IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

Claim No. 00718 of 2022

IN THE MATTER OF Trusts of a Settlement Agreement dated 16 November 2010 establishing the "El Porvenir Trust"

B E T W E E N

SALVADOR MORENO GROSS

Claimant

AND

(1) CREDIT SUISSE TRUST LIMITED (as Trustee of the El Porvenir Trust)

(2) BERTA BONILLA

(3) ANA MARIA GROSS de GARCIA

(4) SALVADOR GROSS MENDOZA

(5) FRANCISCO RENE RAMOS

(6) ANA GABRIELA GROSS GALVAN

Defendants

Before the Honourable Justice Simone I Fitzcharles

Appearances: Mr Ian Cargill Jr with Mr Dawson Malone for the Claimant

Mr N. Leroy Smith and Ms. Kimberleigh Peterson-Turnquest for the First Defendant

Mr Sean N Moree KC and Mrs Peteche Mitchell for the Second Defendant

Hearing: 12 December 2025

JUDGMENT
On Costs

FITZCHARLES, J.

Introduction

[1] This is my judgment on costs following my judgment given on 12 December 2025 in which I decided that the Letter of Wishes, challenged by the Claimant on the ground it is a forgery, is an authentic document.

[2] I dismissed the claim of the Claimant and directed the distribution of the trust fund of the El Porvenir Trust (the "Trust") in accordance with the law and the dispositive discretion of the Trustee (guided by the Letter of Wishes, if the Trustee so chooses). I also gave the parties an opportunity to tender written submissions on the issue of the costs of the claim.

[3] The parties submitted for consideration the Plaintiff's Submissions and Authorities on the Costs of the Action filed on 19 January 2026, the Submissions of the First Defendant filed on 19 January 2026, the Third Affidavit of Floidira M Collie filed on 16 January 2026 and the Submissions on Costs on behalf of the Second Defendant. I considered these documents as well as others on the file in this matter.

[4] For the purposes of considering the award of costs, the 3 active participants in this matter are: (1) the Claimant, Mr Salvador Moreno Gross (the "Claimant"), (2) the First Defendant, Credit Suisse Trust Limited, the Trustee of the Trust (the "Trustee") and (3) the Second Defendant, Ms Berta Bonilla (the "2nd Defendant"). The 2nd Defendant was the only beneficiary to enter an appearance and defence and to make submissions in response to the Claimant's claim.

General Background

[5] The background facts are briefly stated here. The Trust was established pursuant to a Settlement Agreement dated 16 November 2010 between Salvador Antonio Gross Vides (the "Settlor") and the Trustee. The Trustee is and has been the sole trustee of the Trust for its duration.

[6] The Trust is a discretionary trust with 6 named discretionary beneficiaries, among whom are the Claimant and the 2nd Defendant. The 3rd, 4th, 5th and 6th Defendants are also among the discretionary beneficiaries of the Trust.

[7] On or about 15 December 2010 the Trustee received a document which purported to be a Letter of Wishes from the Settlor. The authenticity of the Letter of Wishes was in dispute as between the Claimant and the 2nd to 6th Defendants. The Trustee had no independent basis upon which to question the authenticity of the Letter of Wishes.

[8] The Settlor died on 14 December 2019. The Trustee wished to distribute the Trust assets and dissolve the Trust. However, firstly, the dispute raised by the Claimant respecting the

authenticity of the Letter of Wishes had to be resolved. The dispute was resolved in the Court's judgment upholding the authenticity of the Letter of Wishes.

[9] It is undisputed that adherence to the Letter of Wishes by the Trustee could result in the Claimant receiving a benefit, in the event the Trustee exercises its discretion to confer a benefit on him, of a significantly lower value than if the Letter of Wishes was found to be inauthentic. Further, if authentic, adherence to the Letter of Wishes by the Trustee could result in a 50% share of the assets of the Trust being distributed to the 2nd Defendant who was the Settlor's life partner (of about 20 years) and caretaker at the end of his life. This would, of course, be dependent upon the decision of the Trustee to exercise its discretion to confer a benefit on her.

Law on Costs

[10] In trust litigation, awards of costs are in the broad discretion of the Court. **Section 30(1)** of the **Supreme Court Act**, **Chapter 53**, Statute Laws of The Bahamas provides in part that subject to statute and the rules of court, "the costs of and incidental to all proceedings in the Court, including the administration of estates and trusts, shall be in the discretion of the Court or judge and the Court or judge shall have full power to determine by whom and to what extent the costs are to be paid."

[11] In accordance with **Rule 71.3** of the **Supreme Court Civil Procedure Rules 2022** (the "**CPR**"), the Court may make an order by which a party is required to pay the costs of another party in any proceeding. Further, **CPR 71.6** provides the general rule as to entitlement to costs as follows:

> "**71.6 Successful party generally entitled to costs.**
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> (1) Where the Court decides to make an order about the costs of any proceedings, the general rule is that it must order the unsuccessful party to pay the costs of the successful party.
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> (2) The Court may, however, make no order as to costs or, in an exceptional case, order a successful party to pay all or part of the costs of an unsuccessful party."

[12] The principles enunciated by *Charles SJ* (as she then was) in **Monika Stubbs and anor v Zamar Group Companies Ltd** [2022] 1 BHS J. No 11 as to how the Court's discretion to award costs should be exercised are particularly relevant. There, the Court stated:

> "[229] It is accepted that this discretion is not to be exercised arbitrarily but must be exercised judicially. Buckley LJ, in the Court of Appeal case of Scherer and another v Counting Instruments Ltd. and another [1986] 2 All ER 529 stated:
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> > 'The judge was required to exercise his discretion judicially, i.e. in accordance with established principles and in relation to the facts of the case and on relevant grounds connected with the case, which included any matter relating to the litigation, the parties' conduct in it and the circumstances leading to the litigation, but nothing else.'
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> "[230] The principle to be applied by the Court or Judge when exercising this discretion is that of reasonableness. In McPhee (as Administrator of the Estate of Thelma Mackey) v Stuart [2018] 1 BHS J. No. 18 at para. 8, this Court enumerated some factors which would be reasonable for the Court to consider when deciding the issue of costs, namely:-

1. any order that has already been made;
2. the care, speed and economy with which the case was prepared;
3. the conduct of the parties before as well as during the proceedings;
4. the degree of responsibility accepted by the legal practitioner;
5. the importance of the matter to the parties;
6. the novelty, weight and complexity of the case; and
7. the time reasonably spent on the case.

"[231] The general rule is that, in civil proceedings, the successful party is entitled to his costs. The Court may depart from this general principle if there are good and compelling reasons to do so."

[13] There are, however, specific rules as to costs which are applied in trust disputes. **Section 36(2)** of the **Trustee Act, Chapter 176**, Statute Laws of The Bahamas addresses a trustee's general entitlement to costs out of the trust fund. The Section provides that a "trustee may reimburse himself or pay or discharge out of the trust property all expenses incurred in or about the execution of the trusts or powers."

[14] **Section 36(2)** is the foundation of a trustee's general right of indemnity. According to the authors of ***Lewin* on Trusts** (20th Edition, para 48-004), "the general principle is that a trustee is entitled to indemnity out of the trust fund in respect of costs and expenses properly incurred by him in connection with the performance of his duties and exercise of his powers and discretions as a trustee."

[15] The CPR also contains provisions which address a trustee's costs. **CPR 71.19** states:

"71.19 Costs payable to a party out of a fund.

(1) Save as is provided in paragraph (2), where a person is or has been a party to any proceedings in the capacity of trustee…, he shall, unless the Court otherwise orders, be entitled to the costs of those proceedings, in so far as they are not recovered from or paid by any other person, out of the fund held by the trustee…".

(2) Where paragraph (1) of this rule would otherwise apply but the Court is of the opinion that the trustee…has acted unreasonably or, …such person has in substance acted for his own benefit rather than for the benefit of the fund, the Court may make such other order as it thinks fit."

[16] The Court must also consider the landmark authority of **In re Buckton, Buckton v Buckton** [1907] 2 Ch 406, in which *Kekewich J* seized upon the opportunity to enunciate rules for the guidance of the profession on parties' costs in trust and estate litigation. There, the court identified 3 broad categories of case in which a court might award costs. These categories have been succinctly summarized in the decision of *Master Clark* in **Folds Farm Trustees Limited & Anor v Oliver Alister Sydney Cutts & Ors** [2024] EWHC 2143 as follows:

"Category 1:

> Proceedings brought by the trustee to have the guidance of the court as to a question arising in the administration of the trust: the costs of all parties are, whatever the outcome, usually treated as necessarily for the benefit of the trust fund and ordered to be paid out of it.
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> Category 2:
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> Proceedings brought by someone other than the trustee, but raising the same kind of point as in the first category, and which would have justified an application by the trustee. Such proceedings differ in form but not substance from the first category, and similar considerations apply as to costs.
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> Category 3:
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> Proceedings in which the application is made by someone other than the trustee, and have the character of a hostile claim to a beneficial interest in or entitlement to the trust fund. This category differs from the first two categories, in that the claim is brought not in substance for the benefit of the trust fund, but for the benefit of the claimant, and is resisted for a similar reason: the general principles as to costs of hostile litigation apply, and so the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party, subject to the general qualifications which apply in ordinary hostile litigation."

[17] The claim before this Court was brought by the Claimant after he learned that the Trustee was going to dissolve and distribute the trust assets, and after he requested and obtained copies of the Settlement Agreement and Letter of Wishes.

[18] Standing apart from the fray, albeit named as a party, the Trustee maintained its neutrality throughout this litigation, which was entirely generated by the unsuccessful forgery allegation of the Claimant. The Trustee's position was in keeping with the duty described by the court in the often-quoted **Alsop Wilkinson v Neary & Others** [1995] 1 All ER 431. In that case, the Court distinguished trust disputes, beneficiaries' disputes and third party disputes, and said that where the dispute is between rival claimants to the beneficial interest, the trustee's duty is generally to remain neutral and submit to the court's directions, leaving the rivals to fight their battles.

[19] This battle was fought between the Claimant and the 2nd Defendant, and the 2nd Defendant prevailed. In its essential nature, this dispute was between rival potential beneficiaries about the basis on which the Trustee may exercise its discretion. The most obvious motive for becoming a contender was the potential value of the benefit each beneficiary could derive from the Trust with, or alternatively, without, the Letter of Wishes. While I consider that the trust is discretionary, (so that the discretionary beneficiaries have only a right to be considered objectively as a potential recipient of a benefit by the Trustee), this does not negate that they may litigate in a way clearly designed to improve their prospects of being so considered. I observe also that although their respective potential interests could be similarly affected, all other discretionary beneficiaries chose not to participate in these proceedings.

[20] In my judgment, considering all of the circumstances, this case is not of the character of a neutral trust administration claim such as is captured in **Re Buckton's** category 1 and category 2 cases. By the mechanism of a challenge to the Letter of Wishes, it is a hostile claim to a beneficial interest in or entitlement to the trust fund. In other words, squarely, a category 3 claim.

Costs of the Trustee

[21] Following the receipt of notice of the Claimant's claims, the Trustee sought the Court's directions. In the eventual result, on 9 February 2022, Charles J (as she then was) ordered that the Trustee:

> "shall be at liberty to administer the Trust as if the Contested Letter of Wishes is in all respects valid (including by considering and placing reliance upon the same in the course of determining and effecting any final distribution) if, by 5:00 pm EST on 10th May, 2022 (the "Challenge Deadline"), no Beneficiary shall have: (i) commenced proceedings in the Supreme Court of the Commonwealth of The Bahamas seeking to set aside the Contested Letter of Wishes and/or to have the said Contested Letter of Wishes declared invalid and/or of no legal effect and (ii) served upon the Trustee originating process issued in such proceedings."

[22] Deciding to press ahead with his claim, the Claimant brought these proceedings by his Generally Indorsed Writ on 10 May 2022. He disputed the authenticity of the Letter of Wishes and initially vied for the exclusion of the 2nd Defendant from a distribution of the assets of the Trust, until his subsequently filed Statement of Claim, which included an amended prayer in relation to the distribution of trust assets. The Claimant sought the following relief:

(1) a declaration that the Purported Letter of Wishes is invalid and of no legal effect;

(2) an order that the assets of the El Porvenir Trust be distributed in accordance with the Trust Deed.

[23] The Trustee subsequently sought the directions of the Court (a 'Beddoe' Order) and was granted an Order and directions by Winder CJ on 6 March 2023, in part, in the following terms:

> "1. The Trustee has, to date, acted reasonably in connection with the Action (including by entering the certain Memorandum of Appearance filed on 20th May, 2022 and the certain Defence filed on 11th August, 2022 (the "Trustee's Defence")) and may indemnify itself from the Trust Fund of the Trust for all legal costs properly incurred by it in connection with defending the Action.
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> "2. The Trustee may participate in the Action and, in so doing, the Trustee should (without prejudice to the Trustee's Defence) take a neutral position insofar as the substantive merits are concerned by principally providing discovery, providing/adducing relevant evidence, attending hearings and endeavouring to assist the Court.
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> ...
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> "7. The Trustee shall be relieved and excused wholly from any liability and be fully indemnified pursuant to sections 77(3) and 98 of the Trustee Act, 1998 for any acts or things done by it in accordance with or further to this Order."

[24] I have considered the law and the circumstances of this case including the Trustee's actions. It appears to this Court that the Trustee complied with the Court's directions when necessary, acted reasonably and remained neutral throughout the proceedings. The Trustee is, in my view, entitled to its reasonably-incurred costs.

[25] Counsel for the Trustee, Mr N Leroy Smith submits, and I accept, that the Trustee, acting in its capacity as trustee of the Trust and as a named Defendant, participated in this action with the express approval of the Court by adopting a neutral posture. Rehearsing the applicable legal principles on trustees' costs, Mr Smith submits that the Trustee is *prima facie* entitled to recover its legal costs of and occasioned by the action on an indemnity basis. Counsel further, in maintenance of neutrality, puts forward two options which may be considered by the Court:

(1) if the Court deems it appropriate, the Trustee's costs may be paid out of the Trust Fund prior to any distribution among the beneficiaries, or

(2) the Trustee's costs may be borne by the unsuccessful party personally.

Costs of the 2nd Defendant

[26] The 2nd Defendant was successful in upholding the Letter of Wishes and was the only beneficiary to incur the adversarial costs of doing so.

[27] Counsel for the 2nd Defendant, Mr Sean N Moree KC submits that costs should follow the event and that the Claimant should be made responsible for paying both the Trustee's costs and the 2nd Defendant's costs. On the basis that the costs of the Trustee would diminish the amount received by the class of beneficiaries, it is argued that the Trustee should be in the same position as the Second Defendant, and seek to recover its costs from the Claimant personally, and not out of the Trust assets.

[28] Mr Moree KC took the Court through the relevant law on awarding costs generally and in trust disputes. Counsel also highlighted the conduct of the Claimant in failing to apply for case management and to comply with the case management orders made by the Court, in addition to problems with the evidence in the form of defective filings which increased costs and the length of the proceedings.

[29] Counsel for the 2nd Defendant ultimately submitted that the 2nd Defendant has been successful in hostile litigation. The ordinary rule that costs ought to follow the event and the loser must pay both the Trustee and Second Defendants' costs should be applied. It was further contended that the Trust should not have to absorb the costs of this action as to do so would further prejudice the other beneficiaries who have been penalized by the delay the Claimant's claim has caused to the realization of their benefit. As such, the costs of the Trustee and the 2nd Defendant should be summarily assessed and paid by the Claimant forthwith.

Costs in relation to the Claimant

[30] Counsel for the Claimant, Mr Ian W Cargill, submits that the Trustee should be paid its costs of the action out of "an equal share of the remaining portions of all beneficiaries" of the Trust. Further, there should be no order as to costs in favour of the 2nd Defendant, and the Claimant should be spared having to pay costs. Alternatively, if the Court orders the Claimant to pay the costs of the 2nd Defendant, the same should be paid "out of an equal share of the remaining portions of all beneficiaries" of the Trust. In the alternative, the Court should order that any costs payable by the Claimant to the 2nd Defendant should "be paid out of the Claimant's portion" of the Trust. Any costs should be summarily assessed by the Court.

[31] Counsel has set out the Overriding Objective by which the Court must deal with cases justly and at proportionate costs, taking into account the complexity of the issues, importance of the case and the financial position of each party. Counsel also sets out the undisputed law in relation to a trustee's costs in litigation. The Claimant supports the application of the principle that in proceedings concerning trust administration, properly incurred costs should be borne by the trust fund.

[32] It is contended that this was a bona fide trust dispute raising serious allegations which the Plaintiff was obligated to bring before the Court. Allegations of fraud are serious and it is in the interest of all parties and justice that such allegations are ventilated and determined. Further, the Claimant sought resolution of only one narrow issue – whether the Letter of Wishes was a fraudulent document. It is submitted that there was no improper conduct, exaggeration, or abuse and the proceedings were conducted reasonably throughout.

Disposition

[33] The Court is of the view that the Claimant engaged in hostile litigation and lost. His case was not proven, and in light of the evidence as a whole, not reasonably brought. No other party presented a case in the proceedings to support him and there was no evidence that the Trustee ever distrusted the authenticity of the Letter of Wishes. Further, I do not accept that the proceedings were conducted reasonably by the Claimant. Relevant references have been given in the Third Affidavit of Floidira Collie filed on16 January 2026 and in the written submissions of the 2nd Defendant, particularly at paragraphs 13 through 16, which are accurately stated and accepted by this Court. These demonstrate that the conduct of the case of the Claimant was often marred by a failure to comply with orders, rules and/or directions which gave rise to the exertion of extra effort by the participating parties and incurrence of costs.

[34] In my judgment, the Trustee in this matter is entitled to be indemnified out of the trust fund in respect of and occasioned by these proceedings, insofar as those costs are properly incurred by the Trustee in its neutral capacity as Trustee. Such payment should be made in advance of any distribution, if any, among the beneficiaries, and should be summarily assessed, if not agreed.

[35] I do, however, take into consideration that both the costs of the Trustee and the 2nd Defendant were caused by the Claimant's failed challenge. The Court has not been given any actual current value of the Trust assets. However, the 2nd Defendant has correctly indicated that a payment to the Trustee out of the assets is likely to diminish the value of the potential benefit of the other beneficiaries. Mr Moree KC states that the loser should pay the costs. I agree, and have been furnished with no good and compelling reasons why such order should not be made. A fair solution, in the circumstances, should involve that the Claimant be personally responsible for paying the costs of the 2nd Defendant to be summarily assessed, if not agreed. Further, the Claimant should reimburse the Trust for any costs paid to the Trustee out of the Trust fund.

[36] In answer to the prayer of the Claimant that any costs he must pay to the 2nd Defendant be drawn from any benefit he may derive from the Trust, I firstly point out that such benefit is contingent upon the Trustee's decision to exercise its discretion in favour of the Claimant. However, if the Trustee exercises its discretion to appoint, advance, apply or distribute any part of the Trust assets to or for the benefit of the Claimant, it is in concordance with fairness that the

Trustee shall be entitled, before making such payment, to retain from that benefit such amount as is then due from the Claimant to the 2nd Defendant, and to pay that amount to the 2nd Defendant.

[37] The Court takes note, as well, of the previous Order of Winder CJ made on 6 March 2023, by which approval was given for the funding of legal costs to certain beneficiaries in this action.

[38] In the circumstances of this case and based upon my findings, I make the following Order:

(1) The Trustee's costs of and occasioned by these proceedings, properly incurred in its neutral capacity, shall be paid from the Trust on the indemnity basis, to be summarily assessed, if not agreed;

(2) The Claimant shall reimburse the Trust for the Trustee's costs paid pursuant to (1) above within 21 days after such costs shall have been assessed;

(3) The Claimant shall pay the reasonable costs of the 2nd Defendant of and occasioned by these proceedings, to be summarily assessed, if not agreed;

(4) If the Trustee exercises its discretion to appoint, advance, apply or distribute any part of the Trust assets to or for the benefit of the Claimant, the Trustee shall be entitled to retain from that benefit any unpaid sums then due from the Claimant to the 2nd Defendant under this Order and to pay those sums to the 2nd Defendant, provided that:

(i) nothing in this Order shall require the Trustee to confer any benefit on the Claimant or fetter the Trustee's discretion;

(ii) there shall be no double recovery;

(iii) the amount retained shall not exceed the amount of the benefit that the Trustee has independently decided to confer upon the Claimant; and

(iv) this Order does not preclude the 2nd Defendant from pursuing the Claimant to recover any part of the assessed costs of the 2nd Defendant which remain unsatisfied after applying to those costs amounts permitted by this provision;

(5) The Court reserves the liberty to apply as to whether any amount retained from a future benefit for the Claimant in accordance with (4) above, should be applied solely to the unpaid costs of the 2nd Defendant or apportioned between the 2nd Defendant and the Trust fund in respect of any unpaid reimbursement obligation of the Claimant;

(6) To the extent any costs have been incurred in these proceedings by the 3rd, 4th, 5th and 6th Defendants, they shall bear their own costs.

Dated 16 July 2026

Simone I. Fitzcharles
Justice