IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2025/CLE/gen/unnumbered

IN THE MATTER of the AB Trust Agreement of S dated 6th December 1996

AND IN THE MATTER of the Trustee Act 1998 Chapter 176 of the Statute Laws of The Bahamas

AND IN THE MATTER of an application by CT as Co-Trustee of the said AB Trust Agreement pursuant to Section 77 of the Trustee Act, 1998

Before: The Honourable Justice Simone Fitzcharles

Appearances: Mr Luther McDonald KC appearing with Ms Rashea Newbold of Counsel for the Applicant Trustees

Hearing Date: 19 January 2026

RULING

FITZCHARLES, J

The Application

[1.] This is an application by which co-trustees of The AB Trust Agreement of S dated 6 December 1996 (the "**AB Trust**") seek the opinion, advice and direction of the Court on issues pertaining to the administration of the AB Trust. The application is made by the co-trustees of the AB Trust, CT and W (collectively, the "**Trustees**") pursuant to **Section 77** of the **Trustee Act, 1998** and the inherent jurisdiction of the Court.

[2.] The questions placed before the Court relate to a particular asset, namely certain property in the Commonwealth of The Bahamas (the "**Seascape Property**").

[3.] The application is supported by the Statement of CT and W dated 1 October 2025, the Affidavit of CT sworn on 28 August 2025, the Affidavit of W sworn on 28 August 2025 and the Applicants' Skeleton Arguments in Support of Section 77 Trustee Act application dated 16 January

2026. King's Counsel for the Trustees, Mr Luther McDonald along with Ms Rashea Newbold appeared and were heard by the Court on 19 January 2026.

[4.] This ruling has been anonymized so as to safeguard the privacy of the affairs relating to the AB Trust and persons connected with it.

Relevant Background

[5.] S was a citizen of the United States of America residing in the USA. At the date of his death, he was the beneficial owner in fee simple in possession of the Seascape Property.

[6.] By his Will dated 17 February 1994, S ("**S**" or the "**Settlor**") devised his real and personal property to the Founder Trust. He appointed GA and R as his Personal Representatives.

[7.] The Founder Trust was restated and amended by the AB Trust dated 6 December 1996. The AB Trust designated S and GA as co-trustees and upon their death or refusal to act, W and CT were nominated as successor co-trustees. The Settlor died on 29 January 1997, and at the date of his death he was the beneficial owner in fee simple in possession of the Seascape Property.

[8.] Pursuant to the AB Trust, any property of the Settlor was to be distributed on his death to one of two Trusts: the P Sub-Trust and the Q Sub-Trust. In particular, Clause 3.3.a.4 of the AB Trust governed the distribution of property and its allocation to the Q Sub-Trust and directed the Trustee to allocate any remaining trust property – after distributions made in accordance with Clauses 3.3.a.3 – to the Q Sub-Trust. Clause 3.3.a provides:

> "3.3 Trusts for Spouse and For Family. At my death, if my Spouse survives me:
>
> 3.3(a) Division of Property.
>
> (1) Division of Trust Property. Trustee shall divide the remaining trust property into two trusts, "The Q Sub-Trust" and "The P Sub-Trust".
>
> (2) P Sub-Trust Allocation. Trustee shall allocate to the P Sub-Trust all of my ownership interest and stock in Z, Inc. and any additional trust property, if any, that, when added to the value of my taxable estate (other than the remaining trust property), will increase my taxable estate (other than the remaining trust property) to the largest amount that, after allowing for (1) the unified tax credit that was not claimed for transfers made during lifetime, (2) any other allowable credits and deductions, and (3) any other charges to principal that are allowed as deduction in computing my taxable estate, will result in no federal estate tax being imposed on my estate. If the value of my ownership interest and stock in Z, Inc. in the P Sub-Trust results in some federal estate tax being imposed on my estate, it is my directive that said ownership interest and stock still be allocated to the P Sub-Trust. However, Trustee shall not use the maximum state death tax credit if to do so would require an increase in the state death taxes paid. Trustee also shall allocate to the P Sub-Trust any trust property that is not included in my gross estate. As used in this paragraph, "taxable estate" means my gross estate, as defined in §2031 (a) of the Internal Revenue Code of 1986, as

amended ("IRC"), less (1) deductions set out in IRC 2053 and 2054 (whether or not claimed), and (2) any other charges to principal that are not allowed, and (2) any other charges to principal that are not allowed as deductions pursuant to IRC §2053 and §2054.

(3) Distribution of Marital Residence. My Trustee shall distribute to my Spouse, if she survives me, free of trust, that property occupied at my death by my Spouse and me as our principal marital residence, with said property being currently located in the USA, together with all contents (tangible personal property) on the premises at the time of my death, other than those specific items of tangible personal property distributed pursuant to paragraph 3.2 of this document. Any remaining mortgage balance on the residence shall be paid by my Spouse.

(4) Q Sub-Trust Allocation. Trustee shall allocate to the Q Sub-Trust any remaining trust property after the allocations made pursuant to paragraphs 3.3 (a)(2) and (3). Trustee shall have authority to allocate assets in kind between the Q Sub-Trust and the P Sub-Trust, but the values used shall be determined as of the date or dates of allocation. Trustee shall allocate no assets or proceeds of sale of any asset to the Q Sub-Trust that would not qualify for the marital deduction. Trustee shall pay no taxes from assets allocated to the Q Sub-Trust, other than out of life insurance proceeds, and only to the extent necessary to avoid liquidation of tangible assets of my estate. In carrying out these provisions, Trustee may rely conclusively on written statements of the personal representative of my estate as to the value of assets for federal estate tax purposes, the value of assets qualifying for the marital deduction, and other information that may be pertinent."

[9.] Materially, specific provisions regarding the management and distribution of the Q Sub-Trust are set forth in Clause 3.3 (b) of the AB Trust, which provide:

"3.3 (b) Q Sub-Trust. Trustee shall hold the Q Sub-Trust for the following purposes:

(1) Income. Trustee shall pay net income to my Spouse until death, at least quarter-annually.
(2) Principal. If net income is insufficient to maintain the standard of living my Spouse and I enjoyed prior to my death, Trustee shall use that portion of principal necessary to enable my Spouse to maintain that standard of living. Trustee may distribute principal only to my Spouse.
(3) Residue. At my Spouse's death, Trustee shall pay the approximate amount of estate, inheritance, and other taxes payable as a result of inclusion of any portion of the Q Sub-Trust, in my Spouse's taxable estate, and any taxes then imposed on generation-skipping transfer of assets in the Q Sub-Trust, and Trustee shall distribute the remaining assets in the Q Sub-Trust to the P Sub-Trust.
(4) Withdrawal Right. My Spouse may withdraw from principal during each calendar year of (1) $5,000 or (2) 5 percent of the market value of the principal on the last day of the calendar year in which the withdrawal is requested. Withdrawals may be made at any time during the last 30 days of the calendar year. Withdrawals shall be made in writing and delivered to the Trustee prior to the expiration of the withdrawal period. The right of withdrawal is not cumulative and, if not exercised, shall lapse. If the dollar amount set for the in IRC §2514 €(1) shall be increased by a future amendment, the increased

amount shall be substituted for $5,000 in the first sentence of this paragraph, effective for all calendar years beginning on or after the effective date of the amendment.

(5) Power to Appoint. My spouse shall have the power to appoint and designate the person, persons or entities to receive the assets of the Q Sub-Trust upon her death. This power of appointment may be made by a dated and signed document delivered to the Trustee or in my spouse's last will and testament."

[10.] The Trustees submit that by operation of Clauses 3.3(a) and 3.3(b) of the AB Trust, the Seascape Property fell into the Q Sub-Trust. They assert that although GA was named beneficiary of the Q Sub-Trust as the spouse of S, no provision was made for the legal title to the Seascape Property to be vested in her name. It is submitted that the Settlor's intention was for her to benefit solely from the income generated by the property, rather than to receive the property outright. This contention, they submit, is evident in Clause 3.4(d) which reads:

> "(d) Distribution of Certain Real Property. If still in the Q Sub-Trust, my Trustee shall distribute my Seascape Property in The Bahamas to my son, W, if he survives me. If my son, W, fails to survive me, then my trustee shall distribute my Seascape Property to those of my children, NB and CT, who survive me, in equal shares…".

[11.] As such, pursuant to Clause 3.4 (d) of the AB Trust, the Settlor directed that, in the event the Seascape Property remained a part of the Q Sub-Trust, the Trustee was to distribute the Seascape Property to W. If W did not survive the Settlor, the Seascape Property would be distributed in equal shares to NB and CT. Clause 4 of the AB Trust further provided that GA was to serve as the initial Trustee responsible for distribution and that upon her death, W and CT were to act as co-trustees. Of course, it is in that capacity that they now bring this application before the Court.

[12.] The Seascape Property was the subject of an Option Agreement dated 6 December, 1996, granted by the Settlor (and GA, who did not own an interest in the fee simple of the Seascape Property) to Z, Inc to purchase the lot. There is no evidence that this Option was ever exercised.

[13.] By a Trust Termination Agreement dated 1 December 2000, the AB Trust Agreement was terminated due to the insufficiency of the Settlor's Assets to carry out his wishes. GA, his spouse, was a party to the Termination Agreement. Clause 3 of the Trust Termination Agreement which concerned the Termination of the Q Sub-Trust provided:

> "The Q Sub-Trust created pursuant to the provisions of [the Settlor's AB] Trust Agreement is likewise terminated, cancelled and annulled, and the assets of the Q Sub-Trust, consisting of approximately $18,500 are to be distributed as follows:
>
> a. One-eighth (1.8) of the assets (12 ½%) of the Q Sub-Trust are to be distributed outright to the surviving spouse of S, GA.
>
> b. Three-eighths (3/8) of the assets (37 ½%) of the Q Sub-Trust are to be distributed outright on a pro rata basis to the following named beneficiaries in the Settlor's AB Trust in proportion that the gift

designated for each beneficiary by the provisions of the AB Trust bears to the total of all gifts made by said Trust. The total gifts designated by the Trust is $48,500 and, because the assets of the trust are insufficient to fully fund the total of the gifts, the respective prorata percentage interest of each of the beneficiaries named by the Trust is as follows:

(i) [List of nine beneficiaries and their gift proportions are set out]...

c. One half (½) of the assets (50%) of the Q Sub-Trust are to be divided equally among the three surviving sons of S, to wit: W, CT and NB."

[14.] The applicant Trustees state that no specific disposition was made for the Seascape Property, which was part of the Q Sub-Trust, save that the assets were valued at $18,500.00 and distributed in accordance with legacies in the Trust.

[15.] By a Conveyance dated 3 November 2016, W, as Executor of the Estate of S, conveyed to CT the Seascape Property for consideration of $125,000.00. The Conveyance referenced only the Founder Trust, but the AB Trust expressly revoked and replaced the Founder Trust. According to the Affidavit of W sworn on 28 August 2025, W conveyed the Seascape Property qua executor of his father's estate, believing it to have been a part of his father's estate on 3 November 2016. He erroneously referred only to the Founder Trust, but subsequently understood that the Founder Trust was replaced by the AB Trust.

[16.] Upon taking advice from Bahamian Counsel the Trustees decided to seek the advice, opinion and directions of the Court as there remained questions as to the lawful distribution of the Seascape Property. Specifically, the Trustees became concerned that notwithstanding the Trust Termination Agreement, the Seascape Property may have remained in the AB Trust and may not have been properly disposed of by way of the executor's conveyance of the same out the estate.

[17.] In addition to the written Statement of CT and W dated 01 October 2025, the Affidavit of CT sworn on 28 August 2025 and the Affidavit of W also sworn on 28 August 2025, the Court has read the Last Will and Testament of S dated 17 February 1994, The AB Trust executed on 6 December 1996, Indentures of Conveyance dated 10 March 1961 and 17 November 1986 by which S became seised of the Seascape Property in fee simple, the Option Agreement dated 6 December 1996, the Trust Termination Agreement dated 1 December 2000, the resealed Grant of Probate dated 19 December 2014, the Indenture of Conveyance dated 3 November 2016, the Opinion of Counsel (Alexiou Knowles & Co) dated 20 November 2024 and the Certificate of Death for GA dated 20 May 2024.

Questions for Advice, Opinion and Directions

[18,] The questions posed to the Court are:

(1) whether, notwithstanding the purported termination of the AB Trust, the Seascape Property remains vested in the AB Trust and held by the Trustees;

(2) whether the Trustees are obligated to administer or distribute the Seascape Property in accordance with the terms of the Trust Deed of the AB Trust or whether the Seascape Property is held upon a resulting trust for the estate of S; and

(3) whether the Court should approve the execution of a Confirmatory Conveyance of the Seascape Property by the Trustees to CT upon the direction of W as beneficiary.

The Governing Legislation

[19.] The applicant Trustees have invoked provisions of the **Trustee Act 1998**, Chapter 176, Statute Laws of The Bahamas (the "Act") to support their application. In this regard, **section 77** and **section 78** of the Act are particularly pertinent.

[20.] **Sections 77** and **78** stipulate the following:

> "77. (1) A trustee or personal representative may without commencing an action apply upon a written statement for the opinion, advice or direction of the Court of Judge in Chambers on any question respecting the management or administration of the trust property or the assets of any testator or intestate.
>
> "(2) Such application shall be served upon and the hearing attended by all persons interested in such application or such of them as the Judge thinks expedient.
>
> "(3) A trustee or personal representative acting upon the opinion, advice or direction given by the Judge shall be deemed so far as regards his own responsibility to have discharged his duty as such trustee or personal representative in the subject matter of the said application.
>
> "(4) Subsection (3) shall not extend to indemnify any trustee or personal representative in respect of any act done in accordance with such opinion, advice or direction if he is guilty of any fraud or wilful concealment or misrepresentation in obtaining such opinion, advice or direction.
>
> "(5) The costs of such application shall be in the discretion of the Judge.
>
> "**78**. Where any trustee or personal representative applies for the opinion, advice or direction of a Judge under section 77, the written statement shall be signed by a counsel and attorney and the Judge may require the applicant to attend him by his counsel and attorney either in Chambers or in Court where he deems it necessary to have the assistance of a counsel and attorney."

[21.] An exposition of the purpose of the procedure of **section 77** was delivered by *Charles J* (as she then was) **In the Matter of the trusts of the Deed of Settlement establishing the X Settlement** 2020/CLE/gen/unnumbered on 7 May 2021 as follows:

> "[23] The purpose of the Section 77 Procedure is to provide trustees and personal representatives with an efficient and cost-effective means of obtaining the opinion, advice or direction of a Judge

in Chambers on any question regarding the management or administration of the trust property or the assets of the testator or intestate, for the protection of the trust or estate and the applicant.

"[24] The Section 77 Procedure gives effect to the general supervisory jurisdiction of the Court over the administration of trusts and is modelled upon the procedure for obtaining the "opinion, advice or direction" of a judge on isolated questions relating to the administration of trusts that was introduced in England and Wales by Lord St. Leonard's Law of Property Amendment Act 1859, 22 & 23 Vict, c 35 but later superseded by Rules of Court.

"[25] The principal attraction for trustees and personal representatives of the Section 77 Procedure is that, if the trustee or personal representative acts in accordance with the opinion, advice or direction given by the Judge to whom the application is made then, by statute, they are deemed, so far as regards their own responsibility, to have discharged their duty as trustee or personal representative in the subject matter of the application.

"[26] The Section 77 Procedure cannot be invoked unless some question respecting the management or administration of the trust property or the assets of any testator or intestate arises. Even where the Section 77 Procedure is properly invoked, the Court has discretion whether to give its opinion, advice or direction and as to what opinion, advice or direction it gives."

[22.] I have considered the written Statement of CT and W dated 01 October 2025, the Affidavit of CT sworn on 28 August 2025 and the Affidavit of W also sworn on 28 August 2025, which explain the nature of the issues which compelled the Trustees to approach the Court in this application.

[23.] I have also considered the submissions of Mr Luther McDonald KC and Ms Rashea Newbold, both Counsel appearing for the Trustees. The Court agrees with the submission of Counsel that the Court may opine on the questions posed which fall squarely within the ambit of the management or administration of trust property or the assets of a testator. I am satisfied that this is an appropriate case for invoking the Court's jurisdiction pursuant to **section 77**.

Analysis

How the Seascape Property Was Held

[24.] On a reading of the terms of the AB Trust, the property of the Estate of S was to be divided and held on the P Sub-Trust and the Q Sub-Trust. Further, by those terms, the marital residence of S in the USA was to be distributed to his spouse, GA, free from trust. Apart from this, specific assets were to be allocated to the P Sub-Trust and any remaining assets fell to be held in the Q Sub-Trust. It was both the intention of S and the effect of the terms of the AB Trust, that the Seascape Property was allocated to be held by the Q Sub-Trust. As to the intention of S, clause 3.4(d) provides that if the Seascape Property is still in the Q Sub-Trust at the date of his death it will be distributed to W if he survives the Settlor. The Settlor clearly intended that the Seascape Property form a part of the Q Sub-Trust and not the P Sub-Trust. Further, the Seascape Property

did not form a part of the category of assets expressly allocated to the P Sub-Trust. The Court therefore accepts that the Seascape Property, upon the death of the Settlor (S) and his wife, GA, was held in the Q Sub-Trust and was to be distributed in accordance with the terms thereof as set forth in the AB Trust.

[25.] The Trust Termination Agreement was entered into on 1 December 2000, because the assets in the AB Trust were insufficient to fulfil the wishes of the Settlor, S. However, the Trust Termination Agreement only disposed of the assets in the trust amounting to $18,500. There was no express disposition of the Seascape Property by the terms of the Trust Termination Agreement, and no words or other evidence sufficient to support a notion that such property was impliedly disposed of by the Trust Termination Agreement.

Status of Trust Assets Upon Termination of Trust

[26.] The first two questions posed to the Court for consideration may be dealt with together. These are:

(1) whether, notwithstanding the purported termination of the AB Trust, the Seascape Property remains vested in the AB Trust and held by the Trustees;

(2) whether the Trustees are obligated to administer or distribute the Seascape Property in accordance with the terms of the Trust Deed of the AB Trust or whether the Seascape Property is held upon a resulting trust for the estate of S.

[27.] Firstly, it must be observed that the answer to these questions is not provided in legislation. The Court must therefore find the solution in case law and equitable principles. The status of the Seascape Property as an asset which was held within the now purportedly terminated trust is in issue. Simply put, the question is whether it must still be regarded as held on the AB Trust and distributable by its terms, or whether it is now held on a resulting trust for the benefit of the Estate of S. The answer is important because it will determine the proper method by which the Seascape Property may be disposed of, in the event the purported conveyance by the Executor did not achieve that end in law.

[28.] On the evidence presented and accepted by the Court, the Executor of the Estate purported to convey the Seascape Property to CT in his capacity as Executor. This action was consistent with the existence of a resulting trust of the Seascape Property which fell to the Estate for distribution and therefore subject to transfer by the Executor. However, the Court must examine whether this is the true status of the Seascape Property.

[29.] Mr McDonald KC and Ms Newbold submit that the Seascape Property remained held upon the original trusts pending its distribution to W pursuant to Clause 3.4(d), or, in the alternative, upon a resulting trust for the Settlor's estate until a proper disposition was made. It is asserted that under either analysis, the Q Sub-Trust was not legally terminated as to the Seascape Property, the legal estate continued to vest in the Trustees, and the beneficial interests remained unsatisfied.

Further, it is asserted that the purported termination could not extinguish or defeat W's entitlement (as a beneficiary of the Seascape Property if it still remained in the Q Sub-Trust at the death of the Settlor) merely by omitting to distribute the land. In argument Counsel has cited in support of the Trustees' submissions **Section 77(1)** of the **Trustee Act 1998**, the treatise of **Underhill & Hayton of Law of Trusts and Trustees** (Chapter 6, Article 23), **In the Matter of the trusts Deed of Settlement establishing the X Foundation Trust** (2021) 24 ITELR 952, **Bayley & ors v SG Associates & ors** [2014] EWHC 782 (Ch) and **Re Hulkes; Powell and others v Hulkes** [1886-90] All ER Rep 659.

[30.] The answer to these questions may be drawn from settled principles in the law of trusts. A succinct statement of the relevant principles may be found in **Article 27, Chapter 6** of **Underhill & Hayton on the Law of Trusts and Trustees** where the learned authors stated the following:

> "HOW TRUSTS TERMINATE
>
> "27.1
>
> "(1) A trust terminates once all the assets of the trust fund have been distributed in accordance with the provisions of the trust, whether found in a trust instrument or an oral declaration of trust.
>
> "(2) Where the application of such provisions does not exhaust the trust fund, the assets remaining within the fund will be held on a resulting trust for the settlor or, if dead, his estate (so as to be distributed to the settlor or those entitled to his estate), unless the settlor expressly or by necessary implication abandoned any beneficial interest in the trust fund, in which exceptionally rare eventuality the assets will vest in the Crown as bona vacantia.
>
> ...
>
> "Paragraph 1
>
> "*No trust if no property*
>
> "27.2 Because a trust of property cannot exist unless there is property held on trust, once a trust has been duly emptied of all of its assets, there is no trust. Thus, in a simple case of a fixed trust for A for life, remainder to B, once A dies the trustees hold the assets on a bare trust for B; and such trust terminates once all the trust's assets are transferred to B or to others as directed by B.
>
> ...
>
> "Paragraph 2
>
> "*Resulting trust of trust property*
>
> "27.4 Where for some reason, such as the impact of a rule of the law of trusts or the settlor's failure to provide comprehensively for what is to happen to the income and capital of his trust fund, the provisions of a particular trust fail to exhaust the income and capital of a trust fund, the unexhausted income and capital are almost invariably held on a resulting trust for the settlor or his estate. Thus, if the settlor is dead the relevant property passes as part of his residuary estate under his will or intestacy."

[31.] Firstly, I consider whether the AB Trust terminated when the Termination Agreement was executed. Counsel pressed the point that the conceptual termination of a trust requires the exhaustion of the trust fund, not merely the declaration of the parties. Further, the submission is made that the mere insufficiency of assets to achieve the settlor's intended scheme does not extinguish trust obligations nor convert undistributed assets into ownerless property.

[32.] I agree that the AB Trust did not terminate upon execution of the Termination Agreement as it was not duly emptied of all of its assets. The English High Court case of **Bayley & ors v SG Associates & ors** [2014] EWHC 782 involved a trust the assets of which had been finally distributed to the beneficiaries by a formal resolution and thereafter the trustee had taken the position that the trust had been wound up. However, where the trustee had certain causes of action against a company (SGA) which managed and advised on investments of the trust, these choses in action were found by the court to be trust property. Due to the existence of such trust property the trust was not considered to be terminated by the court. There *Mr David Railton QC*, sitting as the judge stated:

> "In light of these authorities, I have no hesitation in holding that the causes of action which the Trustee has against SGA are trust property. SGA's retainer by the Trustee arose in the administration of the Trust, and for the purposes of the Trust. It owes duties to the Trustee in respect of the investment of the Trust's assets. My conclusion in this respect also deals with the Trustee's contention that the Trust has terminated. While there is trust property which remains vested in the Trustee the Trust necessarily continues until that property is distributed in accordance with the terms of the Trust." (Emphasis added).

[33.] In considering how trusts terminate specifically as it pertains to the issues before this Court, a distinction must be made between two situations. The first is where the trust instrument continues to provide a valid route to dispose of the remaining assets even though the trust has reached its terminal event or is purportedly terminated. In this first situation, there is no gap in beneficial ownership, and the trustees must complete the distribution under the trust's own terms. In the second scenario, the trust terms do not validly dispose of the residue, whether because the relevant provisions fail, are void, or do not cover the balance of assets. In that situation, equity supplies a resulting trust to fill the gap, beneficial ownership having not been effectively disposed of by the terms of the trust.

[34.] This second situation in which a resulting trust arises automatically was described in relevant points on resulting trusts stated by *Megarry J* in **Re Vandervell's Trusts (No. 2)** [1974] Ch. 269. There *Megarry J* categorized the automatic resulting trust as arising where "the transfer [of property by A] to B is made on trusts which leave some or all of the beneficial interest undisposed of. Here B automatically holds on a resulting trust for A to the extent that the beneficial interest has not been carried to him or others. The resulting trust here does not depend on any intentions or presumptions, but is the automatic consequence of A's failure to dispose of what is vested in him."

[35.] In my view, a clear example of the first scenario in which the trust instrument of a terminated trust contains a valid and exhaustive distribution machinery and by reason of which a resulting trust does not take effect, is to be found in the Privy Council case of **Scully and Richardson v Coley** [2009] UKPC 29. In that case, after restructuring its operations in Jamaica and significantly reducing its workforce in 1994, Gillette Caribbean Ltd virtually shut down. The applicants, Scully and Richardson, were employees of Gillette who remained employed and continued to contribute to the company's pension plan. The respondents had left the employ of Gillette and discontinued pension plan contributions when they left. These respondents chose, when they left, to take repayment of their contributions with interest. Following its discontinuance in 2000, the pension plan held some $42 million (the equivalent of GBP 356,000 in 2004).

[36.] The trustees of the pension plan brought an application to seek guidance on the proper distribution of the plan. Scully and Richardson submitted that they were the only employees who were active when the pension plan was discontinued. Therefore, they and others who fell into that category should be the recipients of the distribution of the remaining funds. The respondents contended that the funds remaining in the pension plan should be distributed to all former employees of Gillette in the proportions in which they contributed to the pension plan. At first instance, the Jamaican High Court agreed with the applicants, Richardson and Scully. This decision was reversed in 2007 by the Jamaican Court of Appeal. Richardson and Scully then appealed to the Privy Council. In the leading decision delivered by *Lord Collins* of Mapesbury, the Privy Council held inter alia:

> "[30] The question whether the respondents have an entitlement to an allocation under Rule 12(c) is solely a question of construction of that Rule in the light of the Rules as a whole and the Trust Deed. It has been said more than once that there are no special rules for the construction of pension scheme documents. The provisions of a pension scheme should be construed to give reasonable and practical effect to the scheme, bearing in mind the practical consequences and the fact that it has to be operated against a changing commercial background. See, e.g. *Re Courage Group's Pension Schemes* [1987] 1 WLR 495, 505, per Millett J; *Mettoy Pension Trustees Ltd v Evans* [1990] 1 WLR 1587, 1610 per Warner J; *National Grid Co plc v Mayes* [2001] UKHL 20...per Lord Hoffmann; *Stevens v Bell* [2002] EWCA Civ 672...per Arden LJ.
>
> "[31] Rule 12(b) provides (inter alia) that if the Plan is discontinued, no part of the assets of the Plan are to revert to Gillette until the Plan has made full provision for payment of the pension benefits, other benefits and rights of refund in respect of the service of Members up to the date of discontinuance...".
>
> "[41] Members who have left Gillette and have withdrawn their contributions and credited interest are no longer Members...
>
> "[43] Rule 12(c) contains an exhaustive code for allocation of whatever funds are left in the Plan after it is discontinued, with any amount remaining after allocation to classes (i), (ii) and (iii) to be allocated to each person within the class to be increased in proportion. There is no basis for the argument of the respondents that the allocation of the funds "in the same proportion" is intended to embody in the distribution the concepts of fairness and equity, or that the Rules are too uncertain

to permit a distribution of the funds after the accrued benefits have been paid, with the consequence that the objects of the trust would have failed to that extent.

"[44] There is therefore no question of a surplus to be distributed among all members who had contributed to the Plan, as K Harrison JA thought. Nor is there any question of a surplus to be held on resulting trust, as Harrison P thought.

"[45] A resulting trust may arise if there is a failure of the trust constituting the fund (as in *Air Jamaica Ltd v Charlton* [1999] 1 WLR 1399), and if there is a balance in the trust fund after the rules providing for the distribution of benefits on a discontinuance or winding-up of the fund are satisfied and there is no provision for the distribution of the balance. But there is no surplus where the trustees have to use up the balance of the funds in the payment of benefits: *Air Jamaica Ltd v Charlton* at 1410."

[37.] In ***Scully***, the Privy Council treated the governing deed and rules as containing a complete code for what happened when the plan was discontinued. Because the balance had to be applied under those rules, there was no true surplus and therefore no room for a resulting trust.

[38.] Based on the principles discussed above, in my opinion, the termination of a trust does not by itself create a surplus in the equitable sense. If the trust instrument sets out terms which provide for the full disposal of all assets in the trust, any property which remains after a purported termination of the trust also remains subject to those trusts and must be distributed in total in accordance with those terms before the trust can be considered terminated. A resulting trust can only arise if there are no such terms in the trust provisions which validly and completely govern the disposal of the remaining assets.

[39.] Therefore, in my opinion, the remaining asset in the AB Trust does not fall to be disposed of by way of a resulting trust to the Estate of the Settlor. I am of the view that this case falls within that class of case in which there is an undistributed asset and a valid mechanism governing what is to happen to the asset. By Clause 3.4 (d) of the AB Trust, the Settlor plainly directed that, in the event the Seascape Property remained a part of the Q Sub-Trust, upon the death of GA, the Trustee was to distribute the Seascape Property to W. W is therefore, regardless of any purported prior disposal, entitled to have the Seascape Property distributed to him as the beneficiary absolutely entitled to the same pursuant to the AB Trust. Until such final distribution is made by the Trustees, the AB Trust is not fully terminated. I therefore agree with Counsel's submission that the Seascape Property was subject to the ultimate distribution scheme established by Clause 3.4(d) and that the legal estate in such property remains vested in the Trustees until such distribution is effected.

Solving the Administrative Issue of Correcting Transfer

[40.] The Trustees have applied for my opinion, advice or direction on another question. It is whether the Court should approve the execution of a confirmatory conveyance of the Seascape Property by the Trustees to CT upon the direction of W as beneficiary. Pursuant to the Court's obligation to render advice under Section 77, I advise firstly that, as aptly asserted by Counsel, the applicant Trustees must perform the final distribution of the Seascape Property to the beneficiary,

W, pursuant to Clause 3.4 (d), so as to wind up the AB Trust completely. In accordance with the well-rehearsed principle in **Re Hulkes; Powell and others v Hulkes** [1886-90] All ER Rep 659 at 661, a trustee is treated in equity as remaining in possession of trust assets until he has properly accounted for them and performed his duty, so as to obtain a discharge, by making a valid distribution in accordance with the trust.

[41.] Now, inherent in the solution proposed in the third issue is the question whether the beneficiary, W, may direct the Trustees to distribute the Seascape Property to another person, namely CT. Of course, the Trustees at present hold the legal title to the land, but the conditions of the entitlement of W to take the full title of the Seascape Property absolutely have all been met. Further, W is of full age and capacity. In these circumstances, the law provides strong support for the ability of the absolute beneficiary to direct the Trustees to transfer the legal title to another person. The principle is stated in **Lewin on Trusts**, Eighteenth Edition 2008 at para 24-02 '*The Right to Call for the Trust Property*' thus:

> "The right to call for conveyance or transfer – beneficiary solely entitled
>
> A beneficiary absolutely entitled to land can call on the trustee to execute a conveyance or transfer of the legal estate, either to the beneficiary or as the beneficiary may direct…".

[42.] This is tied to the core equitable principle known as the rule in **Saunders v Vautier** Cr & Ph 240 which is that "it is competent for the beneficiary who is of full age and capacity and is solely and absolutely entitled to assets held on trust to call upon the trustee for the transfer of the trust assets to him or her, or as he or she directs, and so bring the trust to an end" (per *Paul Matthews J* in **Batt v Boswell** [2022] EWHC 649 (Ch). The learned authors of **Lewin** cite as support for the principle the case of **Stephenson v Barclays Bank Trust Co Ltd** [1975] 1 WLR 882 at 889E. It was a case involving co-owners in equity, but in my view, a case such as that of the beneficiary W who is sui juris and the only beneficiary absolutely entitled, is even more strongly supported for application of such a beneficiary's right to call for a transfer of the trust property either to himself or as he may direct. It is therefore my opinion that the Trustees exercising their dispositive power, may transfer the legal estate in the Seascape Property as the beneficiary, W, may require. This may be performed by way of a confirmatory conveyance from the Trustees to CT upon the direction of W in his capacity as the sole beneficiary who is sui juris and absolutely entitled to the property. The Trustees remain entitled to proper protection and discharge. Further, there may be certain regulatory requirements to be met depending on the status in The Bahamas of the transferees of Bahamian real estate. However, I do not venture to advise on those aspects which are beyond the scope of the questions posed to this Court.

Summary and Order

[43.] In summary, having regard to the prevailing law and the circumstances presented in this application, the Court is of the view that:

(1) the Seascape Property:

(i) continues to be held on the Q Sub-Trust of the AB Trust which has not been brought to an end;

(ii) does not fall to be disposed of by way of a resulting trust to the Estate of the Settlor;

(iii) is an undistributed asset and Clause 3.4 (d) of the AB Trust provides a valid mechanism governing what is to happen to the asset;

(2) W:

(i) is entitled to have the Seascape Property distributed to him as the beneficiary absolutely entitled to the same pursuant to the terms of the AB Trust;

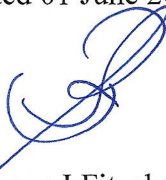
(ii) is competent, in the circumstances of this case, to require the Trustees to transfer the remaining trust asset as he directs.

[44.] The Court therefore grants an order approving the execution of a confirmatory conveyance of the Seascape Property by the Trustees, at the direction of W as beneficiary, in favour of CT. Thereupon, the Trustees shall be discharged without further liability and the administration of the AB Trust shall come to an end. Additionally, the Court, in exercise of its discretion pursuant to **Section 77(5)** of the Act, is satisfied that the application was reasonably and appropriately brought by the Trustees for the benefit of the Trust, and grants the Trustees' costs, to be paid out of the trust fund of the AB Trust.

Afterword

[45.] I thank both Mr Luther McDonald KC and Ms Rashea Newbold, Counsel for the applicant Trustees, whose submissions, both written and oral, were helpful to the Court.

Dated 01 June 2026



Simone I Fitzcharles

Justice