

**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
Common Law and Equity Division  
2021/CLE/gen/01043**

**IN THE MATTER of the trusts of the Declaration of Trust dated 23<sup>rd</sup>  
February 2001 and designated as The Coral Ridge Trust and of the trusts of  
the Declaration of Trust dated 23<sup>rd</sup> February 2001 and designated as The  
Hightree Trust**

**AND IN THE MATTER OF an application under Section 3 of the Judicial  
Trustees Act and/or under the inherent jurisdiction of the Court**

**BETWEEN:**

**CHERYL HAMERSMITH-STEWART**

**Claimant**

**AND**

**CROMWELL TRUST COMPANY LIMITED**

**First Defendant**

**ADAM STEWART**

**(acting in his capacity as the Enforcer, a member of the Advisory Board and personal  
capacity)**

**Second Defendant**

**JAIME STEWART-McCONNELL**

**(acting in her capacity as a member of the Advisory Board and personal capacity)**

**Third Defendant**

**BRIAN JARDIM**

**Fourth Defendant**

**GORDON STEWART**

**Fifth Defendant**

**KELLY STEWART**

**Sixth Defendant**

**SABRINA STEWART**

**Seventh Defendant**

**ASTON JONATHAN STEWART, SLOANE SARAH STEWART, CAMDEN JAIME  
STEWART, PENELOPE SKY McCONNELL, ISLA JAMES McCONNELL, FINLEY  
COLLINS McCONNELL, STELLAN JONATHAN McCONNELL AND THE UNBORN  
ISSUE OF ADAM STEWART AND JAIME McCONNELL**

**(acting by JOHANN GORDON EPSTEIN as their Guardian ad litem)**

**Eighth Defendant**

**ROBERT STEWART**

**Ninth Defendant**

**Before:** Hon. Chief Justice Sir Ian R. Winder

**Appearances:** Simon Taube, KC with John Wilson, KC and Vanessa Smith for the  
Claimant

Elsbeth Talbot Rice, KC with Wilfred Ferguson for the First Defendant

Richard Wilson, KC with John Minns for the Second, Third and Fourth Defendants

Nicholas Le Poidevin, KC with Terry North for the Fifth, Sixth and Seventh Defendants

John Delaney, KC with Lena Bonaby for the Eight Defendant

David Brownbill, KC with Dwana Davis-Gibson and Gia Lockhart for the Ninth Defendant

12 August 2025

## **DECISION ON APPLICATION FOR THE APPOINTMENT OF A JUDICIAL CO-TRUSTEE**

### **WINDER, CJ**

This is the application of the Claimant (Cheryl) for the appointment of a judicial co-trustee of the two Bahamian Trusts established by the late Gordon Arthur Stewart O.J. (the Founder).

### **Background**

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

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

- (1) The Jamaican Family, made up of his sons Adam Stewart ('Adam'), Robert Stewart ('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 and their three children Gordon, Sabrina, and Kelly Stewart.

- [3.] 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 23 February 2001 ("Coral Ridge"); and
  - (b) The Hightree Trust, which was established by declaration of trust also dated 23 February 2001 ("Hightree").

Cromwell Trust Company Limited (Cromwell) is the Trustee of the Trusts.

[4.] Shares in Cromwell are held in a Cayman Islands STAR 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.

[5.] Coral Ridge is reported to hold –

- (a) 100% of the issued shares in a Panama incorporated company, Oasis Global Inc ('Oasis Global'). Oasis Global in turn holds:
  - (i.) 100% of the issued shares in SRI 2000; and
  - (ii.) 100% of the issued shares in a Bahamas incorporated company, Blue Yoda Holdings Limited ('Blue Yoda'), which in turn holds a series of non-hotel assets, as well as the Island Routes Group, which is a tour operator.
- (b) 100% of the issued shares in another Bahamas incorporated company, Vinalhaven Holdings Limited ('Vinalhaven'), which as at 18 January 2021 held cash in the sum of circa US\$ 291 million.

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

- 8. Advisory Board
- 8.1 The Founder Members of the Advisory Board shall be Mr. Stewart, the Principal Beneficiaries and Chris Zacca.
- 8.2 The Enforcer may in writing appoint or remove members of the Advisory Board
- 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.
- 9.6 At any time the Advisory Board, with the written consent of the Trustees (which they may in their absolute discretion and without any liability or responsibility to any person give or withhold), may designate that a specific part of the Hotel Fund shall no longer be considered to be part of the Hotel Fund but shall thereafter be treated as one with that part of the Trust Fund which is not the Hotel Fund.
- 9.7 The Advisory Board shall not be deemed to be Trustees by reason of the powers conferred by this Clause and shall (provided they are not acting in bad faith) not otherwise owe any fiduciary duties to any person in the exercise or non-exercise of any of the powers under this Clause and shall in any event not be liable under this Clause except in the event of the Individual Advisory Board Member's own willful and individual fraud and dishonesty. The Trustees shall have no duty to inquire whether the Advisory Board is acting in bad faith, unless they have actual knowledge of circumstances which strongly indicate.

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

[6.] The Founder also settled a Guernsey Trust called the Winton Trust of which Adam and Jamie are the only named beneficiaries. The primary asset of the Winton Trust is the Unique Group ("Unique"). Unique handles marketing, reservations, advertising and collection for the Sandals

Group. The parent company of Unique is UTC, a Panama company. UTC is the sole shareholder of other companies within Unique, including a Delaware company, Unique Vacations Inc (“UVI”), and a Bahamian company, Unique Vacations Ltd.

[7.] By Deed of Amendment dated 16 August 2018, Clause 6 of the Trusts were each amended to include the following:

6.1 Mr. Stewart may at any time during the Discretionary Period declare in writing that any person shall cease to be a Beneficiary or shall cease to be capable of becoming a Beneficiary and this Trust shall take effect as if that person had died on the date of the declaration unless state otherwise. Thereafter, the Trustees may at any time during the Discretionary Period declare in writing that such person shall from the date of such declaration cease to be a Beneficiary.

6.2 Notwithstanding clause 6.1, if the Trustee in its discretion determine that any one or more of the Beneficiaries has brought any Claim, the Trustee may at any time with the written consent of Mr. Stewart while he is alive, and after his death, without his consent, declare in writing that any one or more of such Beneficiaries shall be excluded from future benefit under this Trust and such exclusion shall have effect from the date of such determination by the Trustee provided that such exclusion shall not derogate from any interest to which any Beneficiary has previously become indefeasibly entitled whether in possession or in reversion or otherwise.

6.3 For the purposes of clause 6.2 “Claim” shall mean all claims demands actions proceedings or counterclaims of any nature:

6.3.1 in which any one or more of the Beneficiaries shall object to or directly or indirectly contest:

(i) any provision of this Trust or any other deed of trust or trust indenture declared by the Trustees;

(ii) any provision of the Will or Wills of Mr. Stewart dealing with the devolution of his estate upon his death;

(iii) any provision of any gift made by Mr. Stewart;

(iv) any provision of any instrument or agreement governing any business entity owned, in whole or in part, by Mr. Stewart or any of his issue;

(v) any provision of any instrument or agreement governing any business entity owned, in whole or in part, by a trust created by Mr. Stewart or any of his issue; or

(vi) any provision of any instrument or agreement governing any business entity affiliated with Mr. Stewart or his issue; or

6.3.2 by which any one or more of the Beneficiaries shall attempt to prevent any provision under any deed indenture will instrument or agreement described in 6.3.1 above from being carried out in accordance with its terms.

[8.] Cheryl alleges 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 were to be dealt with after his death. Cheryl's assertions as to the Founders last wishes are the subject of challenge and its efficacy to be determined in this action.

[9.] Cheryl summarizes these purported wishes as follows:

- (a.) First, by a letter of wishes dated 18 March 2019 the Founder expressed the wish that after his death she and her children receive the sum of US\$100 million from Hightree.
- (b.) Second, in his Last Will & Testament dated 15 May 2020 (the 'Will'), the Founder set out a Table of Properties and listed which properties he wished specific members of his family to receive. Following requests in respect of specific properties, the Table of Properties included a general request that my children receive, "all other homes, apartments or residential units outside Jamaica not mentioned above. (regardless of whether owned by companies falling within the Sandals & Beaches Group or the ATL Group)".
- (c.) Third, in a 'Summary of Trust Arrangements' prepared at the Founder's request by Mr. Patterson the Founder expressed the wish that the parent companies of Sandals, HPI,

and another business be distributed to trusts for his family members in the following proportions:

- (i) A new US Family Trust, for me and my children - 42%.
  - (ii) A trust for Bobby- 16.67%.
  - (iii) A trust for Adam - 16.67%.
  - (iv) A trust for Jaime - 16.66%.
  - (v) A trust for Brian - 8%.
- (d) Fourth, by the 'Summary of Trust Arrangements' the Founder also expressed the wish:
- (i) That me and my children receive 8% veto shares in the parent companies of the said businesses (giving me and my children 50% of the voting rights in the businesses and so the ability to veto shareholder resolutions, protecting our minority position); and
  - (ii) That the parent companies be the subject of a Shareholders' Agreements, which would give the US Family and the Jamaican Family balanced representation on the boards of those companies (effectively providing that neither branch would have a majority on, or control of, the boards, unless they were joined by independent directors).

The Summary of Trust Arrangements were not signed by the Founder. Cheryl also relies on a memorandum, prepared by his personal attorney, Trevor Patterson which 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.

[10.] Adam and some of the defendants assert that Cheryl's representations as to the Founder's wishes do not accurately reflect the genuine, lasting, and free and informed wishes of the Founder.

[11.] Following the Founder's death, relations between the US Family and the Jamaican Family had broken down. Cheryl has commenced this action by Writ of Summons dated 14 September 2020. The indorsement on the Writ provides a summary of Cheryl's claim. It provides:

The [Claimant's] claim herein is against [Cromwell] as trustee of the settlement established by Declaration of Trust dated 23 February 2001 and known as The Coral Ridge Trust and as trustee of the settlement established by Declaration of Trust dated 23 February 2001 and known as The Hightree Trust for the following relief:

- (1) A declaration that the claim does not engage:
  - (i) the no contest clause at clause 6 of the Declaration of Trust of The Coral Ridge, as amended by a Deed of Amendment dated 16<sup>th</sup> August 2018,
  - (ii) the no contest clause at clause 6 of the Declaration of Trust of The Hightree Trust, as amended by a Deed of Amendment dated 16<sup>th</sup> August 2018; or
  - (iii) the no contest clause at clause 27 of the last Will and Testament of the late Gordon Arthur 'Butch' Stewart dated 15<sup>th</sup> May 2020.
- (2) If, but only if, the said declaration is granted:
  - (a) the replacement of [Cromwell] as trustee of the Trusts with The Private Trust Corporation Limited, or alternatively with such wholly independent, professional Bahamian trustee as the Court thinks fit;
  - (b) in the alternative to (a), the appointment of, as a Judicial Trustee of the Trusts in place of [Cromwell], The Private Trust Corporation Limited, alternatively of such wholly independent, professional Bahamian trustee as the Court thinks fit;
  - (c) in the alternative to (b), the appointment of, as an additional trustee of the Trusts to act jointly with [Cromwell], The Private Trust Corporation Limited, alternatively of such wholly independent, professional Bahamian trustee as the Court thinks fit;

[12.] Adam is joined in his capacity as the Enforcer of the Cromwell STAR Trust and a member of the Advisory Board. Jaime is likewise also joined in her capacity as a member of the Advisory Board. Johann Gordon Epstein (Epstein) was appointed as *Guardian ad litem* for Aston Jonathan Stewart, Sloane Sarah Stewart, Camden Jaime Stewart, Penelope Sky McConnell, Isla James McConnell, Finley Collins McConnell, Stellan Jonathan McConnell and the unborn issue of Adam and Jaime.

[13.] The question of whether Cheryl's claim would engage the no contest clause was taken by her as a preliminary issue. In a written decision dated 22 June 2023, this court determined that the no contest clause would not be so engaged by the bringing of Cheryl's claim.

## **The Application**

[14.] Cheryl has applied by (Amended) Notice of Application for the appointment of a Judicial Co-Trustee in the following terms:

1. The Plaintiff, Cheryl Hamersmith-Stewart, makes an application pursuant to Rule 26.1(2)(v) of the Supreme Court Civil Procedure Rules, 2022 (“CPR”), section 3 of the Judicial Trustees Act and / or the inherent jurisdiction of the Court for the following relief, which is sought on an urgent basis:

(a) The Court having determined by its Judgment dated 22 June, 2023 that the final relief claimed in this Action for inter alia the appointment of an independent judicial co-trustee does not engage the ‘no contest’ clauses at (i) clause 6 of the Declaration of Trust of the Coral Ridge Trust dated 23rd February 2001, as amended by Deed of Amendment dated 16th August 2018; and at (ii) clause 6 of the Declaration of Trust of the Hightree Trust dated 23rd February 2001, as amended by Deed of Amendment dated 16th August 2018, and contingent on that finding also applying to the contingent application for relief at subparagraphs 1(b) and 1(c) below, the Plaintiff will seek the relief at subparagraphs 1(b) and 1(c) below.

(b) The appointment of The Private Trust Corporation to serve as an independent Judicial Co-Trustee, serving along with the First Defendant as Trustees of the Coral Ridge Trust (“the Trust”) until judgment in this Action or further order of the Court.

(c) That all appropriate directions and guidance be given to the Judicial Co-Trustee in respect of the further investigation of the findings delineated in the Report of Certified Fraud Examiner, Ms Edith Wong CPA CFE of Global Consulting Firm FTI Consulting Inc dated 10 April 2025 (“the FTI Report”).

(d) That permission be granted pursuant to CPR 32.6 Cheryl have permission to adduce and rely on the FTI Report prepared by Edith Wong CPA and certified fraud examiner.

(e) Such further orders and directions as to the court seems fit.

(f) The costs of and incidental to this application be costs in the cause.

2. The grounds of the application are:

(a) The events detailed in the FTI Report demonstrate that there is a real risk that the principal asset of the Trust, namely its 100% shareholding in Sandals Resorts International 2000 Inc. and the underlying Sandals business, has suffered and will continue to suffer loss as a result of acts of defalcation and misuse of company resources by those charged with the responsibility of management of the Sandals business.

(b) The appointment of a Judicial Co-Trustee is necessary and expedient to safeguard the assets of the Trust and to secure the competent administration of the Trust for the beneficiaries.

...

[15.] Cheryl relies on her fourth affidavit in support of the application. In that affidavit Cheryl states:

**Summary of this Application**

5. There is a pressing need for independent fiduciary oversight of the administration of the Coral Ridge Trust. Without the oversight of an independent trustee, there is a real and present danger that the Trust Fund will suffer irrevocable losses, pending the final determination of my claim. In summary, the situation is as follows.

6. The principal underlying asset of the Coral Ridge Trust is Sandals Resorts International 2000 Inc. ("SRI 2000"), which is a company based in Panama, 100% of the shares of which are held (via an intermediate holding company incorporated in Panama called Oasis Global Inc.) through Coral Ridge, and which in turn holds Sandals & Beaches Resorts ("the Sandals Group"), the well-known hotel and resort chain. Evidence has recently come light which strongly suggests that assets of SRI 2000 are being mishandled or diverted to companies and entities from which the Second Defendant Adam Stewart ("Adam") expects in due course to benefit.

7. Adam is the Executive Chairman of Sandals and exerts direct or indirect control over the activities of the business. There is therefore a strong *prima facie* case that Adam is using the control that he exerts over the Sandals Group for his personal benefit, at the expense of the Coral Ridge Trust.

8. The First Defendant, Cromwell Trust company Limited ("CTCL") is a private trust company incorporated in The Bahamas which currently acts as the sole corporate trustee of the Trusts. The shares to CTCL are held by a Cayman Island law STAR Trust, of which Adam is the 'Enforcer', and in which capacity Adam has the ability to appoint and remove members of the board of directors of CTCL. Adam has actually used that power on multiple occasions to change the composition of the board of directors of CTCL. There is also evidence that:

(a) Adam controls the remuneration of the directors of CTCL via his role as Enforcer.

(b) Adam has exerted control or influence over CTCL's directors and attorneys in relation to the administration of the Coral Ridge Trust.

(c) Where directors of CTCL have previously challenged the control or influence which Adam exercises over CTCL, he has simply exercised his power as Enforcer to remove them from office.

9. The result is that the Trust Fund of the Coral Ridge Trust is currently in material danger, and neither I nor the other beneficiaries of the Trust can have any confidence that CTCL will either conduct a proper investigation into that danger or take appropriate action to

prevent or remedy it. On the Contrary, all available evidence suggests that CTCL will simply act as Adam requires.

10. The threat to the Trust Fund means that these matters cannot be left to trial, by which point the damage may already have been done. An independent co-trustee ought therefore to be installed to ensure that the investigation and response to these matters is conducted swiftly and properly. Subject to a preliminary determination regarding the effect of the ‘no contest’ clauses in the Trusts, I therefore ask the Court to appoint, as co-trustee of the Coral Ridge Trust together with CTCL, an independent professional Judicial Trustee, which can be given appropriate directions by the Court in respect of the investigations of these serious matters.

[16.] Cheryl’s evidence in support of the application is based primarily upon the findings of the FTI report. She discusses the report in her fourth affidavit as follows:

#### D. The FTI Report

25. In litigation in the United States Federal District Court for the Southern District of Florida, under the title HH Advertising Inc. v Unique Vacations, Inc., Unique Travel Corporation and Sandals Resorts International Limited (23-CV-24073-CMA) (“the HH Advertising Litigation”), which involves a claim by a company called HH Advertising Inc. (in which I was formerly a director and remain a minority shareholder) and entities connected with the Sandals Group (including in particular Unique Vacations Inc. and Sandals Resorts International Ltd), discovery has been provided and various depositions have been taken, which documents and testimony on oath are publicly available from the docket in those proceedings. Those documents and testimony contain deeply troubling revelations concerning the financial management of the Sandals Group.

26. Having obtained the publicly available documents and testimony from the HH Advertising Litigation docket, my legal advisors commissioned Edith Wong, a Certified Public Accountant and Certified Fraud Examiner employed by FTI Consulting, Inc., a global consulting firm, to conduct a forensic analysis of the financial information relating to the Sandals Group and related companies contained in those documents and testimony. Ms. Wong’s analysis is set out in her expert report dated 10 April 2025 (“the “FTI Report”).

27. The FTI Report is detailed and comprehensive report, and I will not set out all of Ms. Wong’s analysis finding in this affidavit. However, by way of summary only, and reserving my right to refer to the full contents of the Report on this application, the FTI Report sets out a number of serious ‘red flags’ regarding the financial management of the Sandals Group, including as follows:

28. Inconsistencies between Unique’s cash collections and distributions to SRI 2000: The FTI Report indicates that cash distributions from Unique, which as have said is the worldwide marketing and reservations representative for the Sandals Group, to SRI 2000,

have been inconsistent with the terms of the relevant contractual arrangements between those entities.

29. Ms. Wong identifies that, under the terms of a contract between Sandals and Unique seen by her, Unique is entitled to retain a commission of 6 % on bookings placed through Unique. However, Ms. Wong's analysis of the actual cash distributions to SRI 2000 indicate a retention by Unique of sums materially in excess of that agreed commission. Ms. Wong could identify no contractual basis or other documentation supporting this level of retention by Unique.

30. In addition, Ms. Wong identified that distributions to SRI 2000 pursuant to its agreement with the Unique Group should have amounted to the sum of US\$1,983,697,515 (just under \$2 billion). In fact, the amount distributed to SRI 2000 was just US\$453,5600,00. It therefore appears that Unique has been accumulating significant cash reserves that are not clearly justified by the business needs of either Unique or Sandals Group, with the result that SRI 2000 is not receiving the full amounts due to it under contractual arrangements.

31. As I have already explained, unique is held separately from SRI 2000, via the Guernsey law trust known as the Winton Trust. At present, only Adam and Jaime are named as beneficiaries of the Winton Trust, and while it was the Founder's wish that his other family members be added as beneficiaries of the Winton Trust, that has yet to occur. This raises a clear concern that funds are being retained by Unique for the benefit of Adam and his sister, who are the sole current named beneficiaries of the trust that ultimately owns Unique, to the detriment of the other beneficiaries of the Coral Ridge Trust. This concern is exacerbated by trial testimony in the HH Advertising Litigation that suggests that Adam has disregarded the structure instituted by the Founder and had assumed control of Unique, thereby ignoring the separation of control that should exist between Unique and the Sandals & Beaches Group. In particular, following the Founder's death, Adam convened a meeting of key employees of both Sandals and Unique that he called "*The Way Forward*". During this meeting Adam stated that "*we're on one team, even if we're different entities on paper.*" Further, a former Unique employee testified that even though Unique and Sandals are supposedly different entities on paper, they are all interrelated. Regarding Unique's management he testified that "*the decisions come from the top, the top being the executive chairman [Adam] and his group of executives.*" Further evidence of Adam's having assumed control of Unique, which shows a disregard of the structures the Founder put in place, I exhibited when the subject Unique employee was terminated by Unique CEO Jeff Clarke. When Mr. Clarke terminated the former Unique employee he said, "*This is a strategic decision, coming from Adam and Gebhard and myself.*" ...

32. Inappropriate discretionary payment: The FTI Report identifies instances of Unique making significant discretionary payments for the purposes that appear to be outside the proper scope of its role, such as \$3,013,00 for a Unique office building, and \$4.6 million for *executive bonuses*. Given that Unique has clearly defined limited contractual entitlement to retain fixed sums from revenues representing its commission, these *ad hoc*

discretionary payments suggest funds that have been remitted to SRI 2000 and its shareholders may have been misappropriated.

33. Unexplained related party transactions: The FTI Report reveals substantial payments made by Unique to entities outside the formal Sandals Group structure – including in particular entities which, pursuant to the Will, are defined to be part of the ATL Group, and Blu Voda Holdings (a company that is owned by Coral Ridge Trust but sits outside the SRI 2000 structure) – which lack clear business justification. In particular:

a. Unique made payments totaling over US\$2.4 million to the Jamaica Observer (a loss-making newspaper owned by Gortsew, which the Founder's Will stipulates should be bequeathed as to 52% to Adam personally following a restructuring of that company by the executors of the Founders Estate) over the relevant period. The amounts paid were significantly out of line with the Jamaica Observer's standard advertising rates, suggesting these payments were not genuine advertising expenses but rather a means of improperly supporting the Jamaica Observer using SRI 2000 funds.

b. SRI 2000 appears to have paid c. \$20,000 for furnishings, appliances, and systems for a private home that Adam Stewart is constructing in Port Antonio, Jamaica.

34. Significant accumulation of cash at SRI 2000: Ms. Wong notes that as of February 2023, SRI 2000 held total cash reserves of \$631.3 million, of which \$557.6 million was unrestricted cash. Ms. Wong calculates that this level of cash accumulation at SRI 2000 would have required nearly two years' worth of distributions from Unique at the average rate observed. This suggests SRI 2000 may have been accumulating cash over an extended period rather than making distributions to its shareholder (CTCL as the trustee of the Coral Ridge Trust) as would have been expected, raising further questions about the proper management of Sandals Group assets.

35. Taken as a whole, the FTI Report sets out credible evidence that the Sandals Group is not receiving and dealing properly with the sums to which it is entitled under its contractual arrangements with the Unique Group, and that monies that ought to be paid to SRI 2000 under those arrangements are to being either retained in Unique or used for the benefit of persons other than SRI 200, in a manner that directly or indirectly benefits Adam personally. Given that Adam is the Executive Chairman of the Sandals Group, it must be inferred that Adam is fully aware of this conduct and has either caused it or has permitted it to occur."

[17.] Cromwell opposes the application and has filed the Second Affidavit of Mr. Mark Richford to respond to the allegations. In that affidavit, Richford says

6. The basis of this application is that there are real and present danger of irrevocable losses to the Trust Fund such as that there is a pressing need for fiduciary oversight of the Coral

Ridge Trust. The real and present danger is said to be the mishandling or diversion of assets of SRI 200 by or for the benefit of Adam Stewart.

7. First, the Trustee is not aware of any real or present danger of mishandling or diversion of assets of SRI 2000 as alleged by Ms. Hammersmith-Stewart. The matters set out in CHS-4 do not amount to evidence of any such current danger.

8. Secondly, the Trustee is investigating the issue raised in the FTI Report: it has appointed an independent forensic accountant, Forensic Risk Alliance (FRA), to undertake that investigation, which is currently ongoing.

9. Thirdly and in any event, the structure which the Founder, Butch Stewart, set up is one in which all responsibility for the administration and management of the business of the Sandals Group companies owned, but only indirectly, by the Trust is removed from the Trustee and vested in an Advisory Board. Any co-trustee would be in office on the terms of the Coral Ridge Trust and would therefore be in the same position as the Trustee, which is required by the terms of the Coral Ridge Trust to act at the direction of the Advisory Board in relation to the Sandals Group.

10. Fourthly, SRI 2000 has also appointed an ad hoc committee of independent persons (namely Peter Melhado, Nicholas Lok Jak and Gervase Warner) to deal with the issue raised by the FTI Report and that subcommittee has appointed an independent forensic accountant, Kristofer Swanson of Charles River Associates (“CRA”), to investigate them. The Trustee and its independent forensic accountant will consider Mr. Swanson’s report and the information contained in it as soon as it has been produced and take any action (within its powers) that it considers appropriate. However, by letter dated 15 July 2025, Mr. Melhado wrote to the Trustee’s Bahamian attorney’s, LXP, and the Advisory Board’s Bahamian attorneys.

(a) express his concerns about the confidentiality of the information likely to be dealt with in Mr. Swanson’s report and ask that steps be taken to preserve that confidentiality;

(b) alert them to the fact that Mr. Swanson needs additional time to complete his report. Obviously, FRA cannot consider Mr. Swanson’s report until it is produced. That said, FRA is continuing with its own investigations on the basis of the evidence which is available to the Trustee; and

(c) inform them that while Mr. Swanson is still completing his investigation, he has advised the subcommittee that he has not yet seen any evidence to support Ms. Wong’s allegations of wrongdoing on the part of SRI 2000 management.

11. Fifthly, there is no need, let alone a pressing need, for fiduciary oversight of the Coral Ridge Trust as it is alleged by Ms. Hammersmith-Stewart. The Trustee strongly denies the

repeated but unsubstantiated allegations in CHS-4 that the Trustee is under the control or influence of Adam or otherwise is incapable of taking any necessary and appropriate action for the proper administration of the Trusts. All but one of the current board of directors of the Trustees are independent professional people who (as explained in paragraphs 12 and 46 below) have no previous professional or business connection with Adam or the Sandals Group business.

12. The current board of directors are me, Mrs. Shan Warnock-Smith KC, Ms. Wendy Warren and Ms. Donna Delva. Mrs. Warnock-Smith KS, Ms. Warren and I were appointed on 20 August 2022. Ms. Warren and I are established Bahamian trust administrators. Each of us has over 30 years of experience, including acting as directors of financial institutions licensed and regulated by the Central Bank of the Bahamas and acting as Judicial Trustee. Mrs. Warnock-Smith KC, is an eminent London Silk with vast experience in the trust matters. Mrs. Warnock-Smith KC, Ms. Warren and I took office on or about 12 November 2022 upon approval by the Central Bank of the Bahamas. Ms. Delva was appointed on 15 December 2021, having previously served as secretary since 2012 and is a non-executive director of SRI 2000 (for which she is not remunerated). The complaints Ms. Hammersmith-Stewart makes are not directed at any of us but are directed at people who are no longer directors of the Trustee.

13. We are all fully aware of the fiduciary responsibilities as directors of CTCL and of CTCL's fiduciary responsibilities as Trustee.

...

61. In short, Ms. Hammersmith-Stewart's evidence in Section F of CHS-4 does not support her contention that the Trustee cannot be trusted to conduct and act upon an investigation into the issues raised by the FTI Report. It has already commissioned an investigation and will properly consider the outcome of that investigation and any steps that it has the power to take and thinks should be taken in response.

...

65. There is no substance in Ms. Hammersmith-Stewart's contentions that there is a need for independent fiduciary oversight to prevent irremediable harm to the Coral Ridge Trust fund or the dissipation of the companies' assets. Nor is there any substance in her contentions that there is a need for the appointment of a co-trustee for there to be an appropriate investigation of the issues raised in the FTI Report when such issues are already being investigated by the Trustee, with independent forensic accountancy assistance. Ms. Hammersmith-Stewart's allegations that the Trustee is influenced by Adam are not supported by the evidence and are wrong. The Trustee is administering the Trusts in accordance with its fiduciary obligations and under the constraints imposed by the Founder when he established the bespoke trust structure he established. We consider that the

appointment of a co-trustee will not achieve anything other than duplication of time, effort and costs, which is not the overall interests of the beneficiaries of the Trust.

[18.] Adam, Jaimie and Brian also oppose the application for the appointment of a judicial co-trustee. Adam has also applied for an order that the application be heard in private. Adam's fourth affidavit (which is supported by Jaime and Brian) was filed to respond to the allegations. In that affidavit Adam says:

5. I make this affidavit in order to respond to that Application on behalf of the Third Defendant/Respondent, Jaime McConnell ("Jaime"), the fourth Defendant/Respondent, Brian Jardim, "Brian") and me. Jamie and Brian are also beneficiaries of the Trusts and Jaime is the only other member of the Advisory Board of the Coral Ridge Trust. Jaime and Brian have read a final draft of this affidavit and have confirmed that they agree with it insofar as the matters stated in it are within their own knowledge.

6. Responding to all of the allegations in the FTI Report would require referring to commercially sensitive information about the Sandals Group. Any provision of such information is very likely to have a negative impact on the value of the Sandals group and, therefore, on the Trusts and all of the beneficiaries of the Trust. Jaime, Brian and I consider it crucial that the Judicial Co-Trustee Application is subject to privacy restrictions and we have made, on or around the date of this affidavit, an application for appropriate privacy orders (the "Privacy Application"). I have sworn a fifth affidavit in support of the Privacy Application on behalf of Jaime, Brian and myself ("AS-5"). I do not go into more detail about the need for privacy in this affidavit but respectfully refer the Court to AS-5 in relation to those concerns.

7. The matters deposed to herein are based on my own knowledge or from information provided to me by the third parties. Where the matters I depose to are within my own knowledge, they are true and correct. Where the matters are derived from information provided to me by third parties whom I will identify or from documents I have reviewed, they are true and correct to the best of my knowledge, information and belief.

8. I do not intend to waive, and do not waive, by this affidavit any privilege in any advice provided to me, nor have I been authorized by Jaime or Brian to make any such waiver.

...

#### The Judicial Co-Trustee Application

10. In short, Cheryl's position, as advanced by the Judicial Co-Trustee Application is that:

- (a) There is evidence set out in the FTI Report that suggests that there are grounds for an investigation into whether the assets of SRI 2000 are being mishandled and that without the oversight of an independent trustee, there is a real and present danger that the trust fund will suffer losses;

(b) Cheryl does not have any confidence that CTCL will either conduct a proper investigation into that danger or take appropriate action to prevent or remedy it and considers that CTCL is in no position to undertake any such investigation into my actions;

(c) There is therefore a pressing need for independent fiduciary oversight of the administration of the Coral Ridge Trust; and

(d) An independent co-trustee ought therefore to be installed to ensure that the investigation and response to these matters are conducted swiftly and properly.

...

18. The main allegations postulated in the FTI Report are as follows:

(a) That Ms. Wong's analysis of the "*cash summaries*" identified that Unique's distributions to SRI 2000 "*did not always align with*" the terms of the relevant contractual arrangements between those entities.

(b) That Ms. Wong found evidence of Unique retaining with "*limited documentation explaining the intended use or justification*" for retaining those funds. Based on the "*limited documentation*" which Ms., Wong had accessible, Ms. Wong speculates that reserves may be being managed inappropriately and without regard to normal "*business practices*".

(c) That unique holds a "broad financial discretion to "*potentially*" use funds derived from SRI 2000's operations for its own benefit, which is contrary to Ms. Wong's understanding of the relations between SRI 2000 and Unique based on the "*available*" contractual terms and testimony from relevant witnesses.

(d) That "*payments made to Unique for its services diverged from the payment structures as defines in the 2016 Agreements.*" Ms. Wong speculates whether the payment arrangements were instead structured to "*maximize allocations to minimize taxable income in higher tax jurisdictions.*"

(e) That (i) profits from Blu Voda entities 'may have been' directed to SRI 2000; and (ii) payments made by Unique to the Jamaica Observer exceeded the cost of the advertising placements. Ms. Wong speculates the "*possibility*" that "*these payments may have financially benefited [me]*".

(f) That Unique has inconsistent and non-transparent hotel funding practices. Ms. Wong acknowledged that Unique's funding pattern has become "*more highly correlated with cash collections*". However, she expresses unspecified concerns regarding con-compliance with contractual and tax obligations.

(Together, the "Allegations").

19. The Allegations are speculative and unproven, and appear to be the product of Ms. Wong having been instructed to review certain information obtained from the Hunter Hammersmith Litigation and searched within that incomplete information for red flags.

Flaws in the FTI Report

20. The findings in the FTI Report are inherently flawed due to the lack of information available to Ms. Wong in preparing the FTI Report. It is clear from the FTI Report that Ms. Wong's findings are often based on "limited" information, such that Ms. Wong is forced to resort to mere speculation and assumptions (see Ms. Wong's admissions that her findings are "limited" or based on "incomplete" / "missing" / unavailable data, including at paragraphs 7, 73, 41, 45, 52, 56, 60 and 70 of the FTI Report). Ms. Wong crucially acknowledges at paragraph 41 of the report that *"Additional relevant documents, such as contracts, bank records, accounting records, and email discussions, would provide critical insight into whether the flow of funds between SRI 2000, Unique, and affiliated entities were appropriate. I reserve the right to amend my findings should additional information come to light."* (emphasis added)

21. Cheryl also has not provided the Court with her instructions to Ms. Wong, which means that it is not clear what Cheryl actually instructed Ms. Wong to "investigate" or to produce. There are indications, however, that Ms. Wong was specifically instructed to search for anything that might be said by her to be a red flag, however tenuous, rather than reach an objective view based on the limited information available to her. At paragraph 10, for example, Ms. Wong states that in her review she *"was instructed to search for red flags hat could be indicative of suspicious activity."* Ms. Wong's evidence also makes repeated reference to her understanding being based on *"representations provided to [her] by Counsel"* paragraph 11. Without sight of how and on what terms Ms. Wong was instructed, or a proper record of what representations were made to her by Cheryl's counsel, Ms. Wong's evidence cannot be considered as independent or reliable.

Independent investigations into the claims

22. Despite the Allegations being unproven, speculative and inherently flawed, they are being taken seriously and handled with due consideration by the Advisory Board, CTCL and the board of SRI 2000.

23. As set out above, Jaime and I are members of the Advisory Board of the Coral Ridge Trust.

24. Clause 9 of the Coral Ridge Trust deed provides:

*"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, and 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"*

25. This means that the Advisory Board is responsible for the Sandals Group and is the appropriate body to investigate the Allegations.

26. On 14<sup>th</sup> April 2025, the lawyers for CTCL, Lennox Paton (“LXP”), sent a letter to the Advisory Board and SRI [AS-4/26]. That letter enclosed a letter from Cheryl’s lawyers, McKinney, Bancroft and Hughes (“MBH”) which, in turn, enclosed the FTI Report.

27. On 8 May 2025, the Advisory Board’s lawyers, Macfarlanes LLP, responded to LXP’s letter about the FTI’s Report. As set out in this letter, the Advisory Board:

- (a) Immediately recognized that the Allegations were serious.

- (b) confirmed to CTCL that it wished to address the Allegations in full.

- (c) Explained that, given the length of the FTI Report and the complexity of the matters raised in it, it would not be possible for the Advisory Board to respond to such matters “urgently”, as requested; and;

- (d) Explained that, given the name and substance of the Allegations, it had delegated the response to the FTI Report to the Board of SRI 2000 to address and that SRI 2000 had designated a subcommittee of independent directors to work with its counsel to engage fully independent, highly reputable financial forensic firm with appropriate credentials to conduct a full investigation.

28. On 20 May 2025, SRI 2000’s lawyers, Latham & Watkins LLP, wrote to LXP [AS-4/29] and confirmed that:

- (a) SRI 2000 had appointed an ad hoc committee of independent directors of the Board of Directors of SRI 2000 to engage an independent financial forensic firm to analyze and respond to the FTI Report; and

- (b) The ad hoc committee of independent directors and SRI 2000’s counsel, on behalf of SRI 2000, had selected and engaged Kristofer Swanson of Charles River Associates after the ad hoc committee and its advisors completed a comprehensive selection process. A copy of Ms. Swanson’s CV and the relevant credentials of Charles River Associates were enclosed and are exhibited hereto at [AS-4/30-37]. Mr. Swanson is the Vice President, Practice Leader of Forensic Services for Charles River Associates. He has over 35 years of experience advising companies and counsel on how to respond and counsel on how to respond to the allegations of misconduct, similar to those raised in the FTI Report. He is a Certified Public Accountant, a Certified Fraud Examiner, and is certified in Financial Forensics.

29. On 5 June 2025, LXP responded to Latham & Watkins’s letter and confirmed that “*Our client takes the concerns raised in the FTI Report seriously and has engaged a forensic accounting firm to review the FTI Report, consider any responses from SRI 2000, the Advisory Board, Adam Stewart and advise the Trustee*”.

30. As is clear from the correspondence, the Allegations in the FTI Report are already being investigated by the appropriate bodies: SRI 2000 (as delegated by the Advisory Board) and CTCL. SRI 2000 and CTCL have both appointed independent and highly reputable forensic accountants to investigate the Allegations. In those circumstances, it is not clear

what more an independent judicial co-trustee would so or could do, if appointed. Jaime, Brian and I cannot see how there would be any benefit in there being a *third* independent forensic accountant instructed to investigate the Allegations. Rather, it would seem that the only impact that appointing a judicial co-trustee would have is to incur considerable further costs, other in respect of fees of such an entity and the additional costs of that co-trustee obtaining their own independent advice.

31. As at the date of this affidavit, the investigation being carried out by SRI 2000's expert, Mr. Swanson, is still underway. Whilst SRI 2000 had anticipated (at the time of their 20 May 2025 letter) preparing their report by mid-July, I understand that the investigation has not yet completed but that substantial progress has been made. On 9 July 2025, Latham & Watkins wrote to LXP confirming that:

- (a) Mr. Swanson has been in earnest to investigate the Allegations and draft a responsive report and, to date, has conducted multiple interviews with key personnel from SRI 2000 and certain of its affiliates and Unique;
- (b) SRI 2000 and its affiliates and third parties such as UVI are supporting the work of Mr. Swanson; and
- (c) Due to the nature and number of the issues raised in the FTI Report, the amount of data to be reviewed and the need to conduct certain follow-up interviews, Mr. Swanson's work is taking more time than originally expected.

32. On 15 July 2025, the chair of the ad hoc committee of independent directors of the Board of Directors of SRI 2000 (the "Committee"), Peter Melhado, wrote to LXP and Graham Thompson with comprehensive update on Mr. Swanson's report. In that letter, Mr. Melhado:

- (a) Explained that the Allegations pertain to confidential and sensitive financial information related to SRI 2000 and Unique's historic operations;
- (b) Confirmed that Ms. Wong never contacted SRI 2000 or Unique when she was preparing the FTI report;
- (c) Confirmed that, although Ms. Wong had not conducted a fulsome investigation into the accuracy of her claims and the Allegations contain significant speculation, the Board of Directors of SRI 2000 had nonetheless resolved to respond to the Allegations and investigate them fully and carefully;
- (d) Explained how the ad hoc Committee had been formed and who is on the Committee. None of the members of the ad hoc Committee were directors of SRI 2000 at the time of the matters to which the Allegations relate;
- (e) Explained how Mr. Swanson was selected as the appropriate expert to investigate the Allegations and respond to the FTI Report following a review whereby the ad hoc Committee and its counsel considered the applications and credentials of various financial accountants and firms and conducted interviews of such candidates as part of a comprehensive vetting process;

(f) Confirmed that Mr. Swanson began his investigation immediately after he was engaged and that, since then, he has been carefully investigating each Allegation with the cooperation of SRI 2000 and Unique;

(g) Explained that the committee has instructed Mr. Swanson to draft his responsive report in compliance with the Bahamian Supreme Court's Civil Procedure Rules and that, given this direction (which requires increased attention to the rules and procedures necessary to satisfy the Bahamian expert rules), along with the nature and extent of the Allegations and the time taken to compile certain documentation, Mr. Swanson requires additional time to complete his report;

(h) Confirmed that, while Mr. Swanson's work is still underway, he has advised the Committee that he has not seen any evidence *"to support Ms. Wong's Allegations of wrongdoing on the part of SRI 2000 management"*

(i) Requested that CTCL and the Advisory Board take all reasonable steps to ensure that Mr. Swanson's report will be afforded the appropriate privacy protections before it is submitted to the Court (should the need arise for it to be provided to the Court), and should the Court allow it, will continue to be treated as confidential in the proceedings.

The suitability of the directions of SRI 2000 (including the Committee) and CTCL to perform their functions.

#### *The CTCL Board of Directors*

33. The board of CTCL (the "CTCL Board") is an appropriate body to carry out its functions pursuant to the Trust deeds, including to conduct an independent investigation into the Allegations. The CTCL Board is comprised of professionals of integrity who possess extensive experience across various professional services sectors. Its members include:

a. Shân Warmock-Smith KC, who was appointed on 20 August 2022 and is widely regarded as one of the most eminent lawyers at the Chancery Bar. Ms. Warmock-Smith KC is an English King's Counsel, a Cayman Islands attorney, practices in numerous jurisdictions and is an expert from both an and litigation perspectives on trusts, succession and private wealth issues with an international element;

b. Mark Richford, who was appointed on 20 August 2022 and is a well-respected and highly experienced professional fiduciary with over 30 years of experience working for and heading, the trust department of several international banks in England, the British Virgin Islands, the Cayman Islands and The Bahamas.

c. Wendy Warren, who was appointed on 20 August 2022 and is a Chartered Accountant and the founder and Managing Director of an operational family office focused on full corporate and fund administration services. She also brings over a decade of experience as CEO and Executive Director of the Bahamas Financial Services Board, a financial sector body that works closely with government, regulators and private industry to ensure best-in-class financial services. She has worked with families and family business for over 25 years; and

d. Donna Delva, who was appointed to the Board on 19 January 2022. Ms. Delva has significant prior experience within the Sandals Group, having acted as both a director and secretary of SRI 2000 since 21 February 2012. Prior to her appointment to the CTCL Board, she was company secretary for CTCL. My father also made it clear to me that he held Ms. Delva in the highest regard.

34. I made the Enforcer instruction in August 2022 for the appointment of Mrs. Warmock-Smith KC, Mr. Richford and Ms. Warren because I felt that the Board of Directors would benefit from the addition of full independent and professional directors. This was in the context of strained family relations between the Jamaican Family on the one hand and Bobby and the US Family on the other, and against the backdrop of significant decisions which face CTCL as trustee of the Coral Ridge Trust and the Hightree Trust. As outlined above, these new directors bring a wealth of experience from the financial services, professional fiduciary and legal sectors and are independent of the family and the business.

*Cayman Islands Proceedings to Bless the Reconstitution of the CTCL Board*

35. By an Enforcer instruction dated 12 April 2024 I instructed JTC (the trustee of the Cromwell STAR Trust) to remove (i) Mr. Carey; (ii) Mr. Patterson; (iii) Mr. Singh; (iv) Mr. Soutter; and (v) Mr. Lawrence as directors of CTCT. In advance of determining to exercise my power as Enforcer to instruct this change, I sought an order from the Grand Court of the Cayman Islands blessing and approving the exercise of my power as Enforcer of the Cromwell STAR Trust to instruct JTC (as trustee of the Cromwell Trust) to remove a number of persons as directors of CTCT.

32. On 15 July 2025, the chair of the ad hoc committee of independent directors of the Board of Directors of SRI 2000 (the "Committee"), Peter Melhado, wrote to LXP and Graham Thompson with a comprehensive update on Mr. Swanson's report. In that letter, Mr. Melhado:

- (a) Explained that the Allegations pertain to confidential and sensitive financial information related SRI 2000 and Unique's historic operations;
- (b) Confirmed that Ms. Wong never contacted SRI 2000 or Unique when she was preparing the FTI report;
- (c) Confirmed that, although Ms. Wong had not contacted a fulsome investigation into the accuracy of her claims and the Allegations contain significant speculation, the Board of Directors of SRI 2000 had nonetheless resolved to respond to the Allegations and investigates them fully and carefully.
- (d) Explained how the ad hoc Committee had been formed and who was on the Committee. None of the members of the ad hoc Committee were directors of SRI 2000 at the time of the matters to which the Allegations relate;
- (e) Explained how Mr. Swanson was selected as the appropriate expert to investigate the Allegations and respond to the FTI Report following a review whereby the ad hoc Committee and its counsel considered the applications and credentials of various financial accountants and firms and conducted interviews of such candidates as part of a comprehensive vetting process;
- (f) Confirmed that Mr. Swanson began his investigation immediately after he was engaged and that, since then, he has been carefully investigating each Allegation with the cooperation of SRI 2000 and Unique;

- (g) Explained that the Committee has instructed Mr. Swanson to draft his responsive report in compliance with the Bahamian Supreme Court's Civil Procedure Rules and that, given this direction (which requires increased attention to the rules and procedures necessary to satisfy the Bahamian expert rules), along with the nature and extent of the Allegations and the time taken to compile certain documentation, Mr. Swanson requires additional time to complete his report;
- (h) Confirmed that, while Mr. Swanson's work is still underway, he has advised the Committee that he has not seen any evidence *"to support Ms. Wong's Allegations of wrongdoing on the part of SRI 2000 management"*; and
- (i) Requested that CTCL and the Advisory Board take all reasonable steps to ensure that Mr. Swanson's report will be afforded the appropriate privacy protections before it is submitted to the Court (should the need arise for it to be provided to the Court), and should the Court allow it, will continue to be treated as confidential in the proceedings.

...

38. Mr. Justice Kawaley subsequently delivered his anonymized Reasons for Decision on 26<sup>th</sup> April 2024 which is publicly available (a copy is exhibited hereto at [AS-4/4-9] by which the Judge confirmed that:

- (a) *"the Enforcer clearly had the power to give the relevant instruction"*;
- (b) *"the Enforcer had genuinely decided that the proposed instruction to the Trustee was in the best interest of the Trust and furtherance of the purposes for which it was established"*;
- (c) *"a reasonable enforcer could have reached the same decision"* which was made *"following careful deliberations and the receipt of appropriate legal advice"*; and
- (d) *"the Enforcer was not impeded by conflicts of interest from concluding that it was appropriate to give the relevant instruction"* and properly identified and gave full and frank disclosure of what *"might be considered as potential conflicts of interest."*

### Conclusion

46. For the reasons set out above, it is not necessary for an independent judicial co-trustee to be appointed. All relevant bodies, including CTCL, SRI 2000 and the Advisory Board are taking the Allegations made in the FTI Report seriously, with CTCL and SRI 2000 (whose boards are made up of extremely qualified, renowned directors), both undertaking independent investigations into the Allegations.

47. Despite Cheryl being made aware of the independent investigations, she had proceeded to expend time and resources (and force the other parties and the Court to do the same) in her *"urgent"* application for the appointment of a judicial co-trustee. She has gone so far as to include allegations which are not related to the FTI Report and are being separately litigated in the main proceedings before the Court and before the Supreme Court of Judicature of Jamaica.

48. My concern (as shared by Jaime and Brian) is that Cheryl is leveraging the inherently flawed FTI Report to:

- (a) artificially seek determination of issues already:
  - (i.) before the Court in the main proceedings in circumstances where she can bypass the proper steps to consideration of these issues, as prescribed

- by the timetable to trial in June 2026 (including disclosure, witness evidence and submissions); or
- (ii) before the Supreme Court of Judicature of Jamaica; and
- (b) seek “*urgent*” (albeit, temporary) substantive relief in the form of the appointment of The Private Trust Corporation as judicial co-trustee of the Coral Ridge Trust, in circumstances where:
  - (i.) this application will likely be heard before the SRI 2000 and CTCL have completed their independent investigations into the Allegations in the FTI Report and the parties have had time to give due consideration to and make submissions to the Court regarding SRI 2000’s and CTCL’s independent investigations; and
  - (ii.) as of the date of this affidavit, SRI 2000’s expert, Mr. Swanson, (who, unlike Ms. Wong, is already conducting a careful and thorough investigation into the Allegations) has not found any evidence “*to support Ms. Wong’s allegations of surrounding on the part of SRI 2000 management*”.

[19.] In response to (and support of) the principal affidavits above, the parties filed responses as follows:

- (1) Edith Wong’s Affidavit dated 10 April 2025
- (2) FRA’s ‘Preliminary Conclusions’ dated 21 July 2025 (the “FRA Summary”)
- (3) Edith Wong’s reply to the FRA Summary dated 1 August 2025 (the “FTI Reply”)
- (4) Cheryl’s Fifth Affidavit dated 5 August 2025
- (5) Rafael Marquinez’s opinion on Panama law of 4 August 2025

## Issues

- (1) Whether the Court should hold that the application does not engage the ‘no-contest’ clauses at clause 6 of the Coral Ridge Declaration of Trust dated 23 February 2001, as amended by Deed of Amendment dated 16 August 2018, and clause 6 of the Hightree Trust Declaration of Trust dated 23 February 2001, as amended by Deed of Amendment dated 16 August 2018.
- (2) Whether Cheryl requires permission to rely on the FTI Report, and the FTI Reply by Ms Edith Wong, as expert evidence in support of Cheryl’s Co-Trustee Application.
- (3) And if so required, whether the Court should grant permission to Cheryl pursuant to Rule 32.6(1) of the Supreme Court (Civil Procedure) Rules 2022 (the CPR).
- (4) Whether the Court should exercise its discretion pursuant to section 3 of the Judicial Trustees Act (JTA) or the Court’s inherent jurisdiction to appoint The Private Trust Company, to serve with Cromwell as trustee of the Coral Ridge Trust.

## **Law, Analysis and Discussion**

### **The case for the appointment of a Judicial Co-Trustee**

#### **Cheryl's case**

[20.] On Cheryl's case she asserts that:

- (i.) the Court should hold that it does not engage the 'no-contest' clauses at clause 6 of the Coral Ridge Trust Declaration of Trust dated 23 February 2001, as amended by Deed of Amendment dated 16 August 2018, and clause 6 of the Hightree Trust Declaration of Trust dated 23 February 2001, as amended by Deed of Amendment dated 16 August 2018;
- (ii.) the Court should exercise its discretion pursuant to section 3 of the JTA or the Court's inherent jurisdiction to appoint The Private Trust Company, to serve with Cromwell as trustee of the Coral Ridge Trust on the ground that it is "desirable" and/or "expedient" to do so to secure the welfare of the beneficiaries; and
- (iii.) the Court should (if required) grant permission pursuant to CPR 32.6 for her to rely on the FTI Report, and the FTI Reply by Ms Edith Wong, a certified public accountant and fraud examiner, as expert evidence in support of her Co-Trustee Application.

[21.] Cheryl's children (Gordon, Kelly and Sabrina) as well as Robert, support Cheryl's application.

[22.] Cromwell, Adam, Jaime and Brian oppose the application to appoint a judicial co-trustee. Epstein also does not support the application.

[23.] Cromwell case is that:

- (1) the Court, must determine whether the position Cheryl is taking in relation to the Trustee's duties and powers under the Coral Ridge Trust Declaration (as amended), amounts to a direct or indirect challenge to any provision of the Coral Ridge Trust Declaration, and clause 9 in particular, or is an attempt to prevent any provision under the Coral Ridge Trust, and clause 9 in particular, being carried out in accordance with its terms.
- (2) the Trustee's prompt response to the FTI Report shows that the Trustee is dealing with matters professionally and expeditiously and is investigating the potential concerns which have been raised as best it can (given that it does not have, and cannot require, detailed accounting information from SRI 2000).

- (3) In any case, there would simply be no point in appointing an additional co-trustee to carry out the same functions as the Trustee: a co-trustee would be in the exact same position as the Trustee and the appointment of a co-trustee would serve only unnecessarily to increase costs and the burden of administration of the Coral Ridge Trust.
- (4) The Application in reality appears to be a back-door attempt to secure on a summary basis the very relief that Cheryl seeks in the Main Action, which is set down for trial in June 2026. There is no urgency to the JT Application such as would justify an expedited, and summary, determination of matters which will be decided in, and ought properly to be left to, the Main Action.

[24.] Adam's case, as set out in his written submissions, are:

- (1) The "evidence" relied upon by Cheryl consists largely of material which is inadmissible. The mainstay of Cheryl's evidence is what is described as the "FTI Report". In fact, it is not an expert report at all, but a factual affidavit from Ms. Edith Wong. The FTI Affidavit is avowedly based on incomplete evidence obtained through litigation brought by a company co-owned by Cheryl against, inter alia, SRI 2000. Accordingly, it is (at best) speculative. It is also inadmissible.
- (2) On a fair analysis, Cheryl's evidence does not come close to establishing even a *prima facie* risk of the theft or misuse (or any other mismanagement) of SRI 2000's resources, let alone any risk of irrevocable harm between now and the trial of the substantive claim.
- (3) Cromwell has in fact taken all reasonable steps to ensure that matters are investigated fully and properly. Each of SRI 2000 and Cromwell has initiated a full and independent investigation into the allegations made. Accordingly, there is no more which Cromwell (or any other Trustee) could reasonably be expected to do.
- (4) The appointment of a co-trustee would confer no conceivable benefit, particularly in light of the steps which Cromwell has taken and indicated that it will take. Any impediment in the ability of Cromwell to investigate relevant matters (as a result of the structure deliberately established by the Founder), will apply equally to any co-trustee. The appointment of a co-trustee would simply result in unnecessary costs and/or delay in the ongoing administration of the Trust.

[25.] Epstein does not support the application and says that it is not in the interests of the minor and unborn beneficiaries for there to be unnecessary delay in the ongoing administration of the Trusts. It is unclear to the Guardian whether, and to what extent, the appointment of Private Trust Corporation will hamstring the administration of the Trusts in the short term (as the on-boarding process takes place), thereby risking delay and prejudice to the proper administration of the Trusts.

It is not in the interests of the minors and unborn beneficiaries for the Trust assets to bear unnecessary costs and expenses.

### **No contest clause**

[26.] It was not seriously argued that the application to appoint the Private Trust Corporation, as a judicial co-trustee, will engage the no contest clause. While the extent of Cheryl's expectation (suggestions) for a judicial co-trustee (such as changing the board of directors of the holding companies and amending of articles of incorporation to seize control of these holding companies) may raise concerns as to whether these may violate the no contest clause, the appointment of a new or co-trustee is principally within the scope of the claim in this action, which I have already found does not violate the no contest clause.

### **Jurisdiction to appoint a Judicial Co-Trustee**

[27.] The jurisdiction to appoint a Judicial Trustee is set out in section 3(1) of the JTA. Section 3(1) of the JTA provides:

Where application is made to the court by or on behalf of the person creating or intending to create a trust, or by or on behalf of a trustee or beneficiary, the court may, in its discretion, appoint a person (in this Act called a judicial trustee), to be a trustee of that trust, either jointly with any other person or as sole trustee, and, if sufficient cause is shown, in place of all or any existing trustees.

[28.] Cheryl recognizes that the older authorities have suggested that the discretion, to appoint a judicial co-trustee, should be exercised on the basis of whether or not it is "desirable" for a Judicial Trustee to be appointed, or whether or not "there has been a breakdown in the administration of the trust". Cheryl argues however, that the test for the exercise of the Court's discretion to appoint a judicial trustee is one of expediency. She says that the Court will exercise its discretion where it is expedient to do so for the welfare of the trust and its beneficiaries. She relies on the cases of *Cheung Pui Yuen v World Cup Investments Inc* [2007] HKCA 389 at [80] and *Carvel Foundation v Carvel* [2008] Ch. 395. Cheryl also relies on Section S. 48(1) of the *Trustee Act* which provides:

48. (1) The Court may, whenever it is expedient to appoint a new trustee or new trustees and it is found inexpedient, difficult or impracticable so to do without the assistance of the Court, make an order appointing a new trustee or new trustees either in substitution for or in addition to any existing trustee or trustees or although there is no existing trustee.

Mr. LePoidevin KC, for Gordon, Kelly and Sabrina, also advances the test as one of "expediency, *i.e.* the interests of the Trust, as a whole".

[29.] Cromwell says that the purpose behind section 1(1) of the English Judicial Trustees Act 1896 (which is framed in language similar to the Bahamian statute) is to provide a middle course in cases where the administration of the trust or estate by the ordinary trustees has broken down and it is not desired to put the trust or estate to the expense of a full administration: Cromwell relies on the authority of *Re Ridsdel* [1947] Ch 597 at 605; *Goodman v Goodman* [2013] 3 All ER 490 at [9] and the learned authors of *Lewin on Trusts* 20<sup>th</sup> ed. The appropriate test, Cromwell says, as does Adam, is the exercise of the discretion where the court is satisfied that the appointment is necessary as the administration of the trust or estate by the ordinary trustees has broken down.

[30.] According to the learned authors of *Underhill and Hayton* (20<sup>th</sup> ed) at paragraph 78.5:

78.5 The power of the court to appoint a judicial trustee is purely discretionary, and will not be exercised where no charge of improper conduct is made against an existing trustee who opposes the application, even where he or she is a sole trustee; nor where the donee of the power of appointing trustees has appointed persons able and willing to act; nor will the court as a rule appoint a judicial trustee to act with a private one.

Underhill and Hayton's proposition; that the court does not, as a rule, appoint a judicial trustee to act with a private one was supported by the case of *Re Martin* 1900 WN 129. In that case, Kekewich J. stated that *he did not think that the union of a judicial trustee and a private or gratuitous trustee desirable and, having regard to the appointment of a judicial trustee and the costs to which the estate would be put by his appointment, he would not sanction it*. I accept that the facts in *Re Martin* distinguishes it from the facts of the instant case.

[31.] It is worth noting that none of the authorities cited relate to the appointment of a judicial co-trustee on an interim basis or in circumstances where the appointee will not be a "true" co-trustee administering the trust, but rather a trustee appointed to conduct an investigation.

[32.] I am satisfied that the appropriate test ought to require a breakdown in the administration of the trust, as was found in the case of *Kemp v. Kemp (Executor of the Estate of the late Audley Kemp Sr.)* [2014] 2 BHS J. No. 12. In that case the court found that *it had become impossible or difficult for the administration to be completed by the existing personal representatives and there exists in the Respondents a want of proper capacity to execute the duties*. The Court discussed the issue of appointing a judicial trustee as follow:

[8 ] The problem of the dilatory personal representative and the usefulness of the Judicial Trustees Act was examined in the case of *Goodman and another v. Goodman and another* [2013] 2 All E. R. 490. At paragraph [9] of the judgment, Newery J. referred to the second report, of the Law Reform Committee, [of the Chancery Division] published in 1982 which dealt with the powers and duties of trustees (Cmnd 8733). Part VII of the report noted that

'the dilatory personal representative' was a serious problem and went on to describe the remedy under the Judicial Trustees Act at para 7.14:

"The object of this statute is to provide a middle course in cases where the administration of the estate by the ordinary trustees has broken down and it is not desired to put the estate to the expense of a full administration. We are not aware of any case where this remedy has been adopted and found unsatisfactory."

[9] The learned Editors of *William Mortimer and Summvil on Execution, Administration and Probate* (10<sup>th</sup> Ed.) in referring to disputes in administration at paragraph 60-14 commented –

"If the administration has come to a standstill because relations between the personal representatives have broken down, or relations between the representatives and the beneficiaries have broken down, the court will ordinarily remove the personal representative and appoint new ones to enable the administration to be completed. It is not necessary to establish wrongdoing or fault by the personal representative to obtain his removal. If, for whatever reason (such as clash of personalities, or the lack of confidence in the personal representative by the beneficiaries even if unjustified) it has become impossible or difficult for the administration to be completed by an existing personal representative, then an order for his removal will usually be made." (my emphasis).

[10] The Respondents argue that it is a drastic step for the Court to remove an executor chosen by a testator in the absence of allegations of dishonest or willful misconduct and merely on the ground of delay. The case of *Isaac and others v. Isaac* [2005] All ER (D) 379 was advanced in support of the proposition. In that case the court refused to remove a trustee on the basis that there was "no case of positive misconduct made out against the defendant, nor was there any maintainable allegation of want of honesty, capacity, or reasonable fidelity."

[11] In *Isaac and other v. Isaac*, Park J. relied heavily on the writings of the learned authors of *Lewin on Trust*. According to *Lewin on Trusts*, para 34, "the court has an inherent jurisdiction in executing the trusts to remove a trustee, even though his consent or co-operation is not forthcoming. It is, however, quite a drastic step for the court to take, and in my judgment should only be taken in a clear case."

...

[33.] According to the learned authors of *Lewin on Trust* (20<sup>th</sup> ed) at paragraph 18-002:

Appointment is discretionary

The appointment of a judicial trustee is not a matter of right but entirely within the discretion of the court. The object of the 1896 Act was to provide a middle course in cases where the administration of the trust fund had broken down and it was not desired to put the trust fund to the expense of a full administration. In these circumstances a useful solution might be found in the appointment of a judicial trustee, who acts in close concert

with the court and under conditions enabling the court to supervise his transactions. Accordingly, the court will not normally appoint a judicial trustee unless it is established that there has been a breakdown in the administration of the trust, as for example where there has been insufficient or unsatisfactory accounting by trustees, or an undue delay in making payments to beneficiaries, or an inability on the part of trustees to reach agreement on investment or other matters concerning the management of the trust fund. So where a testator had manifested an intention that his widow and sole executrix, who was tenant for life under his will, should have the sole control of his estate, and there was no ground of complaint against her, the court refused to appoint a judicial trustee at the instance of the reversioner.

### **The Admissibility of the FTI report**

[34.] Adam challenges the admissibility of the FTI Report on the basis that Cheryl did not obtain permission to rely on it as required by Rule 32.6(1) of the CPR. While Cheryl disputes the need for permission, she has nonetheless amended her Notice of Application to seek permission (if so required).

[35.] The FTI Report is said to delineate the findings in the Report of Certified Fraud Examiner, Ms. Edith Wong (Wong) CPA CFE of Global Consulting Firm FTI Consulting Inc. dated 10 April 2025. Beyond her process, and the material utilized by her, Wong's findings are not properly factual but in the nature of opinion evidence.

[36.] Cheryl says that the authorities show that under the CPR there is no need for permission to rely on expert evidence in the present application for interim relief. She says that in an urgent interim application the Court does not insist on compliance with the full rigours of Rule 32.14 of CPR. Instead, consistently with how the Court approaches an urgent interim application, the Court needs to be satisfied that the FTI Report and reply evidence establishes a *prima facie* case of wrongdoing, rather than be concerned with whether Rule 32.14 of CPR has been complied with. Rule 32 of CPR, she says, is concerned with expert evidence at trial which is adduced so that the Court may make final findings of fact.

[37.] Rules 32.1 and 32.6 of the CPR provides:

#### **32.1 Scope of this Part.**

**(1) This Part deals with the provision of expert evidence to assist the Court.**

**(2) In this Part, "expert witness" means an expert who has been instructed to prepare or give evidence for the purpose of court proceedings.**

...

#### **32.6 Court's power to restrict expert evidence.**

**(1) A party may not call an expert witness or put in the report of an expert witness without the court's permission.**

- (2) The general rule is that the court's permission is to be given at a case management conference.
- (3) When a party applies for permission under this rule —
  - (a) that party must name the expert witness and identify the nature of his or her expertise; and
  - (b) any permission granted shall be in relation to that expert witness only.
- (4) The oral or written expert witness' evidence may not be called or put in unless the party wishing to call or put in that evidence has served a report of the evidence which the expert witness intends to give.
- (5) The Court must direct by what date the report must be served.
- (6) The Court may direct that part only of an expert witness' report be disclosed.

[38.] I am satisfied that Rule 32.6 of the CPR requires Cheryl to obtain permission to rely on the FTI Report. This is clear on the face of the provision which speaks in expansive terms rather than restricting it only to the trial process. Additionally, an expert witness is defined as an expert who has been instructed to prepare or give evidence for the purpose of court proceedings. Court proceedings must naturally refer to proceedings such as this application.

[39.] While Rule 32.6(2) speaks to the application being made at the case management conference it also speaks to this as being the “general” rule. This only reflects that the trial process is the usual venue for the reliance on expert evidence. This is supported by the learned authors of *Hollander on Documentary Evidence (15th ed.* at paragraph 31-10, where they state:

In interlocutory proceedings before directions have been given, it is common to put in an expert report, for example to show an arguable defence to an application for summary judgment, or to show the financial position of a company on a security for costs application. No one ever seems to complain about such reports although technically they need leave of the court under the CPR. It has been said that if the parties instruct experts without waiting for the court to give permission they are at risk as to recovering the costs if the court subsequently decides that expert evidence is not necessary.

[40.] Notwithstanding my finding as to the requirement for permission, I readily accept that the exercise of the discretion to allow a party to rely on expert evidence may likely, depending on the circumstances, be different in an interim process from a trial process.

#### **Application for permission to rely on the FTI report**

[41.] Having found that Rule 32 must be complied with, I will turn to consider Cheryl's application for permission to rely on the FTI Report.

[42.] Cheryl says that the court should grant permission for her to rely on the FTI Report and the FTI Reply as expert evidence in this application as, in substance, it complies with the requirements in CPR Part 32. She says that it provides strong *prima facie* evidence of dissipation and

misappropriation of funds due to SRI 2000 to the detriment of the beneficiaries of the Coral Ridge Trust which needs to be investigated urgently. She says that Adam's attempts to strike-out such evidence, on purely technical grounds she says, should be refused.

[43.] Adam complains that the FTI report is a material breach of Rule 32.14(3): it fails to provide the written instructions given to Wong (contrary to Rule 32.14(3)(a)); and it fails to provide notes of any oral instructions given to Wong (contrary to Rule 32.14(3)(c)). This, Adam says, is particularly important as:

- (1) The FTI Report was not produced as a disinterested, fair and balanced analysis of the Sandals Group, but it was instead commissioned to provide the basis for Cheryl issuing a Co-Trustee Application (which, it is to be inferred, was always Cheryl's intention). Wong was expressly instructed (and paid) to produce a report which supported Cheryl's case which is clear from the limited instructions described in the FTI Report as follows: "... I was instructed to search for potential red flags that could be indicative of suspicious activity"
- (2) It is directly contrary to the expert's duty to the Court to embark on an expert analysis with the objective of advancing the case of the party instructing them, rather than to provide an independent and balanced assessment.
- (3) The fact that Wong was instructed to achieve a particular outcome makes it more important that the respondents (and the Court) are able to see the full set of instructions (both written and oral) and materials provided to Wong which led and/or encouraged her to reach the conclusions which she did.

[44.] Adam also complains that the FTI Report cannot be adduced (or relied upon) as expert evidence as it is in breach of other aspects of Rule 32.14 of the CPR:

- (1) It fails to describe (let alone exhibit) all the material which Wong has relied upon (contrary to CPR 32.14(1)(b)).
- (2) It fails to identify whether there is a range of opinion on the matters dealt with in the report and, if so, what that range is and why Wong's opinion is not elsewhere within that range (contrary to CPR 32.14(1)(e)).
- (3) The statement in the final paragraph of the document – which is, bizarrely, headed "Conclusion" – is confined to confirming that the matters set out in the affidavit are "true and correct". Accordingly, it fails to acknowledge Wong's duty to the Court, as distinct from any duty owed to the client paying for her services (contrary to CPR 32.14(2)(a)).
- (4) It also fails to confirm that the above duty has been complied with (contrary to CPR 32.14(2)(b)). In light of the matters set out herein, it is submitted that Wong would be unable properly to confirm that such duty has been complied with.

- (5) It fails to confirm that Wong has included all matters relevant to the issues covered by her report (contrary to CPR 32.14(2)(c)).
- (6) It fails to confirm that Wong has identified any matter which might affect the validity of the report (contrary to CPR 32.14(2)(d)).

[45.] Rule 32.14 of the CPR provides:

**32.14 Contents of report.**

- (1) An expert witness' report must —**
  - (a) give details of the expert witness' qualifications;**
  - (b) give details of any literature or other material which the expert witness has used in making the report;**
  - (c) say who carried out any test or experiment which the expert witness has used for the report;**
  - (d) give details of the qualifications of the person who carried out any such test or experiment;**
  - (e) if there is a range of opinion on the matters dealt with in the report —**
    - (i) summarise the range of opinion; and**
    - (ii) give reasons for his or her opinion; and**
  - (f) contain a summary of the conclusions reached.**
- (2) At the end of an expert witness' report there must be a statement that the expert witness —**
  - (a) understands his or her duty to the Court as set out in rules 32.3 and 32.4;**
  - (b) has complied with that duty;**
  - (c) has included in the report all matters within the expert witness' knowledge and area of expertise relevant to the issue on which the expert evidence is given; and**
  - (d) has given details in the report of any matter which to his or her knowledge might affect the validity of the report.**
- (3) There must also be attached to an expert witness' report copies of —**
  - (a) all written instructions given to the expert witness;**
  - (b) any supplemental instructions given to the expert witness since the original instructions were given; and**
  - (c) a note of any oral instruction given to the expert witness, and the expert must certify that no other instruction than those disclosed have been received by him or her from the party instructing the expert, the party's legal practitioner or any other person acting on behalf of the party.**

...

[46.] It would appear that Cheryl acknowledges that the FTI Report is not fully compliant with the provisions of Rule 32 as she speaks in terms of her *substantial* compliance. I do accept that the court could be moved to exercise its discretion in the face of substantial compliance, on an interim application. I must note however, that raising complaints of non-compliance with Rule 32 is not an arid technical point being raised as there is indeed a true need for compliance with the

procedural requirements relative to expert evidence. The importance of such compliance was helpfully discussed by Smith J in the English High Court case of *Dana UK Axle Ltd v Freudenberg GST GmbH* [2021] EWHC 1413. The learned judge stated:

65. In light of my decision in relation to the PTR Order, it is not strictly necessary for me to address the other serious breaches on the part of FST of CPR 35 and the 2014 Guidance. However, I have had detailed evidence in the form of the Phillips Statement and, in circumstances where I consider those additional breaches to be of a particularly serious nature, I intend to deal with them, albeit as briefly as I can.

#### Experts' Duties

66. Before I turn to consider those breaches, however, I should reiterate what was said by Fraser J in *Imperial Chemical Industries Limited v Merit Merrell Technology Limited* [2018] EWHC 1577 at [237]:

“The principles that govern expert evidence must be carefully adhered to, both by the experts themselves, and the legal advisers who instruct them. If experts are unaware of these principles, they must have them explained to them by their instructing solicitors. This applies regardless of the amounts in stake in any particular case, and is a foundation stone of expert evidence. There is a lengthy practice direction to CPR Part 35, Practice Direction 35. Every expert should read it”.

67. Fraser J went on to set out some examples of the application of the well-known principles in *The Ikarian Reefer* [1993] 2 Lloyd's LR 68 (including the point that I have already identified above that experts of like discipline should have access to the same material). For present purposes, I note the first duty of an expert witness in a civil case as identified by Cresswell J (at page 81) in *The Ikarian Reefer*:

“Expert evidence presented to the Court should be, and should be seen to be, the independent product of the expert uninfluenced as to form or content by the exigencies of litigation (*Whitehouse v Jordan* [1981] 1 WLR 246 at 256, per Lord Wilberforce)”.

68. This duty is echoed in paragraph 2 of Practice Direction 35:

“2.1 Expert evidence should be the independent product of the expert uninfluenced by the pressures of litigation.

2.2 Experts should assist the court by providing objective, unbiased opinions on matters within their expertise, and should not assume the role of an advocate.”

69. CPR 35.3 makes clear that the expert's overriding duty is to the court and that this overrides any duty to his or her client.

#### Breaches of CPR Part 35 and the 2014 Guidance

70. The emails to which I have already referred, disclosed as part of the May Disclosure, have revealed serious flaws in the conduct of FST's experts, many of which were

accepted by Mr Wygas in his submissions, during which he frankly acknowledged that FST had not met the appropriate standards:

“The Defendant simply can’t and doesn’t shirk away from the fact that what has gone on does not comply with the standards that are set by the courts of England and Wales and it shouldn’t have happened...if it happened because people have been overenthusiastic, or however it happened, is irrelevant, but it has happened and therefore the consequences have to follow from that”.

71. I have already relied on some of these failures in the context of the first part of this judgment, but for completeness I identify below all of the breaches of protocol that have been revealed.
72. First, as will already be clear from the earlier part of this judgment, there was a free flow exchange of information between the Experts and FST’s employees and in-house technical specialists, through extensive email exchanges, numerous telephone and video conferences and at site visits, apparently with no, or very little, oversight from Fladgate. Mr Wildschutz explains in paragraph 14 of the First Wildschutz Statement that he was contacted “numerous times” by Mr Bauer of FST “to seek confirmation as to whether or not he was permitted to provide logistical assistance to the experts”, however it would appear that Mr Wildschutz did not seek to have any involvement in these conversations and nor did he ask that they should be recorded. The emails reveal that communications between the Experts and FST’s in-house specialists went far beyond mere “logistics” and it is inevitable that the Experts have been privy to information that was not shared with Dana’s experts.
73. Accordingly, I accept Mr Webb’s submission that I cannot now be satisfied that the requirements of CPR 35.10(3), Practice Direction 35, paragraph 3.2(3) and paragraphs 30 and 55 of the 2014 Guidance referred to earlier in this judgment have been complied with.

[47.] In the circumstances, I am satisfied that FTI Report is in material breach of Rule 32.14 of the CPR.

### **Whether a Co Judicial Trustee ought to be appointed**

[48.] Cheryl says that:

- (1) There is strong prima facie evidence in the FTI Report of misappropriation of funds and jeopardy to the Coral Ridge Trust’s assets.
- (2) On 10 April 2025 the FTI Report was provided by her attorneys, McKinney Bancroft & Hughes (“MBH”), to Cromwell’s attorneys, Lennox Paton. It has repeatedly been acknowledged by Lennox Paton and Cromwell that the FTI Report raises “serious” issues which require an “urgent and substantive response”. ...Cromwell instructed its own forensic accountant FRA to review the FTI Report. The FRA Summary dated 21 July 2025

provided to Cromwell reveals that no serious attempt has been made to uncover the truth.

...

(3) Quite apart from the strong *prima facie* evidence of misappropriation of funds due to SRI 2000, there is also evidence that Adam is contemplating a sale of the Sandals Group of which SRI 2000 is the parent company. ...It is a matter of serious concern that Adam might procure a sale of the Sandals Group, which would stymie an adequate independent investigation of the *prima facie* evidence of wrongdoing indicated by the FTI Report.

(4) In April 2025, the task of carrying out such an adequate independent investigation fell on Cromwell as the sole trustee of the Coral Ridge Trust. Pursuant to clause 9.7 of the Coral Ridge Declaration of Trust, CTCL is under a duty to investigate where it has “actual knowledge of circumstances which strongly indicate” “bad faith” on the part of the Advisory Board, i.e. Adam.

(5) Cromwell’s present ineffective failure to pursue a proper investigation is the latest example of its failures to investigate *prima facie* wrongdoing by Adam.

(6) Given the absence of an independent trustee willing or able to investigate the strong *prima facie* evidence from FTI of Adam’s wrongdoing, and in light of the risk of irremediable harm to the trust funds which cannot sensibly await investigation until after a full trial, it is “*expedient*” for the Court to exercise its powers under the Judicial Trustees Act to appoint an independent, interim Judicial Co-Trustee.

[49.] Cheryl’s application is based primarily on a foundation built upon the FTI report prepared by Wong who she says, “*was engaged to conduct a forensic analysis of the available public financial information relating to the Sandals Group*”. She says that the report shows strong *prima facie* evidence of wrongdoing in respect of the Sandals Group’s affairs.

[50.] Cromwell says that the FRA’s Preliminary Conclusions Report does not acknowledge that “in excess of US\$300 million has apparently been detained or diverted by Unique”. That amount is taken from a table prepared by FRA for the purpose of demonstrating how adjusting the assumptions made by FTI has a dramatic effect on the resulting calculation and also on the conclusions drawn by FTI. FRA’s table carries an express caveat that FRA cannot confirm the accuracy of the calculations.

[51.] Adam says that the deficiencies in the FTI report identified by FRA (including the fundamental arithmetical errors as identified in paragraph 32 of the FRA Report) are concerning. In particular, it is noted that the FRA Report states (at paragraphs 18 & 27) “We identified that FTI often bases its analysis on incomplete information and assumptions, resulting in findings that are not fully substantiated [...] We observed areas where FTI’s analysis was missing key information and relied on assumptions that could be incorrect”. Adam also says that neither FRA nor Kristofer Swanson of Charles River Associates, a Certified Public Accountant and the expert

appointed by SRI 2000 to investigate the allegations in the FTI Affidavit, had identified any evidence to support the allegations in the FTI Affidavit.

[52.] Adam and Cromwell say that the FTI Report is not a conclusive document which can be relied on by the Court for the purposes of Cheryl's application for the appointment of a judicial co-trustee.

[53.] I accept this submission for the many reasons advanced by those opposed to the application and find that the FTI report is indeed inconclusive and incomplete. It is itself an interim report identifying where streams of inquiry lie to complete the report. In assessing this application, I caution myself as to the significance of the decision being sought, to dislodge bespoke arrangements put in place by a settlor, who established a private trust company for the sole purpose of administering the assets being placed into the fund.

[54.] The reasons for my reluctance to find that the FTI Report demonstrates *prima facie* evidence of wrongdoing in respect of the Sandals Group, warranting the appointment of a new trustee alongside Cromwell, include but are not limited to the following:

- (1) At paragraphs 52, 56, 60, 66, 70, 73, 82 of the FTI report, Wong says that no conclusion can be reached as to whether any improper tax avoidance occurred or whether payments or reserves were justified without further documentation and explanations and further consideration.
- (2) Whilst the FTI Report identifies various issues with certain operations of Unique (a company not owned by either of the Trusts) which require further investigation, it does not evidence that the Coral Ridge Trust Fund is "currently in material danger" as Cheryl alleges.
- (3) The FTI Reply expressly accepts that further data and information could affect its findings and conclusions about the alleged inconsistencies between cash collections and distributions to SRI 2000.
- (4) The provisional nature of Wong's conclusions is reflected in the headings she has used, such as "Unexplained Funding by Unique and Accumulation of Cash Balances" and "Potentially Inappropriate Use of Cash Reserves by Unique".
- (5) The FTI Report relies on brief snapshots of the position without any consideration of historical context. For example, Wong has had no regard to whether such features previously existed prior to the death of the Founder or were a feature of his management.
- (6) The Preliminary Conclusions Report dated 21 July 2025 prepared by FRA, in its review of the FTI report has stated, *inter alia*:
  - (i.) that FTI often bases its analysis on incomplete information and assumptions, resulting in findings that are not fully substantiated;
  - (ii.) the FTI Report suffers from a number of shortcomings in its own terms, for example: making apparently unsubstantiated findings; omitting potentially

important sources of data; and making various potentially unjustified assumptions both as to the underlying facts and their effect.

[55.] The inconclusive nature of the FTI Report is set against a backdrop of evidence which reveal that during the period covered by the report, SRI 2000 is said to have been successfully audited by Grant Thornton LLP (now Doane Grant Thornton LLP), rendering the suggestion that there has been (and there is a material risk in future of) a massive theft or misuse of its resources unlikely.

[56.] While Wong relied upon that incomplete information in order to generate suspicion, there did not appear to be any steps taken to obtain missing information flagged by her, prior to launching this application. Similarly, Cheryl could have caused Wong to supply the missing material being complained of, so as to comply with Rule 32.14 of the CPR.

[57.] In the circumstances I am not satisfied that the FTI Report establishes *prima facie* evidence that:

- (i) there has been historic theft or misuse of SRI 2000's resources; or
- (ii) there is a material risk of the theft and misuse of SRI 2000's resources in the near future.

[58.] Cheryl's own submission belies the speculative nature of her evidence. She says at paragraph 53 of her submission that "there is powerful *prima facie* evidence of serious wrongdoing in respect of the affairs of the Sandals Group, which is the primary underlying asset of the Coral Ridge. This wrongdoing involves the possible misappropriation of hundreds of millions of dollars, even over a billion, to the detriment of the Coral Ridge Trust and the US Beneficiaries and Bobby. Such misappropriation may benefit Adam personally (and possibly Jamie)". So while the evidence is being described as powerful, it nonetheless must be circumscribed having regard to the inconclusive nature of Wong's report which, can only be described as preliminary and requiring further information to finalize.

[59.] Cheryl complains that there is the need to conduct an urgent independent investigation of the FTI Report's findings as 4 months after receiving the FTI report, Cromwell, the Advisory Board and SRI 2000 have failed to progress any investigation or produce any evidence to rebut the FTI Report's red flags.

[60.] Having considered this complaint, I am not satisfied that it is a proper complaint to levy against the parties.

- (i) Cromwell, the Advisory Board and SRI 2000 have taken varied steps to assess Ms Wong's report. In each case, inquiries, which are said to be independent, are underway.

(ii) Ms Wong having not condescended to providing her instructions or advising when she began her work on this project, it is difficult to assess whether the timeline afforded to Cromwell to act is fair.

(iii) The sale of the Sandals business does not pose an urgency. Cheryl had been made aware of the Advisory Board's considering the prospects of a sale of the Sandals business. The sale of such an asset could not happen without due diligence and therefore not something which would occur overnight.

[61.] I am not satisfied that there has been a complete breakdown in the proper administration of the Coral Ridge Trust, such that the appointment of a Judicial Co-Trustee is necessary or that the Fund is "currently in material danger". I would go further to say that I am not satisfied that it is expedient to do so.

[62.] In my view the appointment of a Judicial Co-Trustee, at this stage would serve no useful purpose as there has been no breakdown in the administration of the Trust. Whatever concerns are expressed by Wong is already being investigated by an independent expert appointed by the Trustee and another independent expert appointed by an ad hoc committee of independent directors of SRI 2000. The Trustee operates within the parameters of the structure established by the Founder. A co-trustee would be in the same position. It would not have any greater rights or powers in relation to the Sandals Group business or any better access to Sandals Group information than the Trustee has. The Private Trust Corporation would therefore be in exactly the same position as the Trustee is in, not a better position, to investigate the potential issues in the administration of SRI 2000 flagged in the FTI Report.

[63.] Having regard to the claims raised in the main action, which seeks the removal of Cromwell as Trustee, I agree that the main action is the proper forum for litigating who should be trustee. The trial is set to be heard in the spring of next year. I agree with the assessment that acceding to this application could result in the obtaining of the relief sought in the main action without a proper investigation, at a trial, into the issues which arise for determination in the main action. I also agree with the assessment that it is difficult to see the benefits of this application in the short window leading to the trial of the action and in light of the fact that the Sandals Group companies are not held within the Hightree Trust.

[64.] I do not find, therefore that:

(a) there is credible evidence which establishes a "real and present danger" of the imminent "defalcation and misuse" of resources belonging to SRI 2000 such as to cause "irrevocable" harm to Cheryl in advance of the trial in 2026.

(b) Cromwell's current directors are incapable of exercising proper fiduciary oversight over the Trust's assets.

Ultimately, I am not satisfied that there is a risk of irrevocable harm between now and the trial of the substantive claim to warrant the appointment of a judicial co trustee.

### **Conclusion**

[65.] I refuse permission for Cheryl to rely on the FTI Report and even if I was minded to exercise my discretion to do so, I am not satisfied that it could lead to the exercise of my discretion to appoint a Judicial Co-Trustee for the reasons expressed in this judgment. The application is therefore dismissed.

[66.] I will hear the parties by way of written submissions on the issue of costs.

Dated this 17<sup>th</sup> day of October 2025



Sir Ian. Winder  
Chief Justice