

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

Claim No:2022/CLE/gen/01394

IN THE MATTER of the trusts of the Declaration of Trust dated 23rd February 2001 and designated as The Coral Ridge Trust and of the trusts of the Declaration of Trust dated 23rd February 2001 and designated as The Hightree Trust (collectively referred to as the Trusts)

AND IN THE MATTER OF an application under the inherent jurisdiction of the Court

BETWEEN:

ROBERT STEWART

Claimant

AND

CROMWELL TRUST COMPANY LIMITED

First Defendant

AND

CHERYL HAMERSMITH STEWART

Second Defendant

Before: Hon. Chief Justice Sir Ian R. Winder

Appearances: David Brownbill, KC with Dwana Davis-Gibson and Gia Moxey for the Claimant

Brian Simms, KC with Wilfred Ferguson and Tinarje Moxey for the First Defendant

John F. Wilson, KC with Vanessa Smith and Theominique Nottage for the Second Defendant

26 May 2025

JUDGMENT

WINDER, CJ

This is the action for an account and for information by the Claimant (Robert) against the First Defendant Trustee, Cromwell Trust Company Limited (Cromwell). Robert sues as a beneficiary of two Bahamian Trusts established by the late Gordon Arthur Stewart O.J. (the Founder).

Background

[1.] The background to this dispute has been recited in the several judgments given relative to these parties in the companion action 2021/CLE/gen/01043 (the Main Action). A summary of the background follows.

[2.] Robert is the second eldest surviving child of the Founder. The Founder was a successful Jamaican businessman who established the Sandals & Beaches Resorts in addition to many other successful ventures. Sandals & Beaches Resorts is a hotel and resort chain based in Jamaica, with resorts in many countries in the Caribbean, including in The Bahamas. Sandals & Beaches Resorts is owned and operated by a company incorporated in Panama called Sandals Resorts International 2000 Inc. (SRI 2000)

[3.] The Founder died on 4th January 2021. His survivors are divided into two branches:

(1) The Jamaican Family, made up of his sons Adam Stewart (Adam), Robert also called Bobby, and Brian Jardim (Brian), and his daughter Jaime Stewart-McConnell (Jaime); and

(2) The US Family, made up of his common law widow, Cheryl Hamersmith Stewart (Cheryl) and their three children Gordon, Sabrina, and Kelly Stewart.

[4.] During his lifetime the Founder founded two Bahamian trusts (the Trusts) namely:

(a) The Coral Ridge Trust, which was established by declaration of trust dated 23rd February 2001 (Coral Ridge); and

(b) The Hightree Trust, which was established by declaration of trust also dated 23rd February 2001 (Hightree).

Robert is a beneficiary under the Trusts. Cromwell is the Trustee of the Trusts.

[5.] Shares in Cromwell are held in a Cayman Islands trust called the Cromwell STAR Trust. Under the terms of the Cromwell STAR Trust, during his lifetime, the Founder had the power as Enforcer of the trust to direct the Cayman Trustee to appoint new directors of Cromwell. Following his death, this power is now conferred on Adam.

[6.] Coral Ridge is reported to hold substantial cash and other assets, the principal of which is the shareholding through which it owns the Sandals business. The Trustee holds the shares in Oasis Global Inc (Oasis), which in turn holds the shares in SRI 2000, which in turn holds various subsidiaries comprising the Sandals business.

[7.] A feature of Coral Ridge is the Advisory Board. Paragraphs 8 and 9 of the Declaration of Trust, establishing Coral Ridge, provided as follows:

9. Management of the Sandals Shares.

- 9.1 The Trustees shall not have any investment functions, responsibilities, powers or duties relating to that part of the Trust Fund that consists of the Sandals Shares and any monies (including shareholder loans) owing by the Trustees to Sandals or by Sandals to the Trustees, and any of the underlying assets, investments, transactions and activities of Sandals, any of its subsidiary or affiliated companies, or any company, partnership, or assets in which it invests or with whom it enters into any transaction, and any of the proceeds of the foregoing and the assets from time to time representing the same (together "the Hotel Fund").
- 9.2 All of the investment functions, responsibilities, powers and duties relating to the Hotel Fund shall be vested in the Advisory Board.
- 9.3 The Trustees shall (to the extent practicable) ensure that Sandals complies with any investment directions or instructions given by the Advisory Board. Sandals may, however, in its discretion refuse to execute a direction if the Trustees or Sandals bona fide consider that such execution would or might make the Trustees or Sandals subject to any criminal sanction or civil liability to persons not connected with the trust.
- 9.4 Pursuant to the investment functions, responsibilities, powers and duties vested directly in the Advisory Board, the Advisory Board may from time to time require the Trustees to exercise (or refrain from exercising) their rights as holder of the Sandals Shares in a particular manner and the Trustees shall only exercise (or refrain from exercising such rights) in such manner as the Advisory Board from time to time directs.
- 9.5 The Trustees shall not (in the absence of their own actual fraud and dishonesty) have any liability for the investment performance of the Hotel Fund, nor for any cost expense liability or loss whatsoever caused to the Hotel Fund or the Trust Fund by complying (or attempting to comply) with any direction given (or which appears to have been given) by the Advisory Board as aforesaid.

Adam and Jaimie currently make up the membership of Advisory Board.

[8.] Hightree is reported to hold shares in companies which hold considerable assets including real estate in Jamaica, the Turks and Caicos Islands and The Bahamas as well as cash holdings.

[9.] Robert (as does Cheryl in the Main Action) asserts that, prior to his death, the Founder set out detailed wishes as to how he wished the businesses/assets he had put into the Trusts to be dealt with after his death. Much of these assertions as to the Founders last wishes are the subject of challenge and its efficacy to be determined if the action proceeds.

[10.] Robert relies on the 'Summary of Trust Arrangements' purportedly prepared at the Founder's request by Mr Trevor Patterson (who also acted as the Founder's personal attorney during his lifetime). The Summary of Trust Arrangements were not signed by the Founder. The Founder, Robert says, expressed the wish that the parent companies of Sandals, HPI and another business (The Unique Group, which is held by a Guernsey law trust - the Winton Trust) in the Sandals Group, be distributed to trusts for his family members in the following proportions: (i.) A new US Family Trust- 42%; (ii) A trust for him (Robert)- 16.67%; (iii) A trust for Adam - 16.67%; (iv) A trust for Jaime - 16.66%; and (v) A trust for Brian - 8%.

[11.] According to Robert: (1) An extra "veto share" would be issued to the trustee of the trust for the US family, which would entitle the US family trustee to cast an additional 8% vote at general meeting, thereby giving that trustee a 50% voting stake; and (2) A Shareholders Agreement would be entered into by each of the trustees of the five trusts, providing for matters in respect of the composition of the Boards of the parent companies.

[12.] Robert also relies on a memorandum prepared by Patterson. The memorandum was purportedly signed by the Founder on 3 January 2021, some hours before his death and at a time when he was seriously ill. The memorandum provided for the establishment of 5 new trusts to hold the shares of the asset holding companies currently held in trust. The memorandum was not forwarded to Cromwell as the Founder died before this could be done and Patterson considered that his agency was terminated on the Founder's death.

[13.] In the Main Action, Adam and some of the other defendants assert that these representations as to the Founder's wishes do not accurately reflect the genuine, lasting, and free and informed wishes of the Founder.

The Action

[14.] This action was commenced by Robert by Originating Summons dated 4 October 2022. The action initially sought disclosure and production of specified documents. At the commencement of the trial, Robert abandoned all other relief save for the claim as to an accounting by Cromwell. It is said that much of that claim overlapped with reliefs being sought in the Main Action.

[15.] The claim for relief relating to the account is settled in the following terms:

(1) that the following Accounts be taken:

- (a.) an Account of the property subject to the trusts of the Declaration of Trust dated 23 February, 2001 and designated as the Coral Ridge Trust;
- (b.) an Account of the property subject to the trusts of the Declaration of Trust dated 23 February, 2001 and designated as the Hightree Trust;

...

[16.] The Originating Summons was supported by the affidavit of Robert which sets out some of the factual background to the claim. Robert's affidavit provides, in part, as follows:

- "26. Since Dad's death nearly 21 months ago, I am not aware that any steps have been taken to implement these wishes. On 22 September 2021, Cheryl issued a writ, beginning the proceedings No. 2021/CLE/gen/01403 (the "Proceedings"), by which she seeks (i) the removal of the Defendant as trustee of the Trusts, and (ii) a declaration that her claim does not trigger the no-contest provisions of the Trusts.
27. As a beneficiary of the Trusts, and in particular a beneficiary whom Dad wanted to receive a 16.67% share in the trust assets upon his death, I am entitled to, and seek, an account from the trustee so that I can understand what the trust assets were and are, what the trustee has done with the assets, and what distributions have taken place. This is a fundamental part of the trustee's accountability to the beneficiaries.

The Defendant's failure to provide information and documents

28. Since Dad's death, I have made numerous requests of the Defendant for information and documents so that I can understand the above matters. ...
29. The trustee has not provided me with the information and documentation requested and has instead adopted an approach of prevarication and evasiveness.

Attempts to obtain the trust instruments

30. On 9 September 2021, Mr Steven Carey ("Mr Carey") emailed me to request copies of my children's passports, their names, and dates of birth. I assumed that this information was being sought in respect of the establishment of the "drop-down" trust for me that I refer to above, and Matthew Woods of Withers LLP ("Mr Woods") emailed Mr Carey with various questions on my behalf. Mr Carey replied on 21 September 2021, stating that the trusts he was referring to were the "*original trusts set up in 2001*".
31. By an emailed timed 22:07 on 21 September 2021, Mr Woods requested a copy of the trust deed. By an email timed 01:19 on 22 September 2021, Mr Carey refused to provide the trust deed.

...

42. By a letter dated 3 January 2021, Mr Woods wrote to Lennox Paton again. In that letter, Mr Woods asked again for a copy of the trust instrument and documents from Cheryl's proceedings. He also asked whether the trustees would be circulating quarterly accounts, management reports, and future plans for the family businesses in line with Mr Patterson's summary of Dad's wishes.
43. Having still not received a response from the Defendant, Mr Woods emailed Lennox Paton again on 11 January 2022 asking for acknowledgement of his letter and for a follow-up call.
44. Lennox Paton finally responded by a letter dated 18 January 2022. They did not provide a copy of the trust instrument, or any of the other information requested.
45. By a letter to Lennox Paton dated 26 January 2022, Mr Woods again requested a copy of the trust deeds and any appointments relating to me, and requested a copy of the latest accounts. He asked what was forecast in the business plan and cashflows as to when the family businesses were likely to return to profitability and

- pay dividends. He also again requested copies of management reports, quarterly accounts, audited annual accounts, and the business plan for the family businesses.
46. Mr Woods also wrote a second, separate letter to Lennox Paton dated 26 January 2022, which again requested a copy of the trust deed, and set out at length the basis upon which the Defendant ought to have provided it to me.
47. By a letter dated 2 February 2020 (though this appears to have been a typographical error, and should have stated 2022), Lennox Paton noted the request for copies of the trust documents, and stated that they would *"discuss this issue with you tomorrow and will be writing to you separately on this matter"* (at pages 187-189). The information requested in respect of the business was not provided, and instead Lennox Paton stated that the Defendant was *"reviewing how to proceed with family briefings going forward"*.
48. On 1 February 2022 the court made an order in Cheryl's proceedings, directing that copies of all documents filed or undertaken to be filed in the proceedings be served by the Defendant on the beneficiaries of the Trusts. Lennox Paton informed Matthew Woods of this during their call on 3 February 2022.
49. On 11 February 2022 and 21 February 2022 I was accordingly served with bundles containing pleadings and evidence filed in Cheryl's Proceedings, including affidavits with exhibits that contained the trust instruments.
50. It remained the case, therefore, that after 6 months and very many requests - most of them entirely ignored - the Defendant had still not responded to any of my requests.

Attempts to obtain further trust information and documentation

51. By a letter to Lennox Paton dated 24 March 2022, Mr Woods explained that I had not received information about the Sandals Group business, and asked again for quarterly meetings with updates about the businesses. In line with Dad's expectations, Mr Woods again asked for management reports, quarterly accounts, audited annual accounts, and business plans, and he asked for ledgers showing bookings, performance, and earnings for each hotel. He also asked again for an indication of when the business expected to be in a position to pay dividends.
52. Lennox Paton responded by an email dated 11 April 2022, in which they proposed that a conference call be arranged. I am informed by Matthew Woods that this call, which took place on 12 April 2022, Lennox Paton updated Mr Woods on Cheryl's action, Lennox Paton's views on the status of my children in relation to the trusts, the properties, Sandals and Adam's claims as to my father's capacity in the years prior to his death. Mr Woods raised my concern that the properties be properly maintained in the interim before any distributions could take place. It was suggested that I have a call with John Lawrence in relation to the properties that had been allocated to me. Mr Woods also raised my concern that I was not receiving information about Sandals, which Brian Simms said was due to the Defendant focusing its attention on the court applications. Brian Simms also said he was unsure whether affidavits and further papers in the Proceedings could be circulated to beneficiaries.
53. It had also transpired on that call that, despite having been ordered by the court to serve *all* documents filed or undertaken to be filed in Cheryl's proceedings, the Defendant had failed to serve numerous further documents that had been filed in the proceedings, and had failed to keep me abreast of the developments in those proceedings. Copies of these further documents were not served by the Defendant until it sent its letter dated 29 April 2022 (referred to below).

54. By a letter dated 25 April 2022, Withers again wrote to Lennox Paton concerning the worrying lack of information that had been provided by the Defendant. That letter reminded Lennox Paton that the duty to account is one of the irreducible core obligations owed by trustees to beneficiaries, and that Cheryl's claim provided no basis for the complete lack of update as to the financial state of the trust assets and the actions that the trustees were taking to ensure the proper administration of the trust.
55. The Defendant's response, in a letter from Lennox Paton dated 29 April 2022, was to assert that it considered that it had "*fulfilled its obligations*" to me, and simply to state that any questions should be raised in a call with Mr Carey, requesting that times be provided to arrange a call and that a list of questions be provided. Lennox Paton's letter also requested that I "*please note the restrictions in section 83 of the Trustee Act of The Bahamas*". As I understand it, however, there are no restrictions in section 83 on the documents or information that a trustee may disclose to a beneficiary (or that a beneficiary may request).
56. By a letter to Lennox Paton dated 18 May 2022, Withers set out in detail all of the outstanding enquiries in respect of which the Defendant had failed to respond to me. That letter again requested, in particular, that I be provided with the most recent financial statements of the Trusts and an explanation of any material changes in the position described in the financial statements since their date. It also requested the names of the current directors of the Sandals business. The letter also took up the Defendant's offer of a call with Mr Carey.
57. Having received no acknowledgement of receipt of their letter, Withers wrote again to Lennox Paton on 25 May 2022 asking for a response. Lennox Paton finally replied by a letter dated 29 May 2022. That letter did not, however, provide any of the information concerning the trust assets that had been sought (including in particular the financial statements of the Trusts). The letter stated that "*It should be borne in mind ... that the investment functions relating to the shares in Sandals (in the form of its holding company SRI 2000) lie not with the trustee but with the Advisory Board, presently comprised of Adam and Jaime*". The letter also emphasised that, whilst Mr Carey would be available for a call, the letter set out the Defendant's position, and the Defendant "*would not be prepared to go behind that position on a call.*"
58. By a letter to Lennox Paton dated 1 June 2022, Withers reiterated my concern that the requests for copies of financial information and documentation about the trust had gone unanswered for many months. Whilst Lennox Paton sent a letter dated 7 June 2022 which purported to respond to this letter, it did not provide the information and documentation which had been requested, or any explanation as to why it was not prepared to do so.
59. Lennox Paton responded further on 8 June, providing information about the Water Colours Apartment, the property in Paradise Island, the Sir John Boat, Mahi Management Limited, and a number of properties which were distributed to me solely or jointly.
60. On 14 June 2022, Withers had a call with Lennox Paton, in which Withers requested further information about the Watercolours Apartment, the property in Paradise Island, the Sir John boat, Mahi Management Limited, and other properties held by the Trusts. I am informed by Matthew Woods that a number of documents relating to the properties were discussed on that call and Withers were expecting

these to be collated and sent on to them. Following this call, Lennox Paton provided Withers with a valuation report on one of the properties known as Rio Chico and a one page "income and expenditure" summary.

61. In early July, I received some letters from the Defendant with information about some of the lower value properties at Winders Hill and Jack's Hill although no valuations of those properties and so I offered to organise those myself. Many items from previous telephone calls and letters remained outstanding and so on 20 July 2022 Withers wrote again to Lennox Paton reiterating the requests made on the call on 14 June and in the correspondence before that, asking specifically again for more detailed information about the Watercolours apartment, Paradise Island, Rio Chico and the other trust properties. On 4 August Withers received a holding response from Lennox Paton but none of the requested documents. A letter from Lennox Paton followed on 5 August which gave some detail in relation to certain properties, but did not deal with all the requests for information and documents in relation to many important items, such as the valuation and financial management of the Rio Chico private estate.
62. In light of the Defendant's failure to account for the financial state of the assets of the Trusts, and its suggestion that the appropriate persons to consult in respect of the assets and investment activities of the Coral Ridge Trust were the members of the Advisory Board, Withers wrote to Adam and Jaime (as the present members of the Advisory Board) by letter dated 8 July 2022, requesting copies of accounts and the latest annual business plan.
63. By a letter dated 21 July 2022, Graham Thompson Attorneys responded to Withers' letter, declining to provide the requested information, and stating that the Defendant is the "*proper party*" from whom to request the information. The letter stated that Graham Thompson Attorneys had spoken with Lennox Paton on this subject.
64. I am therefore in the absurd position that the Defendant is intimating that accountability for the assets of the Coral Ridge Trust lies with the Advisory Board, but the Advisory Board is referring me back to the Defendant when I ask for it to provide me with the information I require to understand the position, on the basis that the Defendant has confirmed that it is the proper party to which such a request should be made.
65. On 30 August, 2022 Callenders sent a final letter to Counsel for the Trustees demanding information.
66. The Defendant was given until 5 September, 2022 to respond.
67. As at the time of the filing of this Affidavit no response or information has been received from the Defendant.

The 9 June 2022 presentation

68. On 9 June 2022, I attended the Sandals SRI Nassau office in Nassau with other members of the family including Adam and Jaime and Brian Jardim. There we were given a presentation about the financial health of the business by Gebhart Rainer with Adam's assistance. The Presentation lasted for approximately 3 hours.
69. At the outset of the presentation, I asked if could have a copy of the materials afterwards, as we had been given no hard copy to refer to. Adam and Mr Rainer confirmed that I would be provided with a copy afterwards. I accordingly did not take detailed notes during the course of the presentation.

70. However, I have never been given a copy of the materials. On 19 July 2022, having not received the materials as requested in the meeting, I emailed Mr Rainer and Adam requesting copies. On 24 July 2022, Mr Rainer replied to me, refusing to provide the documents, stating that *"all information is to be dealt with in strict confidence and as such, I am not authorized to issue the information requested"*. After further exchanges on the matter, Mr Rainer continued to refuse to provide the presentation. To date, neither he nor the Advisory Board or Trustee have disclosed same, despite my repeated requests.

...

Conclusion

73. As my lawyers have repeatedly emphasized to the Defendant, as a beneficiary of the Trusts, I am entitled to be kept informed as to the trustee's ongoing stewardship of the assets comprised in the Trusts. The duty to account is one of the core obligations owed by trustees to beneficiaries. I have, however, despite numerous requests over many months, been left completely in the dark about the financial state of the trust assets and the actions the trustees are taking to ensure the proper administration of the Trusts.
74. Whilst the Defendant has made oblique references to section 83 of the Trustee Act, 1998, that section expressly preserves a beneficiary's right to an account. I therefore seek an account from the Defendant in respect of the assets of the Trusts.
75. I also seek orders requiring the Defendant to provide information and documentation received from the Advisory.

[17.] In response to the Claim, Cromwell filed the First Affidavit of Stephen Carey. In the Carey Affidavit he states at paragraphs 15, 16 and 27 as follows:

15. Although there is evidence that the Founder was contemplating a plan under which the assets of the trusts would be transferred into five new trusts, dividing the business between different branches of his family, that plan was never implemented during the Founder's lifetime (as Mr. Stewart acknowledges in his Affidavit). In deciding what were the Founder's true wishes, and how to implement them, CTC is confronted by a number of different sources, not all of which are entirely compatible or consistent with one another. It is not, as he would like to suggest, simply a case of the Founder leaving a clear indication of his wishes that CTC has just ignored.
16. In paragraph 27, Mr. Stewart refers to himself as a beneficiary whom the Founder wanted to receive a 16.67% share in the trust assets. While I accept that figure is mentioned in the undated summary document exhibited by Mr. Stewart, the current position is that he remains a discretionary beneficiary. He can call for Trust accounts and they have been provided (see paragraph 26 below) but he has no entitlement to other trust documentation.

Paragraph 1 Account of property subject to the Trusts

27. Mr. Stewart was given copies of the trust accounts for both Trusts on 4 October, 2023.

[18.] On 15 November 2023, Cheryl was added as the Second Defendant to the action and Robert was ordered to give notice of the action to the other beneficiaries. Cheryl supported Robert's claim for the provision of information from Cromwell, which related to the Claim which has since been abandoned.

[19.] Robert responded to the Carey Affidavit in an affidavit filed on 18 March 2024. The relevant part of the affidavit provides at paragraphs 6.25-6.29 as follows:

- 6.25 On 4 October Lennox Paton provided unaudited year end 31 December 2022 accounts for the Trusts but not previous years' accounts.
- 6.26 That same day, on behalf of the Trustee, Mr. Carey filed his response to my 4 October 2022 affidavit.
- 6.27 On 13 October 2023, Withers acknowledged receipt of the 2022 trust accounts and said that they *"trust[ed] that the accounts for earlier years including for the underlying companies, which [they had] been requesting for some time, will follow this week?"* Withers also asked a series of questions arising from the 2022 trust accounts.
- 6.28 At the 24 October 2023 meeting, Withers mentioned they asked a number of specific questions and had been promised information but had not heard further. Lennox Paton replied that the Trustee considered it did not have a right to the information. When asked why they did not have a right to it, Lennox Paton said my lawyers were welcomed to write to them and tell them they were wrong. Lennox Paton went on to confirm that the Trustee was *'following up and seeking to get information'* but that Sandals were *'reluctant to release information'* and were concerned that a beneficiary had asked for it. As mentioned at paragraph 5 above, there is a significant overlap between the board of SRI 2000 (who the Trustee says are refusing to provide the information) and the Trustee itself.
- 6.29 During the meeting, the Trustee's representatives were also unable to confirm basic information about the Trusts, such as the general cash position or whether there had been changes in the figures circulated in April. Lennox Paton asked Withers to put the questions in writing and promised they would respond. Withers did so on 28 October 2023 (and set out at length why the Trustee is wrong to say it does not have any responsibility, powers or duties relating to the Sandals Shares and the Sandals business).

[20.] Cromwell responded to Robert in an Affidavit of Mark Richford. At paragraphs 19 -20 of the Affidavit, Richford stated:

19. Cromwell understood that to be asking for an account to the assets of the Trusts as they currently stand. [Cromwell] has therefore provided Mr. Stewart with the 31 December 2023 accounts being the most recent trust accounts available which set out what the assets of each of the Trust are and thereby inform Mr Stewart as to the “financial state of the trust assets” (which is what he wanted as set out in paragraph 73 of his First Affidavit). Trust accounts for the subsequent year, the year ending 31 December 2024, are in the course of preparation but are not yet ready to be provided to beneficiaries.
20. It is correct that [Cromwell] did not provide Mr. Stewart with historic trust accounts going back to 2001. Those accounts do not come within the scope of paragraph 1 of the OS. In any event, [Cromwell] is not under any obligation to provide such material, and Mr. Stewart has not made out a case why they should be provided to him.

Law, Analysis and Disposition

[21.] In **Armitage v Nurse** [1998] Ch 241 Millett LJ (as he then was) described the duty to account as one of the “irreducible core obligations” owed by trustees to beneficiaries.

[22.] Cromwell accepts the common law position that a beneficiary, albeit a discretionary beneficiary such as Robert, was entitled to an account. However, and surprisingly, as a preliminary matter Mr Simms, KC on behalf of Cromwell asserted that Section 83(10) of the Trustee Act varied the common law such that a discretionary beneficiary was not entitled to an account of the trust property.

[23.] Section 83(10) of the Trustees Act provides:

(10) No such prohibition or restriction, and nothing in this section, shall prejudice the validity of any trusts or the entitlement of any beneficiaries who have in any manner become aware of any trusts to obtain orders of the Court for administration or accounts, or for the execution of the trusts, or any other order of the Court not being an order for the discovery, inspection, disclosure or production of such documents as are described in subsection (8), or for any information or disclosure which by subsection (2), (3), (5)(a) or (7) trustees are under no legal obligation to make.

[Emphasis added]

Mr Simms, KC sought to rely on this Court’s decision in **Dawson Damer v Grampian** [2017] 20 ITELR 722 which interpreted Section 83(8) of the Trustee Act. In **Dawson Damer v Grampian** the Court held that: Notwithstanding any literal construction of s 83(3) to the contrary, the power of the Court to order disclosure under discovery process survived in appropriate limited cases. The

trustee was not bound and could not be compelled to include the items identified in s 83(8)(a)–(d) as part of its list of documents required to be disclosed in the process of discovery or otherwise make them available for inspection as a part of that process. Had Dawson-Damer been able to demonstrate fraud or bad faith in the sense of dishonesty of belief or purpose on the part of the trustee, in the exercise of its duty, she could have moved an application for specific disclosure notwithstanding s 83(8).

[24.] I do not accept the Cromwell's submission as to the interpretation of Section 83(10) or that there is some assistance to be gained from the decision in **Dawson Damer v Grampian**, which dealt with an entirely different sub-clause in Section 83 of the Trustee Act. On a plain reading of Section 83(10), it demonstrates that rather than to restrict the right to an account, the section preserves the very right of a beneficiary to an account.

[25.] Not surprisingly, Cromwell, in the First Affidavit of Stephen Carey, had accepted that as a beneficiary, Robert was entitled to call for an account. (See paragraph 16 of the First Affidavit of Carey) Indeed, Cromwell in October 2023, albeit after the commencement of this action, provided a set of financial statements for the year ending 2022 with comparative figures for the prior two years.

[26.] The real issue in this dispute is the extent of the obligation by Cromwell to account. Robert relies on paragraph 20 of Richford's affidavit to support the view that the documents are available, just will not be provided. Mr Brownbill, KC for Robert says, that the inference is that there is something in the accounts they do not wish them to see. Counsel for Cromwell denies any such inference or that any such representation was made that financials and documents going back to 2001 exists.

[27.] Robert refers to the following judicial statements about the nature and contents of an adequate account:

- (1) In **Royal National Lifeboat Association v Headley** [2016] EWHC 1948, at para 11:
“When the books and cases talk about beneficiaries’ entitlement to accounts, or to trustees being “ready with their accounts” they are not generally referring to annual financial statements such as limited companies and others carrying on business (and indeed some large trusts) commonly produce in the form of balance sheets and profit and loss accounts... Instead they are referring to the very notion of accounting itself. Trustees must be ready to account to their beneficiaries for what they have done with the trust assets.”
- (2) In **Ball v Ball** [2020] EWHC 1020 (Ch), the Court endorsed the following summary of what is required from the trustees at paragraph 24: (i) They must say what the assets were; (ii) They must say what they have done with the assets; (iii) They must say what

the assets now are; (iv) They must say what distributions have taken place.” The Court also emphasized that *“It hardly needs to be said that the level of detail the trustees must provide and the formality of the statements and documents will vary with the size and nature of the trust.”* (¶25).

- (3) In **Re Tillot** [1892] 1 Ch 86, the Court said *“it is not sufficient for the trustee merely to say “I have invested the trust money on a mortgage,” but he must produce the mortgage deeds, so that the cestui que trust may thereby ascertain that the trustee’s statement is correct, and that the trust estate is so invested.”*

[28.] Robert says that a trustee holding assets of the value and significance of the assets in this case must be expected to have extremely detailed and accurate records to support the trust accounts. Mr Brownbill, KC says that the account must include sufficient information together with supporting documentation to explain and evidence various things. He identifies the sort of information expected from the account as follows:

- (1) What assets have been settled onto the Trusts since their creation, and when? What has happened to those assets since they were settled onto the Trusts, and what the Trust assets are now? For instance, the Coral Ridge declaration of trust refers to a Bahamian company, Sandals Resorts International Limited, which it defines as “Sandals”, and refers to the “Sandals Shares”, being the shares in that company, as being part of the Trust Fund.
- (2) What income and other receipts have been received by the First Defendant and when, and what has happened to that income and those receipts.
- (3) What distributions have been made from the Trust funds, to whom, and when.
- (4) What fees and expenses the Trustee has incurred and paid out of the Trust funds, and when.

[29.] Cheryl supports the application of Robert for an account.

[30.] According to Mr Simms, KC for Cromwell, they concede that at common law, even a discretionary beneficiary is entitled to an account by the trustee. He says that Cromwell does not have to produce underlying documents, but must just give an account. Cromwell relies English High Court decision in **Henchley v Thompson** [2017] EWHC 225:

25. ..[T]he view expressed by Lord Millett in *Libertarian Investments Limited*, although not strictly binding on this court carries very considerable weight as do the views of the commentators to which I have referred. There is no absolute entitlement to obtain an order for an account. It is one thing for the duty to account being part of the irreducible

minimum obligations of trustees, but quite another to say that the court must always, without exception, make an order for an account to be provided. The duty and an entitlement to an order from the court are quite different. I can accept, however, that the court will, in the exercise of its discretion, ordinarily make an order for an account where an account has not been provided and furthermore, there may be very limited circumstances in which the court will decline to make such an order. Nevertheless, it is plain to my mind there is a discretion even if it is one which will be applied sparingly.

[31.] Cromwell's position, in summary, is that:

- (1) The obligation to account to Robert does not include an obligation to provide any underlying documents as requested by Robert.
- (2) The trust structure limits the information which is provided to the Trust. The Advisory Board drives the sandals business not Cromwell.
- (3) Cromwell has provided far more than required by law. Robert and his solicitors asked a series of questions, and all those questions were answered.
- (4) Robert became a beneficiary on the death of the Founder and was provided with the state of the account prior to the Founder's death. The nature of the Fund was that the Founder had, by virtue of his control of the Advisory Board and his role as Enforcer, control of the Fund.
- (5) The request for the provision of records to 2001 is unreasonable. What would be the purpose of going back 20 years to a time when the Founder was alive and had much power and control over the assets and how the Trust was ran.

[32.] At the commencement of this action, in December of 2022, Cromwell had not accounted to Robert as it was obligated to do. Cromwell suggests that there were some limitations because of the pending litigation, applications for sealing orders and claims amongst the other beneficiaries. I am not satisfied that this was an accurate representation.

[33.] I am satisfied that in October 2022 Cromwell did account to Robert as to what comprised the trust fund. This was done not only by providing the financial details for the years 2020, 2021 and 2022 but also by answering questions raised by Robert's solicitors in subsequent correspondence.

[34.] Mr. Brownbill, KC accepts there is no magic in the form of the account and that useful information was provided in the correspondence exchanged. The information provided to Robert by Cromwell made him aware of: the cash and cash equivalents held; the amount of the loans to beneficiaries; the investments made and the underlying investments; the initial settled fund which

was \$100; what is now held in the capital account; what is in the income account; and, the total trust funds that are held.

[35.] The account provided also shows where the income came from, that there was a dividend income and interest income for the three years (showing how much money the trustee made on income). The account shows bank expenses, bank fees, the Trustee's fees and professional fees being spent. In the notes it describes the loans to beneficiaries.

[36.] Robert was also provided separately, during the course of global settlement negotiations and in correspondence, with a listing of all of the assets held by the Trusts, the principal of which is the shares in Oasis.

[37.] I am satisfied that Cromwell has accounted as at 2022, what the assets were, what they have done with the assets, what the assets now are and what distributions have taken place.

[38.] I do accept that some portions of Mr. Brownbill, KC's submissions betrayed a tendency to elide the provision of an account with the provision of documents, notwithstanding the withdrawal of that aspect of the Claim. The opportunity to deal with those inquiries will undoubtedly arise in the Main Action. But to suggest that Cromwell should provide 20 plus years of documentation relative to the transactions in the Trust, in my view is an untenable proposition and outside of what could be reasonably expected.

[39.] The principal asset of the Coral Ridge Trust is its shareholding in Oasis. Cromwell says that its rights and obligations as shareholders are limited by the Declaration of Trust; and it does not have information about the underlying business in which it is not involved. The clear evidence supports that the investment and management functions with respect to the Sandals business operates outside of the scope of the Cromwell's remit. Cromwell says it has, by the Founder's design, limited information on this. I accept this submission. I cannot make an Order, as it relates to the provision of information on these assets which cannot be carried into effect. While the value of the Trust is considerable, the bulk of its value is the shareholding in Oasis over which Cromwell has limited oversight and information. In any event, this and other matters are now the subject of scrutiny in the Main Action.

[40.] In my view the only further issue to be resolved is the provision of historical accounting data by the Trustee. Assuming the information exists, I am not satisfied that it is a proper exercise of my discretion to require Cromwell to provide historical information going back 20 years as Robert requests. In coming to this determination, my consideration included but was not limited to the following:

- (1) Robert only became a beneficiary on the death of the Founder in January 2021.

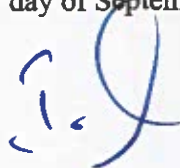
- (2) The evidence is that the Trusts were operated in the nature of directed trust fund with the Founder reserving considerable powers to himself.
- (3) When the Founder was alive Cromwell accounted to him.
- (4) The limitation period for an account in these circumstances is six years.
- (5) Financial services providers are only required to retain records for a limited period.

[41.] In the circumstances, I order Cromwell to provide (where available) the historical accounting for the five years prior to Robert becoming a beneficiary in January 2021, in the form previously provided in October 2023. I expect that, as it did in October 2023, Cromwell will provide the answers to any questions which may emerge.

[42.] I order that Cheryl also be provided with the accounts.

[43.] I will hear the parties on the time for compliance with the Order and on the issue of costs.

Dated this 11th day of September 2025

A handwritten signature in blue ink, appearing to be 'I. Winder', written over a faint circular stamp.

Sir Ian. Winder
Chief Justice