

**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 HAMMERSMITH-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, Vanessa Smith and Theominique Nottage for the Claimant**

Gilead Cooper KC with Brian Simms, KC and Wilfred Ferguson Jr. for the First Defendant

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

Terry North for the Fifth, Sixth and Seventh Defendants

John Delaney, KC with Lena Bonaby for the Eight Defendant

David Brownbill, KC with Gia Lockhart for the Ninth Defendant

Hearing Date(s) 25 and 26 February 2026

### **SPECIFIC DISCLOSURE DECISION**

#### **WINDER, CJ**

This is my decision on the Claimant's (Cheryl) applications for specific disclosure against the First Defendant (Cromwell) and the Second, Third and Fourth Defendants (Collectively referred to as Adam).

[1.] I gratefully adopt the shortened summary of the background to this claim which is stated at paragraphs 11 to 18 of Cheryl's submissions:

11. The Court is by now familiar with the background of these proceedings, which concerns two Bahamian law trusts, Coral Ridge and Hightree (together the "Trusts"), of which Crommwell is the trustee, and which were established to hold the wealth and assets of Gordon 'Butch' Stewart O.J. (the "Founder"). At his death, the Founder was survived by two branches of the family: the "US Family" (consisting of Cheryl and the children of Cheryl and the Founder) and the "Jamaican Family" (consisting of Adam, Jaime, Brian, Bobby and their respective families).

12. The principal asset of Coral Ridge is its 100% shareholding of a Panamanian company, Oasis Global Inc ("Oasis"). Oasis is the sole shareholder of another Panamanian company, SRI 2000 Inc ("SRI 2000"), which is the parent company of the Sandals Group.

13. The principal assets of Hightree are its shareholding in a Panama Company, Hospitality Purveyors Inc ("HPI"), which acts as the design and procurement arm for the Sandals Group, as well shares in a number of companies which own family properties and other luxury assets.

14. There is a third trust, the Winton Trust, which is governed by Guernsey law and of which currently only Adam and Jaime are beneficiaries. The primary asset of the Winton Trust is the Unique Group (“Unique”), the parent company of which is Unique Travel Corp (“UTC”), another Panamanian company.

15. Cheryl’s case is that the Founder’s Wishes included, most significantly, that the US Family would receive 42% of those assets of the Trusts in relation to which there was no specific direction. This includes 42% of the shares in Sandals, HPI and Unique.

16. Cromwell presently has four directors: Ms. Donna Delva (“Ms. Delva”) who is also a director of SRI 2000; Ms. Shân Warnock-Smith KC (“Ms. Warnock-Smith”); Ms. Wendy Warren (“Ms. Warren”); and Mr. Mark Richford (“Mr. Richford”). Adam appointed the last three in 2022. From January 2021 to April 2024, when Adam removed them, the directors of Cromwell included: Mr. Trevor Patterson (“Mr. Patterson”), who was also the personal attorney of the Founder and is an executor of his Estate; Mr. Dmitri Singh (“Mr. Singh”); Mr. John Lawrence (“Mr. Lawrence”); Mr. Paul Soutter (“Mr. Soutter”); and Mr. Steven Carey (“Mr. Carey”).

17. The shares in Cromwell are held by a Cayman Islands law STAR Trust (the “Cromwell STAR Trust”), of which Adam is the ‘Enforcer’, and in which capacity Adam has the power to appoint and remove members of the board of directors of Cromwell.

18. Adam and Jaime are also the ‘Advisory Board’ for Coral Ridge and have the powers provided for at clause 9 of the Coral Ridge Declaration of Trust in respect of the ‘Hotel Fund’ which consists of the shares in Sandals. There is a dispute over the construction of clause 9 and the extent of the powers vested in the Advisory Board.

[2.] In this action, Cheryl seeks a declaration as to the Founder’s wishes and an Order for the removal and replacement of Cromwell as trustee of the Trusts on the basis, she says, that:

- (1) Cromwell has, since the death of the Founder, failed to exercise its duty to consider properly and fairly the exercise of its powers of appointment under the Trusts in accordance with the wishes of the Founder.
- (2) Cromwell is under the control of Adam who:
  - (a) by his misconduct, has demonstrated that he is not a suitable or proper person to have control or influence over a body with the duties of the Trusts;
  - (b) has taken steps to prevent the implementation of the Founder’s wishes; and
  - (c) has removed directors of Cromwell who have tried to implement the Founder’s wishes.

[3.] Following standard disclosure, Cheryl complains that Adam and Cromwell have not provided adequate disclosure. On 29 January 2026, Cheryl applied by Notice of Application for specific disclosure from Adam and Cromwell. The Notice of Application is settled in the following terms:

1. The Plaintiff, Cheryl Hamesmith-Stewart, hereby applied pursuant to Rule 28.5 of the Supreme Court Civil Procedure Rules 2022 (the “CPR”) and/or the inherent jurisdiction of the Court for the following relief:
  - a. An order that the First to Fourth Defendants provide disclosure of the documents classes or categories of documents specified in Schedule 1 of the Order on the ground that such disclosure is necessary in order fairly to dispose of the claim.
  - b. An order that the First Defendant provide disclosure of the documents or classes categories of documents specified in Schedule 2 of the Order on the ground that such disclosure is necessary in order to fairly dispose of the claim.
  - c. An order that the Second to Fourth Defendants provide disclosure of the documents or classes or categories of documents specified in Schedule 3 of the Order on the ground that such disclosure is necessary in order to fairly dispose of the claim.
  - d. Further directions consequential on the relief sought at sub-paragraphs 1(a)-(b) above and such further orders and directions as the court sees fit.
  - e. Such costs orders as the court seems fit.
2. The following written evidence will be filed in support of the application, the First Affidavit of Alicia A. Gibson dated 26 January 2026 and the grounds of the application will be more fully set out in the Plaintiff’s Affidavit in support of this application, which will be filed separately, and by way of summary are as follows:
3. By the present action, the Plaintiff seeks an order replacing the First Defendant as trustee of two Bahamian law trusts known as the Coral Ridge Trust and the Hightree Trust with an independent professional Bahamian trustee (or alternatively the appointment of a co-trustee or the appointment of a judicial trustee or the appointment of a judicial co-trustee) and a declaration as to the true and final wishes of the late Gordon ‘Butch’ Stewart.
4. The First and Second – Fourth Defendants have failed to disclose documents which are relevant to the Plaintiff’s claim, disclosure of which is necessary fairly to dispose of the claim.
5. In addition, the First Defendant has wrongly failed to disclose documents on the basis that they are confidential to third parties.

#### Cheryl’s Case

[4.] Cheryl’s application is supported by her 8<sup>th</sup> Affidavit. Adam and Cromwell filed the 4<sup>th</sup> affidavit of Dancia Knowles and the 4<sup>th</sup> Affidavit of Mark Richford respectively, in opposition to the application.

[5.] Cheryl's case is that Cromwell has control for the purposes of disclosure over the documents of all its directors and former directors which relate to the affairs of Cromwell. Accordingly, Cromwell should have sought directly relevant documents from all its past and present directors in the period since January 2021 relating to the issues in the Claim, including internal communications between directors of Cromwell and the documentary records of their discussions.

[6.] Cheryl says that Adam's contention that he is not obliged to disclose documents of SRI 2000 (or Gorstew Limited) because they are not his personal property is wrong. Cheryl says this evidence does not suggest that Adam has never had physical possession or a right to inspect or take copies of the documents which he is refusing to disclose (e.g. by using his or any other SRI 2000 (or Gorstew) computer to gain access to the documents of SRI 2000 (or Gorstew) as a director). The evidence therefore fails to show that the relevant documents are not in the control of Adam. The documents of SRI 2000 are "in the control of" Adam within CPR 28.2(2). As a director and Executive Chairman of SRI 2000, Adam has or has had physical possession or the right to inspect or take control over the documents in his physical possession or on his computer/laptop, whatever the capacity in which he is or was acting at the time.

[7.] Cheryl also says that Adam's disclosure reveals that when it suits him, he can obtain documents of SRI 2000 for disclosure in this claim, see e.g. the letter dated 24 April 2024 to the Board of SRI 2000 from its then CEO Gebhard Rainer. This letter shows that in 2024, for the first time, Mr. Rainer was disclosing to the Board that in 2022 he had authorised the use of company employees to assist in the construction of Adam's personal villa at Blue Hole, Port Antonio.

[8.] Cheryl submits that the Court ought to reject Adam's arguments that the documents of Sandals/SRI 2000 need not be disclosed by him, in spite of them being directly relevant to the issues and necessary for their determination.

#### Cromwell's Case

[9.] Cromwell's position with respect to Cheryl's application is set out at paragraph 3 of its submissions as follows. Cromwell says that the documents sought from Cromwell are:

- (1) Not relevant to the pleaded case; and/or
- (2) Not necessary or proportionate for the fair determination of the case; and/or
- (3) Privileged; and/or
- (4) Protected from disclosure by section 83(8) of the Trustee Act (as amended) ("section 83(8)").

[10.] Cromwell also objects to the application on the basis that many of the documents which Cheryl is asking for are subject to advice privilege, litigation privilege and/or common interest

privilege, having been brought into existence for the purpose of responding to Cheryl's claim against it. Finally, Cromwell says that section 83(8) provides an exemption from disclosure of – any document disclosing the Trustee's deliberations about any discretion of theirs, or any document disclosing the reason for any exercise of any Trustee's discretion or the material upon which the Trustee's reasons were or might have been based; any document relating to the exercise or proposed exercise of any discretion of the Trustee, including legal advice obtained by the Trustee in connection with the exercise of any discretion.

#### Adams Case

[11.] Adam's position is that Cheryl's application for specific disclosure is in reality an impermissible 'fishing expedition' for broad categories of documents, seemingly disregarding the fact that a proper search has been carried out and ignoring the requirement for documents to be 'directly relevant' in order for them to be disclosable under CPR 28. Adam says that Cheryl is simply hoping that 'something will turn up' to allow her to bolster her hopelessly weak claim.

[12.] Adam says that most of the documents belong to SRI 2000 and not him. Cheryl identifies the documents requested against Cromwell in the first and second schedule of the draft order and against Adam in the first and third schedule of the draft order.

#### Law and Analysis

[13.] Rule 28.2 – 28.6 of the Supreme Court (Civil Procedure) Rules 2022 (the CPR) deals with the duty to disclose and provides as follows:

28.2 Duty of disclosure limited to documents which are or have been in party's control.

(1) A party's duty to disclose documents is limited to documents which are or have been in the control of that party.

(2) For this purpose a party has or has had control of a document if —

(a) it is or was in the physical possession of the party;

(b) the party has or has had a right to inspect or take copies of it; or

(c) the party has or has had a right to possession of it.

28.3 Disclosure of copies.

(1) Except where required by paragraph (2), a party need not disclose more than one copy of a document.

(2) A party must however disclose a copy if it contains a modification, obliteration or other marking or feature which is not present in the original or any copy of the document which is being disclosed.

28.4 Standard disclosure – what documents are to be disclosed.

If a party is required by any direction of the Court to give standard disclosure that party must disclose all documents which are directly relevant to the matters in question in the proceedings.

### 28.5 Specific disclosure.

(1) An order for specific disclosure is an order that a party must do one or more of the following things —

- (a) disclose documents or classes or categories of documents specified in the order;
- (b) disclose documents relevant within the principles relating to discovery of documents, or, alternatively, directly relevant, to a specified issue or issues in the proceedings; or
- (c) carry out a search to the extent stated in the order for —
  - (i) documents relevant, in the sense indicated in paragraph (b), or directly relevant to the proceedings or to a specified issue or issues; or
  - (ii) documents of a particular description or class or in a particular category or identified in any other manner,

and disclose any documents within the scope of the order located as a result of that search.

(2) An order for specific disclosure may be made on or without an application.

(3) An application for specific disclosure is to be made on notice and unless in special circumstances at a case management conference.

(4) An application for specific disclosure may identify documents —

- (a) by describing the class to which they belong; or
- (b) in any other manner.

(5) An order for specific disclosure may require disclosure only of documents which are directly relevant to one or more matters in issue in the proceedings.

### 28.6 Criteria for ordering specific disclosure.

(1) When deciding whether to make an order for specific disclosure, the Court must consider whether specific disclosure is necessary in order to dispose fairly of the claim or to save costs.

(2) The Court must have regard to —

- (a) the likely benefits of specific disclosure;
- (b) the likely cost of specific disclosure; and
- (c) whether it is satisfied that the financial resources of the party against whom the order would be made are likely to be sufficient to enable that party to comply with any such order.

(3) If, having regard to paragraph (2)(c), the Court would otherwise refuse to make an order for specific disclosure it may nonetheless make such an order on terms that the party seeking the order must pay the other party's costs of such disclosure in any event.

(4) If the Court makes an order under paragraph (3) it must assess the costs to be paid in accordance with rule 71.6.

(5) The party in whose favour such order for costs was made may apply to vary the amount of costs so assessed.

[14.] Three broad issues call for legal analysis and determination. These are:

- (a) the meaning of section 83(8) of the Trustee Act;
- (b) whether documents belonging to SRI 2000 are disclosable by Adam; and,
- (c) whether Cheryl's requests are too broad.

### **Section 83(8) of the Trustee Act**

[15.] Section 83(8) of the Trustee Act provides:

(8) Notwithstanding anything to the contrary in this section, trustees shall not be bound or compelled by any process of discovery or inspection or under any equitable rule or principle to disclose or produce to any beneficiary or other person any of the following documents, that is to say —

- (a) any memorandum or letter of wishes issued by the settlor or any other person to the trustees, or any other document recording any wishes of the settlor;
- (b) any document disclosing any deliberations of the trustees as to the manner in which the trustees should exercise any discretion of theirs or disclosing the reasons for any particular exercise of any such discretion or the material upon which such reasons were or might have been based; or
- (c) any other document relating to the exercise or proposed exercise of any discretion of the trustees (including legal advice obtained by them in connection with the exercise by them of any discretion).

[16.] Section 83(8) was considered by this court in the case of **Dawson-Damer v Grampian Trust** (2017) 20 ITEL R 722.

[17.] In **Dawson-Damer v Grampian Trust** the plaintiff was a beneficiary of a discretionary family trust of which the defendant was the trustee. The plaintiff was excluded from distribution of the trust funds and took action against the trustee alleging breach of duty by the trustee in failing to give her interests reasonable consideration and in adopting a policy that she would not benefit under the settlement. The trustee filed a statement of defence and the plaintiff then served a request for further and better particulars. The trustee responded that it was protected by s 83(8) of the Trustee Act. The plaintiff argued that s 83(8) did not apply to contentious litigation, that the protection under the section had been waived by reference to documents in the statement of defence.

[18.] The Court held that: (1) Notwithstanding any literal construction of s 83(3) to the contrary, the power of the Court to order disclosure under discovery process survived in appropriate limited cases. The trustee was not bound and could not be compelled to include the items identified in s

83(8)(a)–(d) as part of its list of documents required to be disclosed in the process of discovery or otherwise make them available for inspection as a part of that process. Had the plaintiff been able to demonstrate fraud or bad faith in the sense of dishonesty of belief or purpose on the part of the trustee, in the exercise of its duty, she could have moved an application for specific disclosure notwithstanding s 83(8). As the allegation was a failure to consider, a prima facie case of breach of duty would not suffice to defeat the protection afforded under s 83(8). In the absence of fraud or mala fides, such circumstances did not warrant intervention by the court to cause the disclosure of the confidential material in the hands of the trustee; (2) Any right conferred by s 83(3) was capable of being waived. Merely pleading reliance on a document was not sufficient to constitute waiver, however. Fairness dictated that once disclosure had been made the whole of the transaction was to be released (see [50], [51], [52], [95]); (3) Article 20(8) of the Constitution would not be breached if s 83(3) barred all disclosure of the material listed therein. Discovery was an important part of the litigation process but was not an essential element of a fair trial (see [58], [59], [60], [61], [62], [63], [96]); (4) Section 83(3) conferred on trustees the right to withhold documents only and nothing more (see [65]).

[19.] Cromwell says that section 83(8) is primarily directed to the disclosure process in ordinary civil litigation such as this (see [34] of the judgment); and the strong protection afforded by s. 83(8) will be applied according to its terms and can only be overridden where the requesting party (here Cheryl) is able to demonstrate fraud and/or *mala fides*, in the sense of dishonesty of belief or purpose, on the part of the Trustee (see [39] – [42]). In the present case there is no allegation of fraud or dishonesty on Cromwell’s part.

[20.] Dawson-Damer (at [43] *et seq*), is also applicable, Cromwell says, as there can be no question of a trustee waiving the protection of s. 83(8), or of legal professional privilege, unless, at a minimum, the trustee *itself* has consciously chosen to deploy the relevant material in support of its case. Cromwell says that it has not voluntarily deployed or relied on the material to which Cheryl points in her Applications: instead, Cheryl has herself obtained much of that material by other means (discussed below). Cromwell cannot be accused of “cherry-picking” documents to suit its own case; rather, Cheryl has chosen the documents that she believes suits hers.

[21.] I accept Cromwell’s assessment of the application of section 83(8). In my view the real issue is whether the material which sought to be withheld properly falls within the categories listed in section 83(8) (a) to (d).

### **Whether Adam is obligated to disclose documents owned by SRI 2000**

[22.] Adam says that the documents sought by Cheryl from Adam either: (i) do not exist (or are not relevant to the matters at issue in these proceedings), (ii) are not in his possession and/or control; or (iii) are subject to privilege. He says that he does not have any of these documents in

his possession and/or control. Although he is the Executive Chairman of Sandals Group, and a director of SRI 2000, he does not possess or control these documents personally. In particular, the documents sought at [2c(iv)] of Schedule 3 (namely the instructions to, and documents provided to, Mr. Swanson and the report of Mr. Swanson and documents referred to in the report of Mr. Swanson) were in the remit of the independent *ad hoc* committee established to investigate the allegations made by Cheryl and so have not been provided to the Board of SRI 2000.

[23.] Cheryl says that it is plain that, *in the real world*, the documents of SRI 2000 are “in the control of” Adam within the meaning of CPR 28.2(2). She says that:

- (1) As a director and Executive Chair of SRI 2000, Adam has or has had physical possession or the right to inspect or take control over the documents in his physical possession or on his computer/laptop, whatever the capacity in which he is or was acting at the time.
- (2) In practice, Adam’s own disclosure shows that he has instructed a Sandals employee to access e-mails on Sandals’ computers to obtain information for his own personal purposes (Cheryl’s private documents): see § 118 of Cheryl 8 and Adam’s WhatsApp messages to Andy Blanco at CHS-8/434.51 There is no suggestion that he sought and obtained board approval to obtain documents from Sandals’ board in this way. It is therefore absurd to now suggest, as they do, that he would require board approval to share documents outside the board of SRI 2000.
- (3) Further, it is plain from Adam’s disclosure that, when it suits him, Adam can obtain documents of SRI 2000 for disclosure in this claim, see e.g. the letter dated 24 April 2024 to the board of SRI 2000 from its then CEO Gebhard Rainer.<sup>52</sup> This letter apparently shows that in 2024, for the first time, Mr. Rainer was disclosing to the board that in 2022 he had authorised the use of company employees to assist in the construction of Adam’s personal villa at Blue Hole, Port Antonio.
- (4) The position of Cromwell and Adam is that clause 9 of the Coral Ridge trust deed gives the Advisory Board the exclusive right to vote the shares in the Hotel Fund, and therefore the Advisory Board has *de facto* control over Oasis and its board and SRI 2000 and its board.
- (5) The United States Federal Court has held in the litigation between Hunter Hamersmith v Unique and Sandals that Adam is the person in control of (i) UTC and companies held ultimately by the Winton Trust; and (ii) SRI 2000 and the Sandals Group of companies beneath SRI 2000.

[24.] Adam relies on the English High Court case of **Constantin Medien AG v. Ecclestone and others** [2013] EWHC 2674 (Ch). The claimant in **Constantin Medien AG** sought disclosure of documents held by the Formula One Group (“FOG”). Disclosure was sought against Mr. Ecclestone on the basis that he was a director and his office was at FOG’s headquarters. Vos J (as he then was) dismissed the application with respect to Ecclestone. Vos J was not satisfied that the

fact that Ecclestone had an office at the address of FOG's headquarters, or that he exercised managerial control in his capacity as director, meant that FOG's documents were under his control. According to Vos J:

“... it would be stretching one's imagination to suppose that the entire offices leased by the FOG companies or other entities associated with them are properly to be regarded as in Mr. Ecclestone's physical possession just because he, as Chief Executive Officer, has an office in the same building. It might be different in another case concerned with a small one-man company where the documents are kept at the director's home or in his one-man office, but here the FOG companies have a serious and substantial business. The fact that Mr. Ecclestone may operate a degree of managerial control does not put all FOG's documents, whether at Princes Gate or in storage in Biggin Hill or elsewhere in his physical possession”.

[25.] Vos J relied on the English Court of Appeal decision in **Oxford Legal Group Limited v. Sibbasbridge Services plc** [2008] EWCA Civ 387. In that case, Chadwick LJ held that a director's right to inspect company documents could only be invoked where such inspection was to further the company's best interests. He stated that: *“for a director to invoke the right to inspect for some purpose other than that of carrying out his duties as a director is to seek to use the right for an improper purpose...”*

[26.] In **Constantin Medien AG**, the Board of FOG had been opposed to the disclosure of its documents in the proceedings. The Court was therefore (unwilling to impugn the conclusion that FOG's decision had been reached on the basis of what was in the company's best interests.) Applying the reasoning in **Oxford Legal Group**, Vos J stated, at paragraph 64 as follows:

“In these circumstances, it seems to me that I must be bound by the decision of the company's own board of directors as to what is in its best interests. The director here, Mr. Ecclestone, may wish to inspect the FOG companies' documents so as to give disclosure in these proceedings. But... Mr. Ecclestone only has a right to do so in order to enable him to carry out his duties as a director of those companies ... it is clear to me that such a right would not be invoked for the purpose for which it had been conferred, namely to allow the director to protect the interests of the FOG companies... I cannot require that he give disclosure against the wishes of the board of directors of the FOG companies themselves.”

[27.] Cheryl relies upon the decision in **Berkeley Square Holdings Ltd v Lancer Property Asset Management Ltd** [2021] EWHC 849 and says that documents within the control of one party may fall within the control of another party, even where there is no legally enforceable right to access the documents, as a result of an *“understanding or arrangement that the party who is said to have control will be able to access the documents held by the custodian one way or another”*. Cheryl argues that Adam's control over the Sandals Group, as well as his powers as a

member of the Advisory Board, mean that, if he chose to do so, he would be able access the documents of the Sandals Group one way or another.

[28.] The Board of Directors of SRI 2000 (of which Adam is Executive Chairman) is opposed to the disclosure of certain of its documents in these proceedings as in **Constantin Medien AG**. There may be some distinction if Adam is in physical possession of these documents, which may be in emails and/or other media in his possession on his laptop/computer or accessible by him, albeit not physically on the premises of SRI 2000. This would make it marginally unlike the scenario in **Constantin Medien AG**. The principles in **Berkley Square Holdings Ltd.** would nonetheless prohibit Adam, as a director, from invoking the right to inspect and take corporate documents for some purpose other than that of carrying out his duties as a director. As Chadwick LJ posits, this would be to use the right for an improper purpose.

[29.] **Vos J** in **Constantin Medien AG** acknowledged that the circumstance of the companies operation could affect the determination of whether the documents are disclosable. He accepted that the rule was not hard and fast. He stated that the obligation to disclose “*might be different in another case concerned with a small one-man company where the documents are kept at the director’s home or in his one-man office*”. He also referenced that “*the FOG companies have a serious and substantial business*”.

[30.] Whilst the Sandals Group is undoubtedly a significant enterprise it is nonetheless ultimately for the benefit of the family of the Founder. The ownership of the trust structure, above SRI 2000, is its parent. The Panamanian company Oasis, which in turn is wholly owned by Cromwell. These proceedings, for which the documents are being sought, is in essence a dispute involving the family of the Founder. Notwithstanding this, there are distinct corporate entities with their own corporate personalities and board directorships. I do accept that there is some evidence to support Cheryl’s view that Adam’s control over the Sandals Group, as well as his powers as a member of the Advisory Board, could mean that, if he chooses to do so, he would be able access the documents of the Sandals Group. He has in the past accessed documents to support his case.

[31.] The complaints under investigation in this Claim concerns allegations of Adam eliding his own interest with that of the Sandals Group. Each request must be considered holistically, in light of the circumstances and having regard to the relevant pleadings to determine whether disclosure ought to be granted.

#### **Whether Cheryl’s requests are too broad**

[32.] Cromwell's says that its fundamental objection to the Cheryl's Specific Disclosure Application is that it does not satisfy the requirements of Rules 28.5 and 28.6 or the criteria laid down in the CPR Guide. Cheryl, Cromwell says, cannot show that the documents she is seeking are relevant to her pleaded case. Cromwell describes the disclosure application as wide-ranging and unfocused. Cromwell also says that the application is, grossly disproportionate both in terms of cost and time, and plainly in violation of the overriding objective. It also risks disrupting the timetable and would put the trial date at risk.

[33.] Adam says that Cheryl's disclosure application seeks "*to go behind the disclosure exercise undertaken by his lawyers and obtain all underlying documents, without regard to relevance and/or proportionality. Not only is this abusive and contrary to the framework and principles of CPR Part 28, but it is particularly inappropriate given the scale, professionalism, and procedural integrity of the disclosure exercise undertaken by [Adam's] lawyers*".

[34.] Adam describes in detail their disclosure exercise, which involved: harvesting documents (spanning a period of over a quarter of a century) from a variety of sources, applying over 75 search terms to the harvested documents yielding over 200,000 responsive documents, and a three-level review of the responsive documents by [Adam]. The scale of this disclosure exercise, he says, resulted in total costs in the region of, if not more than, US\$1,000,000.

[35.] The determination to make an order for specific disclosure under the CPR requires the Court to be satisfied that the specific disclosure is *necessary* in order to dispose fairly of the claim or to save costs. By rule 28.6(2) the Court must consider (a) the likely benefits of specific disclosure; (b) the likely cost of specific disclosure; and (c) whether it is satisfied that the financial resources of the party against whom the order would be made are likely to be sufficient to enable that party to comply with any such order. The court must be satisfied as to the relevance of the documents sought, and that they are or have been in the party's control. The determination as to relevance can only be made with reference to the pleadings, and the factual issues in dispute.

[36.] I constantly remind myself of the admonition of Lord Woolf, in his **Access to Justice Report, 1996**, which ushered in the civil procedure reforms in the UK, that: "two of the major generators of unnecessary cost in civil litigation were uncontrolled discovery and expert evidence". Costs generation has a symbiotic relationship with time consumption, in which case the goal of a speedy and efficient resolution of the dispute is clearly undermined. I also accept the submission of the Defendants that the Court will consider all the circumstances of the case and in particular the overriding objective; any risk that ordering further disclosure will derail trial fixture; and the requirement of proportionality.

[37.] Where disclosure is required with respect to a class of documents the class should be carefully defined so it is limited to what is relevant and proportionate, so the disclosing party is in

no doubt as to the scope of their obligation. The Court must be weary of parties seeking to engage in fishing expeditions. In **Federico Riege v Sarkis Izmirlian** this Court, relying on the decision in **Berkeley Administration Inc v McClelland** [1990] FSR 381) held that “...*there is no jurisdiction to make an order for the production of documents unless (a) there is sufficient evidence that the documents exist which the other party has not disclosed; (b) the document or documents relate to matters in issue in the action; and (c) there is sufficient evidence that the document is in the possession, custody or power of the other party.*”

[38.] Against this legal backdrop we consider the specific requests in Cheryl’s notice of application.

### **Schedule 1 of the Draft Order**

[39.] Schedule 1 outlines Cheryl’s disclosure requests for Cromwell, and Adam, as follows:

[1.] Each of the First to Fourth Defendants shall carry out a search and disclose any documents within the following classes and/or categories.

- a. All communications between the First Defendant (or any of its directors or former) directors and the second and or Third Defendant and or their respective legal representatives in connection with the role of the Second and/or Third Defendants as members of the Advisory Board or in connection with the business of the Sandals Group.
- b. All communications between the First Defendant and (or any of its directors or former directors) and the Second Defendant and or their represent respective legal representatives in respect of the addition or removal of directors to or from the board of directors of the First Defendant.
- c. All documents pertaining to the following meetings between the directors and our former directors of the first defendant and the second defendant and or the third defendant and our 4th defendant and their respective legal representatives:
  - (i) the ‘Collaboration Meeting’ on 23 May 2022;
  - (ii) the meeting on 24 August 2022 between Ms. Warnhock-Smith KC and Ms. Garnham;
  - (iii) the meeting in or around October 2023 between the First Defendant, the Second Defendant and their respective legal representatives; and
  - (iv) the meeting in January 2024 between Ms. Warnock-Smith KC, the second Defendant, Third Defendant and Fourth Defendant. Such documents shall include:
    - i. All communications between the directors and/or former directors of the First Defendant and the Second Defendant and/or Third Defendant and/or Fourth Defendant, or their respective legal representatives in respect of such meetings.

- ii. Notes and/or minute of such meetings.

**Schedule 1 paragraph 1(a)**

[40.] Cromwell complains, and I agree, that this request is not specific but rather wide and unspecific. There are no date constraints and also extends to communications between legal advisers without any reservation. Cromwell says that Cheryl seeks disclosure of all communications over a period of 25 years between any director of Cromwell, past or present, and Adam or Jaime relating either to the Advisory Board or the business of Sandals. They also complain that the request is unreasonable and disproportionate indicting that “the work of identifying, collating and reviewing all documents that could fall within in these categories would be immensely time-consuming”.

[41.] Cheryl’s evidence in support of this request is set out in paragraph 41 of her 8<sup>th</sup> Affidavit where she simply says “communications between Cromwell and the Advisory Board are relevant to the issues in dispute in these proceedings”. I am not satisfied that a case has been made out for disclosure as the proper determination of Cheryl’s pleaded issues could not require the disclosure of every communication that has ever passed between Cromwell or its lawyers and Adam and Jaime and their lawyers over a 25-year period. I am not satisfied on her evidence that Cheryl has support for saying that there are relevant non-privileged documents that have not been disclosed by Cromwell or Adam. Cromwell has sworn evidence, on oath, that it has disclosed all communications with the Advisory Board, where relevant to the pleaded issues, and does not accept that any further documents are relevant. The only order I will make in relation to this matter is that Adam and Jaimie (not their Counsel) do likewise give sworn evidence, on oath, that they have disclosed all communications with Cromwell, which are relevant to the pleaded issues and that they do not accept that any further documents are relevant.

**Schedule 1 paragraph (b)**

[42.] I am satisfied that Section 83(8) of the Trustee Act does not cover these requests. Should this be the only basis for retaining the documents they should be disclosed. Otherwise I am satisfied, on the responses provided by Richford in his 4<sup>th</sup> Affidavit that a case does not currently exist for an order for specific disclosure. I will also Order that Adam (not his Counsel) do likewise give sworn evidence, on oath, that they have disclosed all relevant communications with Cromwell relative to this issue of the removal of the directors of Cromwell.

**Schedule 1 paragraph (c)**

[43.] Cheryl seeks disclosure in relation to four meetings: (1) the ‘Collaboration Meeting’ on 23 May 2022; (2) the meeting on 24 August 2022 between Ms. Warnhock-Smith KC and Ms. Garnham; (3) the meeting (October 2023) between Cromwell, Adam and their legal representatives; and (4) the meeting (January 2024) between Ms. Warnock-Smith KC, Adam, Jaimie and Brian. Cheryl says, at paragraph 61-68 of her 8<sup>th</sup> Affidavit as follows:

61. Some limited disclosure has been provided in relation to meetings between Cromwell and the Jamaican Family:

62. An agenda for a “Collaboration Meeting” on 23 May 2022 to be attended by, among others, Trevor Patterson, Gebhardt Rainer, CEO of Sandals, Jaime, Adam, Cromwell’s attorneys, and Ms. Caroline Garnham has been disclosed by Cromwell (although not by the Second to Fourth Defendants).

63. An email of 23 August 2022 from Ms. Warnock-Smith in which she informed Adam that she would “*catch up with Caroline tomorrow to discuss next steps*”.

64. WhatsApp messages between Ms. Warnock-Smith and Adam on 18 November 2022 to arrange a meeting as Adam has “*a few timely matters to put before you and your new colleagues*”.

65. A WhatsApp message from Adam on 19 December 2022 asking for a call with Ms. Warnock-Smith because “*We have a plan*”.

66. Arrangements for a meeting between Ms. Warnock-Smith, Adam, Jamie and Brian on 11 January 2023.

67. A letter from Macfarlanes dated 12 December 2023 referring to meeting between Cromwell, Adam and his legal representatives in October 2023.

68. No minutes or notes of any of the meetings have been disclosed. Further, no correspondence has been disclosed in relation to the ‘Collaboration Meeting’, notwithstanding that there must have been correspondence for it to be organised. Cromwell has subsequently asserted that the agenda for the ‘Collaboration Meeting’ is privileged and that it was disclosed inadvertently. While this is primarily a matter for submissions, I do not see how that agenda can be privileged, not least because it involved third parties, but the same is true of any communications in advance of it occurring, or indeed after the meeting or proposed meeting. These should be disclosed.

(i) The ‘Collaboration Meeting’ on 23 May 2022

[44.] Richford’s evidence was that;

“the meeting for which Ms. Garnham prepared a draft agenda in May 2022, prior to the appointments of Ms Warnock-Smith, Ms. Warren and myself, did not take place and that the draft agenda was never agreed by Cromwell. There was therefore no discussion between Adam Stewart and Cromwell concerning the matters listed in that draft agenda and there are no minutes or notes.”

Adam’s evidence supports this and therefore there is no basis for an order for specific disclosure.

(ii) The meeting on 24 August 2022 between Ms. Warnock-Smith KC and Ms. Garnham

[45.] Cromwell says that meeting on 24 August 2022 concerned the mechanics of implementing the decision by Adam as Enforcer to appoint Ms. Warnock-Smith KC, Mr. Richford and Ms. Warren as directors. Their appointments, Cromwell says, are not a matter of dispute as there is no

pleaded issue relating to the contact between Ms. Garnham and Ms. Warnock-Smith KC. No further disclosure is justified.

[46.] I accept this as a valid submission and will make no order for disclosure.

(iii) The meeting (October 2023) between Cromwell, Adam and their legal representatives

[47.] Cromwell says the meeting, which is referred to in the letter from Macfarlanes dated 12 December 2023, concerned a draft potential Distribution Plan produced by Cromwell. They say that what happened at the meeting is explained in the Macfarlanes letter. The meeting and the draft Distribution Plan are not pleaded issues and therefore no further discovery is necessary.

[48.] I accept this as a valid submission and will make no order for disclosure.

(iv) The meeting (January 2024) between Ms. Warnock-Smith KC, Adam, Jaimie and Brian

[49.] Cromwell submits that *“Cheryl’s pleaded case is that Ms. Warnock-Smith KC and Mr. Richford met with Adam and Brian prior to their appointment as directors and did not offer to meet with her or the US Family at the time of their appointment as directors. Those meetings are said to have prejudiced Cromwell’s ability to administer the Trusts dispassionately (Statement of Claim at paragraphs 33A(d) (e) and (f)). The factual allegation that no meetings were offered at the time of appointment is admitted by paragraph 43E of Cromwell’s Re-Re-Amended Defence (although meetings were offered very shortly after Ms. Warnock-Smith KC’s appointment). The pleaded issue does not justify the wide-ranging request in paragraph 1(c) for all communications and notes and minutes. Without prejudice to that position and subject to Cromwell’s Reservations, in the interests of transparency and to avoid unnecessary argument, Cromwell has provided further correspondence about arrangements by Ms. Warnock Smith KC to meet Cheryl and Bobby. “*

[50.] I am satisfied that the request was too broad and that no further disclosure is now required.

## **Schedule 2 of the Draft Order**

[51.] Schedule 2 outlines additional disclosure requests for Cromwell as follows:

2. The First Defendant shall carry out a search and disclose any documents within the following classes and/or categories:
  - a. All documents pertaining to the proposed addition of the Plaintiff to the board of directors of the First Defendant, including:
    - i. Communications (which in this Schedule and in Schedule 2 and 3 hereto means any communications, including by letter, email, WhatsApp, SMS text or other means) between the directors and/or former directors of the First Defendant and the Founder and notes of any meetings between the directors and/or former directors of the First Defendant and the Founder.

- ii. Communications between the directors and/or former directors of the First Defendant and the Founder.
  - iii. Communications between the directors and/or former directors of the First Defendant and Central Bank of The Bahamas.
- b. All documents pertaining to the implementation of the Founder's wish that 42% of the assets of the Coral Ridge Trust, Hightree Trust and Winton Trust be transferred or appointed to trusts for the US Family, including:
  - i. Communications in respect of the proposed 42% interest in the Sandals Group in June 2021 between the directors and/or former directors of the First Defendant amongst themselves and between the directors and/or former directors of the First Defendant and any third parties.
  - ii. Communications in respect of the proposed shareholders' agreement between the adult beneficiaries of the Coral Ridge Trust, the Hightree Trust and the Winton Trust between the directors and/or former directors of the First Defendant amongst themselves and between the directors and/or former directors of the First Defendant and any third parties.
  - iii. Any resolution or other record of a decision of the board of directors of the First Defendant to transfer, distribute or otherwise allocate 42% of the shares in Oasis Global Inc ("Oasis") and/or Hospitality Purveyors Inc ("HPI") to the US Family and all communications in respect of such resolution(s) or decision(s) between the directors and/or former directors of the First Defendant.
  - iv. Minutes and/or notes of any meetings and communications between the directors and/or former directors of the First Defendant, in respect of the 'Global Distribution Plan' from the Second to Fourth Defendants' legal representative (Macfarlanes LLP) sent by letter dated 29 June 2023.
- c. All documents pertaining to the application of the US tax rules regarding the Controlled Foreign Corporations (CFCs) and changes to eliminate the CFC status for companies within the Sandals Group, including:
  - i. Communications between the directors and/or former directors of the First Defendants amongst themselves.
  - ii. Minutes and/or notes of any meetings of the directors of the First Defendant.
  - iii. The instructions to and advice provided by Baker & McKenzie LLP in respect of the CFC status of companies within the Sandals Group.
- d. All documents pertaining to the interpretation of Clause 9 of the Coral Ridge Trust Deed and the role of the Advisory Board, including:
  - i. Communications between the directors and/or former directors of the First Defendant amongst themselves.
  - ii. Minutes and/or notes of any meetings of the First Defendant.

3. The First Defendant shall disclose all documents which have been withheld on the basis of the third party confidentially.
4. The First Defendant shall disclose the exhibit to the First Statutory Declaration of Trevor Patterson dated 8 March 2021.

**Schedule 2 paragraph 2(a)**

[52.] Schedule 2 paragraph 2(a) relates to Cheryl's appointment to the board of directors. Cromwell's case is that

“the Founder wished Cheryl to be appointed to Cromwell's board but that alleged wish was not implemented during the Founder's lifetime because, it is alleged, Mr. Carey failed to submit the Plaintiff's application to the Central Bank of the Bahamas. After the Founder's death, it is alleged that Cromwell has failed to appoint the Plaintiff as a director (Statement of Claim paragraphs 28 to 30C and 31(b)). Cromwell's case is that the Founder told Mr. Carey to hold off on the appointment because he had not made a final decision. After the Founder's death the power of appointment was vested in the Cromwell STAR Trust to be exercised as instructed by Adam as Enforcer (Re-Re-Amended Defence paragraphs 7 and 39 to 41B). The central issue in dispute is why the appointment process did not proceed in the Founder's lifetime. That is primarily a matter for evidence.”

[53.] Cromwell submits that; (1) the decision whether to direct the trustee of the Cromwell STAR Trust to exercise its shareholder power to appoint Cheryl was a matter for the Founder alone during his lifetime in his capacity as Enforcer; (2) the extent that internal trustee deliberations exist in relation to this issue, such deliberations are confidential and not disclosable pursuant to section 83(8) of the Trustee Act.

[54.] I am not satisfied that this is a matter covered by section 83(8). The appointment of a director, on Cromwell's case is a matter for the Enforcer who directs the Trustee. In which case these documents do not fall to be considered within the ambit of documents described in the list outlined in sections 83(8)(a) to (d). Any document being withheld on this basis ought therefore to be disclosed.

**Schedule 2 paragraph 2(b)**

[55.] This request relates to all documents concerned with the implementation of what is said to be the Founder's wish that 42% of the Trusts' assets be distributed to the US family.

[56.] Cromwell says, and I agree, that documents recording or relating to the exercise or proposed exercise of the Trustee's dispositive discretion, which is what any discussion of this matter would be, are exempted from disclosure under section 83(8).

**Schedule 2 paragraph 2(c)**

[57.] This request relates to Cheryl's pleaded claim that Cromwell failed to take action to end the application of certain US tax rules to the Sandal Group until December 2022 which may have caused loss to the US Family.

[58.] Cromwell's pleaded defence denies that it was under any duty to act as Cheryl alleges or that it had the power to reorganise the corporate structure of the Sandals Group.

[59.] I am satisfied that any deliberations by Cromwell and any legal advice taken are exempted from disclosure under section 83(8).

**Schedule 2 paragraph 2(d)**

[60.] This request relates to the interpretation of Clause 9 of the Coral Ridge Trust Deed and the role of the Advisory Board.

[61.] Cromwell says that the question of the interpretation of Clause 9 of the Coral Ridge Trust Deed is a question of law for the Court to determine on the usual principles of construction. They also say that the views of the directors of Cromwell on the subject and, indeed the views of any lawyers instructed to advise on the question, are irrelevant and inadmissible for that purpose. Cromwell also invokes the provisions of section 83(8) which they say would apply.

[62.] I accept this as a valid submission and will make no order for specific disclosure.

**Schedule 2 paragraph 3**

[63.] This request requires Cromwell to disclose all documents which have been withheld on the basis of the third party confidentiality.

[64.] Cromwell says that Cheryl has misunderstood its disclosure certificate as documents have not been withheld on the basis of third-party confidentiality alone. Indeed, from the bar table, Mr. Cooper KC on behalf of Cromwell, indicates that Cromwell is not refusing disclosure on the basis of any confidentiality. Cromwell says that it has in its control documents which were provided to it by Mr. Patterson who was also the Founder's lawyer and is one of the Founder's Executors. Cromwell says that it is concerned not to disclose material which is subject to third party privilege which Cromwell cannot waive. I accept Cromwell's position and will permit disclosure if the Founder's Executors and Cheryl are content for the material to be disclosed in the proceedings.

**Schedule 2 paragraph 4**

[65.] This request is for Cromwell to produce the exhibit to the First Statutory Declaration of Trevor Patterson dated 8 March 2021. Cromwell's evidence on oath is that it does not have the

exhibit which was not provided to it. In the circumstances, and without more, Cromwell cannot be ordered to disclose the document. Further I did not accept the submission that the document is within Cromwell's control.

### **Schedule 3 of the Draft Order**

[66.] Schedule 3 outlines additional disclosure requests for Adam as follows:

2. The Second to Fourth Defendants shall carry out a search and disclose any documents within the documents following classes and/or categories:
  - a. All documents pertaining to the Advisory Board, including:
    - i. Note and/or minutes of meetings and communications between the Second Defendant and Third Defendant amongst themselves in relation to the direction of the Advisory Board to the First Defendant dated 11 October 2021 not to transfer any part of the Hotel Fund.
    - ii. Notes and/or minutes of meetings and communications between the Second Defendant and the Third Defendant amongst themselves in relation to possible distributions by the First Defendant.
    - iii. Notes and/or minutes of meetings and communications between the Second Defendant and Third Defendant amongst themselves in their capacity as members of the Advisory Board in respect of the business of Sandals Group.
  - b. All documents pertaining to the purchase of the Blue Hole and the Port Antonio Property, and the development/refurbishment of the Port Antonio Property, including:
    - i. Communications between the Second Defendant and Third Defendant amongst themselves in relation to the purchase of the Port Antonio Property.
    - ii. Notes and/or minutes of any meetings of employees SRI 2000 or any other company within the Sandals Group in relation to the purchase of Blue Hole.
    - iii. Communications between the Second Defendant and/or Third Defendant amongst themselves with employees of SRI 2000 and any other company within the Sandals Group in relation to employees of the Sandals Group undertaking work on the Port Antonio Property.
    - iv. Invoices from SRI 2000 or any other company within the Sandals Group in relation to work undertaken on the Port Antonio Property.
    - v. Account statements showing payments to SRI 2000 or any other company within the Sandals Group in relation to work undertaken on the Port Antonio Property.
    - vi. Communications between the Second Defendant and/or Third Defendant and Michael Lee-Chin or his representatives.
  - c. All documents pertaining to (i) the retention of commissions by Unique Travel Corp, (ii) payments by Unique Travel Corp to the brand advertising and promotion

- fund, remission of Gross Hotel Packages Revenues by Unique Travel Corp to SRI 2000, (iii) discretionary payments by Unique Travel Corp to Unique Vacations Inc, (iv) payments by Unique Travel Corp to or for the benefit of the Jamaica Observer, and 9v) Payments by SRI 2000 in relation to the Port Antonio Property, including:
- i. Cash summaries prepared by Unique's employees in the period between January 2023 and May 2024 (to the extent not already disclosed).
  - ii. The audited accounts for SRI 2000 and Unique for the relevant period.
  - iii. Communications and notes or minutes of any meetings in relation to (i) the establishment of a sub-committee of the board of directors of SRI, and (ii) the appointment of Mr. Kristofer Swanson to investigate the 'red flags' raised in the FTI Report.
- d. Documents pertaining to the sale of the Gulfstream Aircraft and the purchase of the Falcon 50EX sent or received by the Second Defendant including:
- i. Communications between the Second Defendant and Third Defendant amongst themselves in their capacities as members of the Advisory Board.
  - ii. Communications between the Second Defendant and/or Third Defendant and employees of SRI 2000 or any other company within the Sandals Group.
  - iii. Notes and/or minutes of any meetings of SRI 2000 or any other company within the Sandals Group.
3. The Second to Fourth Defendant shall disclose the Second Defendant's application to the Grand Court of the Cayman Islands for a blessing of the decision to remove Mr. Trevor Patterson, Mr. Dmitri Singh, Mr. Steve Carey and Mr. Paul Soutter as directors of the First Defendant, together with the affidavits filed in support of that application.
  4. The Second to Fourth Defendant shall disclose all emails which attach communications between Mr. Paul Backhouse of Cogent and Mr. David Barnhill or other employees or shareholders of Gunster LLC.
  5. The Second to Fourth Defendants shall disclose any email which attaches the memorandum from Mr. Paul Backhouse of Cogent to Mr. John Lawrence dated 6 October 2021.
  6. The Second to Fourth Defendants shall disclose all communications in relation to obtaining access to the email accounts of Roger Seivwright and Paul Soutter to search for documents relating to the affairs of the Plaintiff.
  7. The Second to Fourth Defendants shall disclose unredacted versions of:
    - a. Letters from Graham Thompson to Lennox Paton dated 27 April 2023 and 19 January 2024.
    - b. Emails forwarding communications from Dr. David Barnhill to Mr. Trevor Patterson dated 20 February 2021, 3 March 2021 and 17 March 2021.
    - c. The email between the Second Defendant and Mr. Paul backhouse of Cogent dated 21 May 2024.

[67.] Cheryl seeks documents pertaining to the Advisory Board. In particular, she seeks documentation relative to communication between Adam and Jaime. Adam's evidence is that Adam and Jaime have disclosed all relevant communications between them that are not the subject of any legal privilege. No notes and/or minutes of meetings or communications between them in relation to the October 11, 2021 direction exist and therefore there are no documents to disclose. Adam says that he does not believe that any equivalent documents to those set out above were generated by the Founder during the period in which he was made a member of the Advisory Board.

[68.] Cheryl says that this is unbelievable.

[69.] While this may be unbelievable, without more, the Court cannot make a specific disclosure order against Adam. The only order I will make in relation to this matter is that Adam and Jaimie (not their Counsel) do provide sworn evidence, on oath, that no such documents in this class exists.

**Schedule 3 paragraph 2(b)**

[70.] Cheryl requests disclosure of all documents pertaining to the purchase of the Blue Hole and the Port Antonio Property, and the development/refurbishment of the Port Antonio Property.

[71.] Cheryl's pleaded case is that Adam has repeatedly preferred his own and his family's interests over the interests of the Sandals Group and has thereby demonstrated that he is not a suitable or proper person to have control over Cromwell. One of the components of this claim, deals with Adam's conduct in the purchase of real estate in Port Antonio, Jamaica and the allegation of a diversion of funds from the Sandals Group. Cheryl submits at paragraph 148 to 149 of her submissions that:

148. On 8 November 2022, Adam and Jaime purchased the Port Antonio Property from Mr. Michael Lee-Chin as part of a transaction in which the Sandals Group simultaneously purchased the Jamaican historical site, Blue Hole, from Mr. Lee-Chin, despite there being no apparent commercial purpose to the transaction for the Sandals Group. The inference pleaded at SOC §34A.b is that Adam agreed to Sandals purchasing Blue Hole to enable him to obtain the Port Antonio Property for his personal benefit. Rather ridiculously, [Adam] say that the purchase of the two properties was entirely unconnected, even though the offer by Adam was "*for the pair*".

149. The earliest documents disclosed in relation to the Port Antonio Property are 28 October 2022, some 10 days before the sale completed. On that day, Adam sent WhatsApp messages simultaneously to various Sandals Group staff and Jaime and their mother informing them that he had agreed a deal with Mr. Lee-Chin on Blue Hole and the Port Antonio Property.

[72.] Adam's evidence, as found at paragraphs 26 to 27 of the 4<sup>th</sup> Affidavit of Dancia Knowles, is as follows:

26. [Adam] have disclosed all relevant documents in their possession and/or control pertaining to the purchase of the Blue Lagoon and the Port Antonio Property and the development and refurbishment of the Port Antonio Property. These documents include:
  - 26.1 The Agreement for Sale of the Port Antonio Property.
  - 26.2 The Agreement for the Sale of Blue Lagoon.
  - 26.3 A statement of account from the conveyancing files addressed to Sandals Resorts International Ltd.
  - 26.4 A statement of account from the conveyancing file addressed to Adam Stewart and Jaime McConnell-Stewart.
  - 26.5 A deed of assignment in relation to the hangar, which provided part of the funding for Sandals Resorts International Ltd.'s purchase of Blue Lagoon.
  - 26.6 A letter from Gebhard Rainer to the board of SRI 2000 regarding the provision of project management services through Nicky Feanny.
  - 26.7 Communication between [Adam-Jaimie] in relation to the purchase of the Port Antonio Property.
  - 26.8 Communications between [Adam]and Sandals Group employees about the Blue Lagoon Purchase.
  - 26.9 Communications between [Adam-Jaimie] and Michael Lee-Chin.
27. In relation to [2b.ii-v] of the Specific Disclosure Application, any documents that fall under those categories, would not be in the possession or control of [Adam]. They would be in the possession or control pf SRI 2000. On 29 January 2026, GT wrote to Latham & Watkins, in their capacity as lawyers for SRI 2000 to request that they confirm whether SRI 2000 would provide [Adam] with any documents within categories [2.b.ii-v] . Latham & Watkins responded on 15 February 2026 and confirmed that the SRI 2000 Board "*is not willing to make the requested information available to any of [our] clients to facilitate their disclosure in the Bahamian proceedings*". In Latham & Watkins' letter they noted that "*SRI 2000 is not a party to the Bahamian proceedings and is not subject to the disclosure requirements of that court*" and that "*the Board specifically objects to the disclosure of such commercially sensitive and confidential business information in this context because SRI 2000 would not make such information public under practically any circumstances.*"

[73.] Adam's case is that they have disclosed all relevant documents in their possession and/or control pertaining to the purchase of the Blue Lagoon and the Port Antonio Property (Blue Marlin Villa) and the development and refurbishment of the Blue Marlin Villa. In relation to Item 2b.ii–v, any documents that fall under those categories would not be in the possession or control of Adam but in the possession or control of SRI 2000. Adam says that their lawyers have written to SRI

2000, which has confirmed that it “is not willing to make the requested information available to [Adam] to facilitate their disclosure in the Bahamian proceedings”.

[74.] In as far as Adam is in possession of these documents (sought at paragraphs 2(b)(ii)-(v)), which may be in emails and/or other media on his laptop/computer or accessible by him, I order that he disclose it.

[75.] The evidence is that Adam agreed with Micheal Lee Chin to acquire the “pair” of properties. His initial offer was for US\$9,000,000 in cash in addition to the transfer of Sandal’s Hanger at Norman Manley Airport. Adam, in the same negotiation, was therefore lobbying on his own behalf (to acquire ownership in Blue Marlin Villa) as well as on behalf of Sandals (to acquire ownership in Blue Lagoon). The transactions were consummated together with separate Agreements for sale executed on the same day and seemingly invoiced together through the same attorney Mark Golding of the law firm Hart, Muirhead and Fata. Evidence provided by Adam also reveals that he utilized Sandal’s employees to project manage the refurbishment of his Blue Marlin Villa.

[76.] Cheryl’s complaint is that of Adam eliding his own interest with that of the Sandals Group and using his positions to prefer himself to that of the rest of the family. Adam’s position in the Sandals Group, as well as his powers as a member of the Advisory Board, does provide him with the ability to access the documents of the Sandals Group. He has in the past accessed documents peculiar to Sandals to support his case, in particular:

- (1) A 27 March 2023 email from Heidi Clarke of Sandals to Adam about her concerns about the Blue Lagoon property.
- (2) A 2 November 2022 email from Gebhard Rainer to members of the Board of SRI 2000 attaching a letter outlining “a unique opportunity for the company to purchase the adjacent parcels of land at its Dragon Bay property - “Blue Hole”, Portland, Jamaica;
- (3) A private and confidential memorandum dated 20 April 2024 from Gebhard Rainer to director memorializing an earlier 2022 agreement to provide project management services to Adam in his personal capacity. The letter was said to have been written to clarify any rumours or potential false information that might be circulating about this.

As these transactions are so closely connected, I am unable to accept the nuance, sought to be employed, of the documents not being in Adam’s “personal’ possession. The pleading relates to allegations of Adam aligning his personal interest with that of the Sandals Group in this transaction involving the purchase and refurbishment of these properties. Having bundled the transaction together it could not be right that SRI 2000 could claim exclusive property in these documents. Any concerns of SRI 2000 as to confidentiality can easily be accommodated by the implementation of an appropriate privacy order.

### **Schedule 3 paragraph 2(c)**

[77.] This request seeks the production of all documents pertaining to (i) the retention of commissions by Unique Travel Corp, (ii) payments by Unique Travel Corp to the brand advertising and promotion fund, remission of Gross Hotel Packages Revenues by Unique Travel Corp to SRI 2000, (iii) discretionary payments by Unique Travel Corp to Unique Vacations Inc, (iv) payments by Unique Travel Corp to or for the benefit of the Jamaica Observer, and (v) Payments by SRI 2000 in relation to the Port Antonio Property.

[78.] Cheryl says at paragraphs 157-161 of its submission that:

157. [Adam] have not provided any documents in relation to Cheryl's pleaded case of Adam's misconduct concerning the payments by Unique to the Jamaica Observer out of monies due to SRI 2000. The L&W Letter states that weekly payments of US\$45,000 have been paid to the Jamaica Observer. It is apparent therefore that the Sandals Group has been bearing the costs of the Jamaica Observer since the Founder's death.

158. This is justified in the L&W Letter by the assertion that a subsidiary of SRI 2000, SRI Limited, has "booked a receivable" from Gorstew for these sums (which, it seems, have not been repaid) and that the "advances to Gorstew are deemed payable by management to be collectible in full".

159. There must be documents which record when and how the receivable was "booked", the amount of the receivable, the terms of the receivable (which is presumably interest free), when the receivable is expected to be paid, all of which is relevant to whether there has been a genuine commercial transaction or not. This material must have been provided to Mr. Swanson to enable him to reach the surprising conclusion that the cost of the payments of SRI 2000's funds to the Jamaica Observer have not been borne directly or indirectly by the beneficiaries. Further, these documents must be in [Adam] possession or control given Adam's role as (i) a director and chairman of the board of SRI 2000 and (ii) the person in control of Gorstew and the Jamaica Observer. Those documents are also in the control of Adam and Jaime in their capacity as members of the Advisory Board. It is notable that Bobby's disclosure contains a significant number of documents in relation to the Jamaica Observer, which have not been disclosed by [Adam].

160. In relation to the pleaded case of diversion of funds from SRI 2000 to Unique, the L&W Letter asserts that "Mr. Swanson concluded that SRI 2000 has been receiving the funds to which it was entitled", but it does not provide a detailed explanation as to the amounts of funds remitted to SRI 2000 and how those compare with the stipulated percentages in the 2016 Worldwide Agency Agreement. Further, Mr. Swanson is said to have been provided with information from SRI 2000 and Unique, consolidated audited financial statements for SRI 2000 and Unique, and documents and interviews of executives within the Sandals Group and Unique, none of which has been disclosed by [Adam]. The instructions, documents and report of Mr. Swanson are "in the control of" Adam as a

director and Chairman of the board of SRI 2000 and a member of the Advisory Board. They ought therefore to be disclosed.

161. The manner in which the Advisory Board has responded to the Misconduct Allegations and the manner in which it has satisfied itself that there is no impropriety (particularly in circumstances where such impropriety involves members of the Advisory Board) is of direct relevance to the matters in question in these proceedings. Whilst no admissions are made as to the admissibility of Mr. Swanson's report as evidence, it is clearly disclosable. It is therefore respectfully submitted that [Adam] should be ordered to disclose the Advisory Board's communications in respect of the investigation undertaken by Mr. Swanson, as well as Mr. Swanson's report, the instructions and materials relied upon.

[79.] Adam's evidence, in the 4<sup>th</sup> affidavit of Dancia Knowles, at paragraphs 28 – 30 provides as follows:

28. It appears that Cheryl is seeking the documents sought at paragraph [2c] of the Specific Disclosure Application on the basis that those documents are relevant to the newly pleaded allegations at paragraphs 34A.i, 34A.ie and 34A.if of her Re-Re-Re-Amended Statement of Claim.

29. On 22 December 2025, the Court gave Cheryl: (i) permission to amend her claim so as to introduce, *inter alii*, the amended pleadings at paragraphs 32A.i, 34A.ir and 34A; and (ii) "limited permission" to call Ms. Faye Hall of FRP Advisory as an expert witness in respect of those pleadings. The Court also gave the defendants permission to adduce expert evidence responding to Ms. Hall (the "Amend/Extend Judgment").

30. [Adam's] legal team understood from the Amend/Extend Judgment that the Court did not contemplate that any further disclosure of underlying documents would be produced beyond those already considered pursuant to the investigation of Ms. Wong's Affidavit (including in particular the documents referred to in Mr. Swanson's Report (insofar as they are in the possession or control of [Adam])).

[80.] Adam argues that it is implicit from the 22 December 2025 decision on Cheryl's application to further amend her Statement of Claim, that the Court did not contemplate that these amendments should give rise to any further disclosure of underlying documents beyond those documents already considered pursuant to the investigation of Ms. Wong's Affidavit, including in particular the documents referred to in Mr. Swanson's Report.

[81.] I accept Adam's submission that there was an expectation that there would be no further disclosure on this issue of Unique Vacations Inc/UTC as Cheryl had already procured her expert report to support her complaint. In the 22 December 2026 judgment, the Court was cognizant of the fast-approaching trial date and limited Cheryl in the expansion of her claim relative to the

UTC issue. The issue was only permitted as it would have had limited impact on the trial certainty. Paragraphs 26 - 30 of the 22 December 2026 judgment stated:

[26.] This is Cheryl's fourth (4th) effort at amending her Statement of Claim. The trial of this claim is currently scheduled to be heard in a few short months, and it will be heard five (5) years since the commencement of the action. It has already been the subject of several significant interlocutory applications and determinations in this Court and in the Court of Appeal. Three and a half weeks of the Court's busy schedule has already been allocated for the hearing of the claim in the new year. The application, if allowed, has the potential to significantly increase the costs associated with this already expensive litigation as it will demand additional disclosure, additional witness testimony and additional expert testimony. I remain mindful of the admonition of Lord Woolf, in his Access to Justice Report, 1996, which ushered in the civil procedure reforms in the UK, that:

“two of the major generators of unnecessary cost in civil litigation were uncontrolled discovery and expert evidence”.

In this new approach to amendments, the answer cannot be a question of simply compensation in costs to the litigants. In this case we have litigants with considerable capacity to pay. This could result in unlimited applications for amendments. I bear in mind that it is also the court system which is also put to bear the enhanced expenditure, which deprives or delays other litigants in the timely resolution of their matters.

[27.] I am satisfied that, in the interests of the administration of justice, fairness, balancing the respective prejudices to the parties, the failure to act promptly and the effect the amendment will have on the trial date, these specific amendments, at paragraph 22 above, ought to be refused. I will therefore also refuse the leave to call the expert witness on Panamanian Law associated with the claim against the Trustee, alleging that it failed to take steps or reasonable steps to investigate the management of SRI 2000.

[28.] In my view, however, Cheryl could be permitted to raise conduct which demonstrate what she says are further instances of Adam Stewart's conduct rendering him not a suitable or proper person to have control of a body with the duties of the trustee of the Trusts, In fact, at paragraph 34 j of the Re-Re-Amended Statement of Claim she reserved her right to do so. She pleaded:

j. The Plaintiff reserves her right to rely at trial on further instances of Adam Stewart's conduct rendering him not a suitable or proper person to have control of a body with the duties of the trustee of the Trusts as are revealed by further investigation and/or by discovery.

[29.] What is improper, as I have indicated, is to raise new causes of action alleging bad faith in the manner which she has done. This is especially so where, what is before the court, does not raise good prospects of success in such a claim. As Adam points out, Cheryl's expert witness, Hall, notwithstanding her instruction to opine on misuse and misappropriation, makes no reference to either misuse or misappropriation in her

conclusions. At best she says that “UTC was retaining money it was not entitled to, and those funds were not for the use of UTC under the terms of the 2016 Agreement”.

[30.] I will therefore permit amendments to the Claim which raise the issue of UTC’s dealings in the context of Adam’s alleged misconduct as already pleaded, but only insofar as it is not in the nature of a new claim of bad faith. In limiting the complaint to the 64-week period (between January 2023 and May 2024), as she has done, Cheryl reduces the scope of the expansion of the claim. As all parties have been investigating the allegations since the Edith Wong report it would not be a significant imposition for Cheryl to add these further particulars to the existing claim. I note that the affidavit of Kaelan McCartney purports to speak decisively to findings already made by the Cromwell and SRI2000 independent investigations.

[82.] I will not order Adam to procure the documents. I will order that Adam provide sworn evidence that the documents are not in his physical possession, personal or otherwise. Should the parties wish to enter into an appropriate confidentiality protocol as proposed by SRI 2000, in respect of documents not in the possession of Adam, the Court is prepared to bless the same.

**Schedule 3 paragraph 2(d)**

[83.] These requests relate to documents pertaining to the sale of the Gulfstream Aircraft and the purchase of the Falcon 50EX sent or received by Adam.

[84.] Cheryl complaint criticizes Adam’s handling of the Gulfstream aircraft after the Founder’s death. The Founder, she says, had expressed a wish for the plane to remain available for the benefit of the US Family. However, she asserts that Cromwell quickly decided to sell it, citing SRI 2000’s view that it could not serve both the Sandals Group and the family. Despite this justification, she says that the Sandals Group later acquired a new aircraft, which is not shared with the US Family but is instead used by Adam, his family, and his acquaintances. Cheryl argues that this demonstrates Adam prioritizing his own interests over those of the family, while imposing costs on the Group.

[85.] Adam says that they have disclosed all relevant documents in this category that are in their possession and/or control and are not subject to any legal privilege. He says that these documents include communications between Adam and/or Jaimie and Sandals Group employees and there is no further communication between Adam and Jaimie as Advisory Board members relevant to this category.

[86.] Adam says that no notes and/or minutes of any meetings of SRI 2000 or any other company within the Sandals Group are in his possession or control. Adam says that he requested documents in this category from SRI 2000’s attorneys, Latham & Watkins, on 29 January 2026 who confirmed that the SRI 2000’s Board declined to provide the documents to him. Having regard to the nature of this complaint, I am satisfied that it is within the remit of SRI 2000 to decide what was in the

company's best interests. I am not prepared to, or able to impugn that conclusion, therefore make no order for disclosure.

### **Schedule 3 paragraph 3**

[87.] In this request Cheryl seeks that Adam disclose his application to the Grand Court of the Cayman Islands for a blessing of the decision to remove Mr. Trevor Patterson, Mr. Dmitri Singh, Mr. Steve Carey and Mr. Paul Soutter as directors of the First Defendant, together with the affidavits filed in support of that application.

[88.] Adam says that they are not at liberty to disclose any documents sought in this category because of privacy restrictions ordered by the Grand Court of the Cayman Islands.

[89.] Adam relies on the blessing given to him by the Grand Court of the Cayman in support of his decision to remove Mr. Trevor Patterson, Mr. Dmitri Singh, Mr. Steve Carey and Mr. Paul Soutter as directors of Cromwell. Adam moved the application in the Cayman Islands and has provided, in these proceedings, the Order of the Cayman Court, the Originating Summons and the judgment of Kawaley J. The Order of Grand Court of the Cayman Islands granted permission for Adam, as Enforcer to:

“...disclose and use in cause number 2021/CLE/gen/01043 in the Supreme Court of the Commonwealth of The Bahamas (or on appeal thereof, if applicable) (i) the body of this Order along with Confidential Annex A and Annex B (but not Confidential Annex C) hereto; (i) the Order of this Court in these proceedings dated 12 February 2024; and (ii) the Reasons for Decision of this Court in these proceedings delivered on 26 April 2024.”

It does seem that Adam is limited in what he is permitted to disclose from the Grand Court proceedings. In the circumstances, it would not be appropriate to make a disclosure orders against Adam.

### **Schedule 3 paragraph 4**

[90.] In this request Cheryl seeks that Adam disclose all emails which attach communication between Mr. Paul Backhouse of Cogent and Mr. David Barnhill or other employees or shareholders of Gunster LLC. Adam says that the documents sought are not relevant to the issues in the proceedings and that they are under no obligation to disclose them. I accept this submission.

### **Schedule 3 paragraph 5**

[91.] In this request Cheryl seeks an Order that Adam disclose any email which attaches the memorandum from Mr. Paul Backhouse of Cogent to Mr. John Lawrence dated 6 October 2021. Adam says that the documents sought are not relevant to the issues in the proceedings and that they are under no obligation to disclose them.

[92.] I agree with Adam, and without more, there is no obligation to disclose further.

**Schedule 3 paragraph 6**

[93.] In this request Cheryl seeks an Order that Adam disclose all communications in relation to obtaining access to the email accounts of Roger Seivwright and Paul Soutter to search for documents relating to the affairs of the Cheryl. Adam says that they have disclosed all documents in this category and in their possession and/or control that are not subject to any legal privilege.

[94.] I agree with Adam, and without more, there is no obligation to disclose further.

**Schedule 3 paragraph 7**

[95.] In this request Cheryl seeks an order that Adam discloses unredacted versions of material disclosed. Adam says that the information redacted are either (a) not relevant to the issues in the proceedings; (b) subject to privilege; and/or (c) subject to privacy orders. They are therefore not required to disclose it.

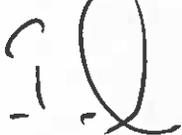
[96.] I agree with Adam that, without more, there is no obligation to disclose further.

**Conclusion**

[97.] All disclosure ordered to be made by this decision must be completed within the next 21 days.

[98.] I will hear the parties, by written submissions, as to the appropriate order for costs.

Dated the 19<sup>th</sup> day of March 2026

A handwritten signature in black ink, appearing to read 'I Winder', with a large loop at the end of the last name.

Sir Ian Winder  
Chief Justice