas, Roscouet and Hawson (it is not known when or why this third director was appointed) resigned and Fairbairn Corporate Services Limited appointed as directors. **(EXHIBIT 71)**
- 292.** On 8 September 2010 Mossack Fonseca in an email request the beneficial owners names of various companies under the ***Anti Money Laundering and Financial Terrorism Code 2008***. Westley Holdings owner is listed as Fairbairn Nominees (Jersey) Limited **(EXHIBIT 72)**. It is illegal to give false information to the BVI authorities, which this would be if the Jersey trustee of Westley trust were indeed the beneficial owner.
- 293.** Westley Holdings was liquidated on the 31 October 2014 in the BVI by its shareholder Nedgroup Private Wealth Nominees Limited and not by the Jersey Trustee and Westley Trust, which ceased to exist on 15 March 2013, some 1 and ½ years before, more conclusive evidence that Westley Trust never was the shareholder of Westley Holdings. **(EXHIBIT 73)**
- 294.** It is clear that Jersey Trustee has never been the legal owner of one issued share of Westley Holdings as recorded in the Westley trust accounts and as such has no legal title or property rights in Westley Holdings.
- 295.** This complex ownership structure was never agreed upon, requested by or explained to any of the Brakspear family and the names of the companies and the individuals named as directors in the BVI company were never revealed to anyone in the Brakspear family, revealed in any financial accounts written up by Nedbank or in any court papers in South Africa or Jersey.
- 296.** The need for such a secretive and complex structure to conceal ownership and how it was advantageous to anyone in the Brakspear family as an investment or to gain residency is unknown, how it met South African law requirements or how it was *“properly declared to the South African authorities”* as per Horton email to Ian dated 5 May 2004 **(EXHIBIT 15)** – is clearly misleading advice by Horton as a fiduciary.

297. It is also clear that “the true nature” of the structure, was fraudulently concealed by Jersey Trustees to the Plaintiffs, the South African authorities and to the courts in different legal jurisdictions.

298. Jersey Trustee were paid to set up these structures, ensuring us there was no need to sign any documents, but failed to exercise any reasonable care or integrity in setting up the structure; this **we submit is mis-selling maybe even crossing the line to fraud.**

299. Jersey Trustee acted with impunity and are accountable, it seems, to no one.

300. The wrongdoings of Jersey Trustee as professional trustees of Westley trust were outrageous, showing absolute disregard for the Plaintiffs rights.

301. Jersey Trustee conduct was malicious, highly reprehensible and far below the standard of decent behavior of a normal person never mind the higher standard expected of a fiduciary.

302. Fees paid to various Nedgroup Jersey entities and their legal advisors by Brakspear’s and from Westley trust property 2004 to 2016

	£	ZAR
a. Formation of Jersey trust and BVI Company structure	£8,810	
b. 1 page Guarantee letter	£5,500	
c. Loan arrangement fee	£1,700	
d. Renewal of 1 page Guarantee letter	£5,500	
e. Interest on £340,000 loan	£105,832	

Legal fees paid from Westley Trust fund in Jersey

f. 2011 legal fees	£4,282	
g. 2012 legal fees	£32,416	

Sub Total £ 164,040 = R 2, 296,560

303. Liquidation and legal fees paid out of Westley trust property In South Africa

a. 1 st account (EXHIBIT 74)	2,367,113
b. 2 nd account (EXHIBIT 75)	1,569,443
c. 3 rd account (EXHIBIT 76)	2,561,315

Sub total £ 464,133 = R 6, 497,871

TOTAL PAID (Nedgroup Jersey entities and their liquidation lawyers) £ 628,173 = R 8, 498,658

304. In addition the Brakspear families personally paid the following “**out of pocket**” expenses to **maintain, enhance and protect the Westley trust property** and which Jersey trustee refused to accept or acknowledge in form or manner and begs the question how did the arm operate for 4 years under its administration and who made the mortgage payments?

a. Mortgage payments for the Westley trust property	£73,857
b. Operating cost and improvement for the Westley trust property	£214,285
c. Legal fees involving Westley trust property	£116,571

Total **£404,713**

Grand total **£ 1,011,760 = R 14, 164,640**

305. Income/capital paid to Westley trust beneficiaries from Westley trust property 2004 - 2016

Grand Total **£0** = **R0**

306. These figures do not include the Brakspear Family loss of income, loss of homes, loss of opportunity costs and the many other untold damages and hardship to our lives founded on the advice of Mr. Greg Horton and Mr. Justin Thomas and then the subsequent dishonest actions by Nedgroup Private Wealth.

307. Given all of this one needs to ask the question as to why would the various parties in Nedgroup go to such lengths to dispute firstly, who the settlor was and then claim there is no settlor of the Westley Trust, make false representations under oath and then create false and misleading accounts?

308. Of course, the answer lies in creating the necessary degree of confusion needed to avoid a full and thorough evaluation of all the actions taken by these parties over the last 13 years. It is often said that 'sunlight is the best disinfectant' and in the case at hand Jersey Trustee, Guernsey Trustee and the greater Fairbairn group have gone to unbelievable lengths to ensure that no sunlight whatsoever shone upon Jersey Trustee actions

309. Fiduciary duties were owed to the Plaintiffs whether as advisor and to make full disclosure of all relevant facts known when setting up the trust to the settlor, or as trustees when administering the trust for the beneficiaries.

310. Jersey Trustees have been dishonest in every aspect. They have never told the truth; beginning with

- a) **the constitution of the trust its settlor and the property settled on the trust**
- b) **the supposed bespoke trust deed,**
- c) **ownership of the underlying BVI company,**
- d) **in the administration of the trust,**
- e) **in record keeping and trust accounts**
- f) **in representations to various courts in different legal jurisdictions of fictitious undocumented loans totaling £830,000 to West Dunes**
- g) **which representations contradict their own trust financial statements and board resolution written up by themselves.**

311. They cannot have it both ways either they have either been dishonest and deceitful under oath to various court or have been dishonest and deceitful in the selling of the trust and the BVI company to Ian, the trust financial statements and board resolutions that they wrote up and supplied to the beneficiaries.

SWORN by the said

Dorothy Audrey Brakspear



At 16, CASTILIAN STREET NORTHAMPTON

This *23rd* day of *OCTOBER* 2017

Before me
Address for service



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