

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

PROBATE DIVISION

2022/PRO/CPR/00005

B E T W E E N

IN THE MATTER of the Estate of MARY CAROLYN PAPAI, deceased

AND

NEW PROVIDENCE COMMUNITY CHURCH

Claimant

AND

RONALD HARCOURT KNOWLES

AND

CHARLES WENZEL MACKAY

Defendants

Before: The Hon. Madame Justice Hope Strachan

Appearances: Norwood Rolle, of Counsel for the Petitioner
Owen Wells, of Counsel for the Respondent

Hearing Dates: Tuesday 22nd May 2024, 18th September, 2024, 24th February, 2025, 11th March, 2025, 23rd April, 2025, 7th July, 2025, 26th November, 2025, 30th September, 2025, 15th December, 2025, 31st July 2026 (includes final submission date)

Probate-Construction of Will- Demonstrative legacy- Specific legacy and devise- general pecuniary legacy- residuary gift- failure or insufficiency of designated fund- separate corporate personality- Executor's duties- Inventory and account- Administration and abatement – Interest - Costs

JUDGMENT

Introduction

[1.] This case commenced with a Re-Amended Writ of Summons file on 26th October, 2022. The Endorsement on the Writ was as follows:

- (1) Payment of **Three Hundred Thousand Dollars (\$300,000.00)**
- (2) The Plaintiff's claim is as beneficiary under the Last Will and Testament of Mary Carolyn Papai, late of No. 5 Happy Lane, Sandy Port in the Western District of the Island of New Providence, dated 4th February, A.D., 2014.
- (3) Further or in the alternative, if necessary an order for the Administration for the personal estate of the said Mary Carolyn Papai, with all necessary and proper accounts, direction and inquiries;
- (4) Interest pursuant to the Civil Procedure (Award of Interest) Act;
- (5) Such Further or other relief; and
- (6) Costs
- (7) The Defendants are sued as the Executors named in the said Last Will and Testament of the said Mary Carolyn Papai.

[2.] The factual basis for the Claim was set forth in The Statement of Claim filed 27th October, 2022. The Claimant said;

- a. By her will dated 4th February 2014, probate whereof was on 28th August 2015 granted out of the Probate registry to two (2) of the six (6) executors named therein, vide, the above-named Defendants Charles Wenzel McKay and Ronald Harcourt Knowles, the above named Mary Carolyn Papai, deceased, by clause 4(b)(iii) bequeathed a legacy of **Three Hundred Thousand Dollars (\$300,000.00)** to the Plaintiff New Providence Community Church.
- b. That the said Mary Carolyn Papai died on 21st October 2014
- c. The Plaintiff has made several requests to the Defendants for payment of the said legacy.
- d. By letters dated 10th August 2020 and 3rd December 2021 the Defendants have rejected the Plaintiffs Claim.
- e. The Plaintiff has not received the said legacy or any part thereof.

AND the Plaintiff claims

- (i) Payment of the **\$300,000.00**
- (ii) If necessary, administration of the estate of Mary Carolyn Papai;
- (iii) Interest pursuant to the Civil Procedure (Award of Interest) Act,
- (iv) Such Further or other Relief; and
- (v) Costs.

[3.] The Defendants admit that Mary Carolyn Papai's Will provided for a legacy to the Claimant, but deny that Ports International Limited ("Ports") has an obligation to honor the bequest. They say Ms. Papai could dispose by Will only of property she owned personally, not property belonging to the company. They also deny that the Will dated 4th February 2014 named six executors. They admit the allegations in paragraphs 2–4 of the Statement of Claim, subject to their position that the Claimant, made only two requests for payment.

[4.] The Defendants deny that the Claimant became entitled to a distribution of funds to satisfy the legacy. They contend that it failed because the will directed payment from Ms. Papai's personal accounts and Ports International Limited's accounts; she had no personal account at death from which the legacies could be paid; and the company was a separate legal entity whose assets the executors had no authority to distribute. They further say that, as executors, they are obliged to preserve the company's value and transfer its shares undiluted to the trustees for Ms. Papai's son, Happy Hall, when he turned **Thirty-five (35)** years old on 15th October 2023. In their case, the terms of the bequest did not permit other estate assets to be used to meet the unpaid legacy under Part II of the Schedule to the Probate and Administration of Estates Act. Save for their express admissions, they deny the remaining allegations in the Statement of Claim. [Emphasis Mine]

The Issue

[5.] In essence, this case concerns the proper construction and administration of the Last Will and Testament of Mary Carolyn Papai. The principal dispute is whether a **Three Hundred Thousand Dollar (\$300,000.00)** gift to New Providence Community Church ("NPC") failed because a nominated source was said not to exist and the other belonged to Ports. NPC claimed that the gift is demonstrative and survives failure or insufficiency of the nominated source, while the Defendants contend that it failed for want of subject matter. In order to make a proper determination, the Court must also classify the other gifts in the Will and determine their proper place in the administration of the Estate.

Background

- [6.] The Testatrix executed her Will on 4th February, 2014. She died several months later on 21st, October, 2014. The validity and due execution of the will are not in dispute. The Will appoints Executors, directs payment of debts and funeral expenses, and records the Testatrix's wish concerning cremation and placement of her ashes at a columbarium associated with NPC. The dispute concerns construction and administration rather than validity of the testamentary instrument.
- [7.] The Testatrix gave all shares beneficially owned by her in Ports and HMH Enterprises Ltd to trustees for the advancement of her son until age **Thirty-five (35)**. The trustees were given powers of sale, conversion and investment, together with powers concerning advancement from capital. Any exercise of their powers relating to Ports was expressly made subject to decisions of the Ports Board, and the remaining shares were ultimately to be transferred to the son absolutely.
- [8.] The Will then gave NPC **Three Hundred Thousand Dollars (\$300,000.00)**, the Cancer Society of the Bahamas **Fifty-Thousand Dollars (\$50,000.00)** and creates a **One Hundred Fifty Thousand Dollars (\$150,000.00)** fund upon trust for three named organizations. Each disposition uses materially identical language identifying the Testatrix's personal accounts and Ports accounts as the source. The combined face amount of these provisions is **Five Hundred Thousand Dollars (\$500,000.00)**.
- [9.] The Testatrix separately devised the identified Sandy port properties to her son. She gave Alana Wheaton up to **Thirty Thousand Dollars (\$30,000.00)** absolutely for the purpose of purchasing a motor vehicle and thereafter gave the rest and remainder of her real and personal property to her son. The Will therefore contains several legally distinct forms of testamentary dispositions.
- [10.] NPC repeatedly sought payment but received no part of its legacy. The Defendants say their inquiries revealed no personal banking fund sufficient to satisfy the gift and no corporate authority permitting payment from Ports. They further contend that Ports' money was not Estate property, and that the legacy therefore failed for want of subject matter.
- [11.] The Defendants also relied upon NPC's failure to provide information concerning the cost of the proposed columbarium, other donors and their intended contributions. NPC says the Will contains no such conditions and that the Executors could not lawfully add them. NPC also seeks an account and alleges that the administration may have favored the son over other beneficiaries.

[12.] The probate declaration creates an additional factual issue. It records “Amounts deposited in bank as Nil” but then identifies Scotiabank at **Forty-nine Thousand One Hundred Fifty-three Dollars Twenty-four Cents (\$49,153.24)** and Royal Bank at **Eight Hundred Twenty Dollars Thirty-one Dollars (\$820.31)**, together with a credit-card balance of **Ninety-three Dollars Forty-five Cents (\$93.45)**. It also lists household goods at **Forty Thousand Dollars (\$40,000.00)**, Port shares at **One Thousand Dollars (\$1,000.00)** in value and HMH shares at **Five Thousand Dollars (\$5,000.00)** in value with a stated total of **Ninety-six Thousand Sixty-seven Dollars (\$96,067.00)**. The entries require reconciliation before the Court can safely determine the net Estate.

Summary of Submissions

[13.] NPC submits that the words “the sum of **\$300,000.00**” create an independent monetary gift. Its claim is that the subsequent reference to personal and Ports accounts merely identifies the contemplated source of payment. Its case is therefore that the gift is demonstrative rather than specific, and does not fail merely because the nominated fund is insufficient or unavailable.

[14.] NPC relies principally on **Paget v Huish (1863) 1 H& M 663; 71 ER 291**. The Court identified a demonstrative legacy as a positive gift for which a particular fund is primarily designated, but which is not intended to fail merely because the designated fund fails. NPC also relies upon the statutory treatment of the undischarged portion of such a legacy.

[15.] The Defendants accept that the Will contains the words relied upon but dispute their legal effect. They contend that the Testatrix owned shares in Ports but did not own its bank accounts and there was no lawful corporate resolution authorizing the contemplated payment. They also rely upon their responsibility to preserve the Ports shares specifically place in trust for the son.

[16.] The Court accepts that the Defendants’ corporate- law point is substantial. The questions, however, is whether it determines ownership of Ports’ money only, or also determines whether the testamentary gift itself survives. Those are not necessarily the same question. The distinction lies at the center of this judgment.

Issues

[17.] The following comprise the compiled issues of the parties.

- 1) Whether, on the proper construction of the Will, the Testatrix created valid gifts in favor of NPC and other beneficiaries, and what type of testamentary disposition did each gift constitute.

- 2) Whether the **Three Hundred Thousand Dollars (\$300,000)** gift to NPC failed for uncertainty or want of subject matter because the personal accounts were said not to exist, were unidentified or were insufficient?
- 3) Whether the Testatrix could dispose by her personal Will of funds belonging to Ports International Limited, and whether the legal unavailability of those corporate funds caused the demonstrative legacies to fail?
- 4) Whether the construction of the columbarium, its cost and the participation of other donors were conditions precedent to NPC's entitlement?
- 5) Whether the Defendants acted lawfully and prudently in refusing payment, and whether their administration amounted to breach of duty or improper preference of the son?
- 6) Whether NPC is entitled to an inventory and account, and how the Estate assets, debts, expenses, competition legacies, residue and any abatement affect the amount ultimately payable?
- 7) Whether NPC is presently entitled to an immediate order for payment of the entire **Three Hundred Thousand Dollars (\$300,000)**?
- 8) Whether NPC is entitled to interest and costs?

Law and Analysis

[18.] The Will is the Court's starting point. A testator may give only what the law permits the testator to give. Wills Act Chapter 155 Section 3 provides that "Subject to this Act, every person may dispose by will executed in accordance with this Act, all real estate and all personal estate owned by him at the time of his death." Imperative to the execution, is the requirement first, for compliance in accordance with the Act, and in particular S.4 and S.5 of the Wills Act, which contemplates the capacity and formalities required.

[19.] A Will speaks at death. Section 20 of the Wills Act, Ch. 115 provides that "Every will shall be construed, with reference to the real and personal estate referred to in it, to speak and take effect as if it had been executed immediately before the death of the testator unless a contrary intention appears by the will." Every Will is construed, with reference to the real and personal estate referred to in it, to speak and take effect as though executed immediately before death unless a contrary intention appears. The provision requires attention to the property and legal

rights existing at death. It does not confer testamentary power over property legally owned by another person.

[20.] It is incumbent on the Court to construe the Will by reference to the property and legal interests capable of passing at the Testatrix's death.

[21.] It is the responsibility of the Executor to administer the will in accordance with the wishes of the testator. Probate and Administration of Estates Act S. 59 notes that immediately upon the death of the Testator, the Estate goes to the personal representative of the Estate. It is therefore the responsibility of the Executors to execute and administer the estate of the Testatrix, in accordance with her wishes.

S. 59 Probate Act - “(1) Real estate to which a deceased person was entitled for an interest not ceasing on his death, shall, on his death and notwithstanding any testamentary disposition thereof, devolve on the personal representative of the deceased. (2) The personal representative shall be the representative of the deceased in regard to his real estate to which he was entitled for an interest not ceasing on his death as well as in regard to his personal estate and shall hold the estate as trustee for the persons by law entitled thereto.”

[22.] Section 52 Probate and Administration of Estates Act complements this section by requiring a personal representative, when lawfully required, to exhibit a “true and perfect inventory and account” of the deceased's real and personal estate and gives the Court power to require that inventory. These provisions are material where the Court cannot safely determine entitlement to payment without first knowing what entered, left and remains in Estate.

[23.] Section 64 and Part II of the Schedule prescribe the order in which a solvent estate is applied toward funeral, testamentary and administration expenses, debts, liabilities and testamentary dispositions. The statutory scheme requires provision for pecuniary legacies before residue is finally distributed and places specifically devised or bequeathed property later in the order of administration. Whether resort must ultimately be had to specific property depends upon the state of the Estate, and the application of that statutory order.

[24.] The intention of the testator governs, but the words control. The Court gives effect to the Will made, not the Will which might have been made. Section 20 of the Wills Act, Ch. 115 provides that every Will is construed, with reference to the real and personal estate referred to

in it, to speak and take effect as though executed immediately before death unless a contrary intention appears. The provision requires attention to the property and legal rights existing at death. It does not confer testamentary power over property legally owned by another person.

- [25.] In **Perrin v Morgan [1943] AC 399** at 420, *Lord Romer* described it as “a cardinal rule of construction that a will should be so construed as to give effect to the intention of the testator.” The intention sought is the intention expressed through the language of the Will read as a whole. The Court may construe those words but it may not rewrite them or introduce conditions and limitations which the Testatrix did not impose.

Classification and Consequence

- [26.] Not every testamentary gift behaves in the same way. The traditional law distinguishes between specific, general and demonstrative legacies. **Andrew Borkowski in Textbook on Succession 2nd edn, pg. 212** makes a classification of gifts. Referring to *Lord Blackburn* in **Robertson v Broadbent (1883) 8 App Cas 812, at 820 (7.1.1.1)** he notes “a specific legacy is a gift of a particular part of the testator’s personal estate, distinguished from the rest of the assets.” It is a gift or devise identified by the property itself.
- [27.] **Borkowski** identifies a general legacy – “A general legacy is a gift of personality which is not identified as a particular, distinguished part of the testator’s estate, but is to be provided for the legatee out of the general estate. **Bothamley v Sherson Jessel Mr** described a general legacy as “having no reference to the actual state of the testator’s property, it being only supposed that the testator has sufficient property which on being realized will procure for the legatee that which is given to him...” **Borkowski** further notes that “General legacies are not subject to ademption, unlike specific legacies.”
- [28.] At pg. 214 point 7.1.1.3, **Borkowski** describes a demonstrative legacy – “a gift which is in its nature a general legacy, but where a particular fund is pointed out to satisfy it.” **Ashburner v Macquire 91786) 2 Bro CC 108: 29 ER 62, at 63** is referred “Thus a gift of 1000 pounds from my account at Barclays Bank’ is a demonstrative legacy. The intention of the testator is that the gift shall be primarily satisfied from the specified fund; if that fund is insufficient or ceases to exist, the deficit is to be taken from the general estate (as in the case of the general legacy). Demonstrative legacies are not subject to ademption.”
- [29.] The distinction may be simply put as follows: – with a specific legacy, the identified property is the gift; with a demonstrative legacy, the benefit is the gift and the identified fund is primarily the means of paying it.

- [30.] A failed source does not necessarily mean a failed gift. In this regard, the Court found the case of **Paget v Huish (1863) 1 H & M 663: 71 ER 291** as useful in its determination. The Court in **Paget**, distinguished a specific gift confined to a particular fund from a demonstrative legacy, where there is a positive gift but a particular fund is printed out as primarily applicable for its payment. The latter was described as a gift which was “not to fail by the failure of the particular fund.”
- [31.] Bahamian statute recognizes the same distinction. Section 2 Probate and Administration of Estates Act, Ch. 108 defines “pecuniary legacy” to include a general legacy and a demonstrative legacy as far as it is not discharged out of the designated property, “pecuniary legacy” includes an annuity, a general legacy, and a demonstrative legacy so far as it is not discharged out of the designated property and any other general direction by a testator for the payment of money.” The statute therefore expressly contemplates that an undischarged portion of a demonstrative gift survives as a pecuniary legacy.”
- [32.] Part 11 of the Schedule (Probate Act) later places the retained pecuniary-legacy fund before property and specifically devised or bequeathed, with specific property applicable in according to value if that stage is reached. The will may vary the statutory order. The consequence is that residue cannot simply be distributed before outstanding pecuniary claims are administered, but specific property should not automatically be treated as the first source of cash.
- [33.] Ports must also be treated as a separate legal person. The company is subject to adherence to the stipulations in the **Companies Act, Ch. 308. Section 79 of the Companies Act, Ch. 308** similarly provides, subject to a unanimous shareholder agreement, that directors exercise the company’s powers to direct and manage the business and affairs- “Subject to any unanimous shareholder agreement the directors of a company shall — (a) exercise the powers of the company directly or indirectly through the employees and agents of the company; and (b) direct the management of the business and affairs of the company. “
- [34.] A company and its shareholder are not the same person. The Estate owned the Ports shares; that did not mean it owned Ports’ bank account. The principle in **Salomon v Salomon & Co. Ltd. [1897] AC 22** establishes the separate legal personality of an incorporated company. Further, Section 79 of the Companies Act, Ch. 308 is consistent with this principle and similarly provides, subject to a unanimous shareholder agreement, that directors exercise the company’s powers and direct the management of its business and affairs “Subject to any unanimous shareholder agreement the directors of a company shall — (a) exercise the powers of the company directly or indirectly through the employees and agents of the company; and (b) direct the management of the business and affairs of the company. “

[35.] The Will itself recognizes the corporate boundary. In dealing with Ports, the Testatrix expressly made the trustees' relevant powers subject to decisions of the Ports Board. Her Will could therefore dispose of the Ports shares which she beneficially owned, but could not of itself operate as a corporate resolution transferring money belonging to Ports.

[36.] Two separate questions are presented. Corporate law determines whether the source can be taken while succession law determines whether the gift survives when it cannot. The Defendants' proposition that Ports' corporate money could not simply be appropriated under the Testatrix's personal Will does not, by itself, answer whether a monetary legacy expressed to be derived from that source failed. The second question depends upon construction of the Will, the classification of the gift, and the statutory treatment of demonstrative legacies.

[37.] The Court must first identify what the Testatrix gave, secondly, determine whether the accounts mentioned in the Will were themselves the subject of the gift or merely its designated source. Separately, the Court must also determine the legal consequence if either source was unavailable or insufficient; and finally, administer any surviving legacy according to the Probate and Administration of Estates Act.

Analysis And Discussion

Issue 1

[38.] Whether, on proper construction of the Will, the Testatrix created valid gifts in favor of NPC and the other beneficiaries, and what type of testamentary disposition each gift constitutes?

[39.] The proper classification becomes clear when the dispositions are all read together. Where the Testatrix intended to transfer identified property, she identified that property directly. Where she intended to give a monetary benefit, she used a stated sum. The Court should give those drafting difference their ordinary legal significance. It is helpful here to demonstrate the difference between a demonstrative gift and a specific gift.

[40.] A demonstrative gift is a gift of a stated amount in a will that names a particular source from which it should be paid. For example: "I leave £5,000 to my niece, to be paid from my savings account."

The savings account is the first place the executors should look for the money. If it contains less than **Five Thousand Pounds (£5,000)**, the gift does not necessarily fail: the balance may be paid from the estate's other available assets. The important distinction is that the person is being given **Five Thousand Pounds (£5,000)**, not merely whatever

happens to be left in that account. Whether a particular gift has that effect depends on the wording of the will.

[41.] The difference between the demonstrative gift and the specific gift can be gleaned from is whether the will gives a particular asset or gives a fixed amount to be paid from a suggested source.

Type of gift	Ordinary-language example	If the named asset or source is no longer there
Specific gift	“I give my gold watch to my daughter.”	The daughter is meant to receive that watch . If the deceased no longer owned it at death, the gift will ordinarily fail; she does not automatically receive its value instead.
Demonstrative gift	“I give £5,000 to my daughter, to be paid from my savings account.”	The daughter is meant to receive £5,000 . The account is the first source of payment. If it has only £2,000, the remaining £3,000 may be paid from other available estate assets.

[42.] That distinction is reflected in *Mullins v Smith* (1860) 1 Drew & Sm 204, which distinguishes a gift of an identified portion of property from a money gift payable out of that property. In *Bevan v Attorney General* (1863) 4 Giff 361, the court held that the shortfall on demonstrative money gifts was payable from the general personal estate not specifically given away.

[43.] For distribution, the executors or trustees should first read the whole will to decide which kind of gift was intended; mentioning an account does not, by itself, settle the question. They should identify and preserve assets given specifically, then use the named source first for each demonstrative gift. If that source falls short, they should consider the balance against the estate’s other available assets—not assume either that the gift fails or that they may take an asset specifically left to someone else. Debts and administration expenses, any directions in the will, and the estate’s overall sufficiency must be accounted for before beneficiaries are paid. If the estate cannot meet all gifts, the applicable reduction of gifts needs to be worked out before distribution; a demonstrative gift is not an unconditional promise of payment in

full. **Mullins v Smith (1860) 1 Drew & Sm 204; Bevan v Attorney General (1863) 4 Giff 361.**

[44.] In short, a specific beneficiary receives the identified thing; a demonstrative beneficiary receives the stated amount, with the identified fund used first.

[45.] Ports and HMH shares are specific bequests upon trust. The Will gives all shares beneficially owned by the Testatrix in the two companies to her trustees and later directs transfer of the remaining shares to the son. The subject matter is therefore the shares themselves, not merely their monetary value.

[46.] The NPC provision is materially different. It begins with the fixed words “The sum of **\$300,000.00**,” and only identifies personal and Ports accounts as the sources from which the money is to be derived. The Will does not give NPC the accounts themselves, nor does it limit the benefit to whatever balance may happen to remain in them.

[47.] The Court finds that NPC’s gift is a demonstrative pecuniary legacy. The **Three Hundred Thousand Dollars (\$300,000.00)** is the testamentary benefit and the identified accounts are its designated primary sources. That construction accords with the distinction in **Paget** and with the statutory definition of the undischarged part of a demonstrative legacy.

[48.] The **Fifty Thousand Dollars (\$50,000.00)** gift to the Cancer Society is expressed in materially identical terms. It likewise gives a fixed sum out of the Testatrix’s personal accounts and Ports accounts. It is therefore also a demonstrative pecuniary legacy.

[49.] The **One Hundred Fifty Thousand Dollars (\$150,000.00)** provision uses the same source language but adds that the money is held “upon trust” for application in the trustees’ discretion to the three named organizations. The Court recognizes that it is a demonstrative pecuniary fund held upon trust. That finding identifies its legal character but does not determine that the full **One Hundred Fifty Thousand Dollars (\$150,000.00)** must necessarily be paid if lawful administration requires abatement.

[50.] The identified Sandyport properties are specific devises, because the land itself is given to the son. The Alana Wheaton provision is a general pecuniary disposition of up to **Thirty Thousand Dollars (\$30,000.00)** because no particular source is identified. The words “up to” and the stated motor-vehicle purpose may require further construction if precise quantum is disputed.

[51.] The final gift of all the rest and remainder to the son is a residuary devise and bequest. Residue means what remains after lawful administration of debts, expenses and prior testamentary claims. It is not a fund which passes in priority to other claims.

Issue 2

[52.] Whether the **Three Hundred Thousand Dollars (\$300,000)** gift to NPC failed for uncertainty or want of subject matter, because the personal accounts were said not to exist, were unidentified or were insufficient?

[53.] The Defendant's contention that the absence of a nominated personal account necessarily caused the legacy to fail is rejected. There is no uncertainty concerning the beneficiary or the amount. NPC is named and **Three Hundred Thousand Dollars (\$300,000)** is fixed. The alleged difficulty concerns the source of payment, which is legally different from uncertainty as to subject matter of the gift.

[54.] **Paget** is directly instructive. A demonstrative legacy is not confined in the same way as a specific gift or to the continued existence of the nominated fund. The Bahamian statutory definition reinforces that conclusion by expressly recognizing the undischarged portion of a demonstrative legacy as a pecuniary legacy.

[55.] The Court declines to make a final factual finding that no relevant personal banking funds existed. The probate declaration states bank deposits as nil but immediately lists Scotiabank and Royal Bank amounts totaling **Forty-nine Thousand Nine Hundred Seventy-Three Dollars Fifty-five Cents (\$49,973.55)**. Those figures do not prove that the accounts fall within the testamentary expression "my personal accounts", but they require explanation before the contrary proposition can safely be accepted.

[56.] The absence, identification difficulty or insufficiency of the designated personal source did not of itself extinguish NPC's demonstrative legacy. The factual status of the banking entries remains to be determined through the account.

Issue 3

[57.] Whether the Testatrix could dispose by her personal Will of funds belonging to Ports International Limited, and whether the legal unavailability of those funds caused the demonstrative legacies to fail?

[58.] The Defendants are correct with respect to the Testatrix being unable to dispose of company funds as her personal property, neither did ownership of the shares make the company's bank accounts the Testatrix's personal property. Section 79 of the Companies Act places management and exercise of corporate powers in the directors, subject to its statutory qualification.

[59.] The Executors are therefore correct not to withdraw Ports' corporate money merely because the Will referred to it. A demonstrative legacy does not authorize an executor to appropriate property owned by a separate legal person. The Will itself reinforces this conclusion by subordinating trustee powers concerning Ports to decision of the Board.

[60.] The Defendants' argument fails, however, when it treats that corporate conclusion as disposing of the probate question. The legal unavailability of a designated fund does not necessarily destroy the demonstrated gift for which it was nominated. The undischarged benefit remains subject to the statutory regime applicable to pecuniary legacies.

[61.] A further distinction must be maintained between money remaining within Ports and money lawfully received from Ports. Corporate profits or corporate bank balances are not Estate property merely because the Estate owns shares. A lawful dividend, repayment or other distribution actually received by the Estate or trustees may nevertheless become relevant according to its legal character. Those receipts must therefore be disclosed in the account.

Issue 4

[62.] Whether the construction of the columbarium, its cost and the participation of other donors were conditions precedent to NPC's entitlement?

[63.] The Defendant's correspondence relied upon the lack of columbarium costs, information about other donors and confirmation that the project would proceed. The Will separately expresses the Testatrix's wishes concerning the placement of her ashes. Neither fact converts those matters into a condition of the later monetary gift.

[64.] The **Three Hundred Thousand Dollars (\$300,000.00)** clause contains no words such as "provided that", "upon condition that", or any equivalent limitation. The Court cannot add a condition merely because it might explain why the Testatrix wished to benefit NPC. Motive and condition are different legal concepts the Will controls.

[65.] The construction of the columbarium, its cost and participation by other donors were not conditions precedent to NPC's entitlement on the wording before the Court. The Executors

could not properly make entitlement depend upon requirements which the Testatrix did not express.

Issue 5

[66.] Whether the Defendants acted lawfully and prudently in refusing payment, and whether their administration amounted to breach of duty or improper preference of the son?

[67.] The Executors' conduct must be divided into two issues. They were correct in refusing to appropriate Ports' corporate assets without lawful authority. They were not correct, if their administration proceeded on that basis, to conclude that the corporate limitation automatically extinguished NPC's demonstrative legacy.

[68.] A mistaken construction, however, does not automatically establish personal liability. The Court would have to determine what property was collected, retained or distributed, whether any duty was breached, whether that breach caused loss, and what remedy follows. Those factual questions cannot safely be answered from the present record.

[69.] The same applies to NPC's allegation that the son was improperly preferred. The will itself gives the son significant specific and residuary benefits, which the Executors were required to respect. The benefits could not lawfully be administered as though valid pecuniary dispositions to others did not exist.

[70.] The Court has found no alleged fraud, dishonesty, mala fides, willful default, devastavit or causative loss. Whether the erroneous construction resulted in a compensable breach, whether the son was improperly preferred, and whether any protection or defense is available to the Executors are reserved. The approach distinguishes correction of a legal error from a premature finding of personal wrongdoing.

Issue 6

[71.] Whether NPC is entitled to an inventory and account, and how the Estate assets, debts, expenses, competing legacies, residue and any abatement affect the amount ultimately payable?

[72.] NPC is entitled to an inventory and account under Section 52 of the Probate and Administration of Estates Act. The need for an account is especially clear because the declaration contains banking entries requiring reconciliation and does not disclose reliable current values for all significant assets. The Court must know the true Estate before it can determine what is payable.

- [73.] The three demonstrative dispositions have a combined face amount of **Five Hundred Thousand Dollars (\$500,00.00)** and use materially identical source language. That strongly supports equivalent classification and, in the absence of contrary testamentary words, prima facie equal rank. The Court awaits the Estate report to determine the designated fund to determine their precise priority or any percentage of abatement.
- [74.] Emphasis for caution is regarded. The Will expressly directed that identified charitable legacies should abate first if there were a shortfall. No equivalent priority language appears in these three provisions, but the ultimate consequences must still be worked out under the order as dictated in the Probate Act.
- [75.] Should the Scotiabank and Royal Bank sums be proved to have personal funds beneficially owned by the Testatrix, they may be relevant to the designated source. The court makes no such finding now. Their ownership and character must first be established from the banking records.
- [76.] Any portion of a demonstrative legacy not discharged from its designated property remains a pecuniary legacy by statutory definition. The Estate must then apply Section 64 and Part II of the Schedule, which preserve funds for pecuniary legacies before the residue is finally distributed and reach specifically devised or bequeathed property only later in the statutory sequence.
- [77.] That statutory order is particularly important to the son's interests. His residue cannot be calculated as though the outstanding pecuniary gifts did not exist, but neither should his specifically devised land or specifically bequeathed shares be sold merely because cash appears insufficient at first sight. Whether the Estate must ultimately resort to specific property can only be decided after earlier classes of assets are identified and applied.
- [78.] The account must also establish funeral, testamentary and administration expenses, debts and other lawful liabilities. The Will itself directs payment of debts and funeral expenses, and Section 64 of the Act regulates the administration of those liabilities. Gross probate figures therefore cannot simply be divided among the beneficiaries.
- [79.] Reconciliation of the stated inventory total is also required. The positive asset entries shown in the declaration total **Ninety-five Thousand Nine Hundred Seventy-three Dollars Fifty-five Cents (\$95,973.55)**, while the state total is **Ninety-six Thousand Sixty-seven Dollars (\$96,067.00)**, a difference of **Ninety-Three Dollars Forty-five Cents (\$93.45)** corresponding to the listed credit-card balance. The Court makes no finding that the liability was wrongly added, but the account must explain the calculation.

[80.] The Court should account first and distribute second. The proper sequence is to identify the assets, classify the gifts, establish debts and expenses, apply the statutory order, determine any abatement and only then calculate the residue.

Issue 7

[81.] Whether NPC is presently entitled to an immediate order for payment of the entire **Three Hundred Thousand Dollars (\$300,000.00)**?

[82.] NPC has succeeded on validity and classification, but those conclusions do not establish that **Three Hundred Thousand Dollars (\$300,000.00)** is presently available for immediate distribution. A face-value legacy and the amount recoverable after lawful administration are distinct. The Court should not collapse those two stages.

[83.] An immediate unconditional order could also rejudge the right of the Cancer Society, the **One Hundred Fifty Thousand Dollars (\$150,000.00)** trust, Alana Wheaton and affect what NPC and other pecuniary beneficiaries receive.

[84.] At this stage, the Court declines an order for payment of the entire **Three Hundred Thousand Dollars (\$300,000.00)**. NPC holds a valid demonstrative legacy with a face amount of **Three Hundred Thousand Dollars (\$300,000.00)**. The amount presently payable must await the account and application of the statutory order.

Issue 8

[85.] Whether NPC is entitled to interest and costs?

[86.] NPC claims interest under the Civil Procedure (Award of Interest) Act. Section 2 of the Act provides for interest upon a judgment debt from entry of judgment in the Supreme Court until satisfaction, while Section 3 permits an award of prejudgment interest in proceedings for recovery of debt or damages. The Court should not quantify prejudgment interest before determining both the amount properly due and when it should lawfully have been paid.

[87.] Prejudgment interest is therefore reserved. Any eventual judgment debt will carry such post-judgment interest as the legislation requires. This preserves the Claimant's claim without deciding it upon an incomplete administration record.

[88.] NPC has substantially succeeded on the central construction question, while the Defendants have succeeded on the separate corporate-property point. Questions of accounting,

abatement and personal liability remain outstanding. NPC should therefore receive its costs of the principle construction and validity issue, with all other costs reserved.

Conclusion

[89.] The conclusions on construction are conclusions of law drawn from the language of the Will. Findings concerning the state of the Estate are limited to matters established by the probate material presently before the Court. Where the evidence is incomplete, the Court makes no final factual finding and direct an account instead. This distinction is necessary to a fair determination of the parties' rights.

[90.] NPC's **Three Hundred Thousand Dollars (\$300,000.00)** gift is a demonstrative pecuniary legacy. The Cancer Society's **Fifty Thousand Dollars (\$50,000.00)** gift is likewise demonstrative, while the **One Hundred Fifty Thousand Dollars (\$150,000.00)** provision is a demonstrative pecuniary fund held upon trust. The Ports and HMH shares are specific bequests upon trust, the Sandypoint land are specific devises, the Alana Wheaton provision is a general pecuniary disposition of up to **Thirty Thousand Dollars (\$30,000.00)** and the son's remaining entitlement is residuary.

[91.] The Defendants are correct that Port's money was not the Testatrix's personal property and could not be transferred merely by her Will. The Defendants are not correct that the resulting inability to use that corporate fund necessarily extinguished the demonstrative gifts. Corporate law determines ownership of the company's money; probate law determines what becomes of a legacy when it's designated source cannot lawfully satisfy it.

[92.] NPC therefore succeeds on construction and validity. The Defendants succeed on the narrower proposition that Ports' corporate property could not be appropriated directly under the Will. Final quantum, abatement, resort to specific property and any personal liability of the Executors must await the Estate account.

Order

1. It is declared that the **Three Hundred Thousand Dollars (\$300,000.00)** disposition favor of New Providence Community Church is a valid demonstrative pecuniary legacy. The Testatrix's personal accounts and Ports accounts were designated sources rather than the subject matter of the gift. Absence, insufficiency or legal unavailability of those sources did not, without more, cause the legacy to fail.
2. It is further declared that the **Fifty Thousand Dollars (\$50,000.00)** disposition to the Cancer Society of the Bahamas is a demonstrative pecuniary legacy and the **One**

Hundred Fifty Thousand Dollars (\$150,000.00) provision for Smile Train, World Vision and Youth Empowerment through Soccer is a demonstrative pecuniary fund held upon trusts expressed in the Will. The dispositions held are prima facie of equal rank in the absence of contrary testamentary language. Final priority, abatement and quantum are reserved.

3. It is further declared that the Ports and HMH shares are specific bequests upon trust and the identified Sandyport lands are specific devises. The Alana Wheaton provision is a general pecuniary disposition of up to **Thirty Thousand Dollars (\$30,000.00)**, subject to any further construction required as to quantum. The sons final gift is a residuary devise and bequest subject to lawful administration.
4. It is further declared that property belonging to Ports did not form part of the Testatrix's Estate merely because she owned its shares. The Executors had no authority under the Will alone to appropriate Ports' corporate funds. Any lawful dividend, distribution, repayment or other value actually received from Ports or HMH by the Estate or trustee shall nevertheless be accounted for according to its legal character.
5. It is further declared that the columbarium, its estimated cost, participation of other donors and proof of their contributions were not conditions precedent to NPC's entitlement. Nothing in the relevant gift expressly imposed those requirements. The Executors were therefore not entitled to treat them as independent conditions of validity.
6. Pursuant to Section 52 of the Probate and Administration of Estates Act, the Defendants shall within **Forty-five (45)** days of the date hereof file and serve a true and complete inventory and account of Estate. The account shall identify all estate assets, receipts, debts, funeral and administration expenses, distributions and assets remaining, together with the legal basis of all material transfers.
7. The account shall specifically reconcile the Scotiabank and Royal Bank entries with the statement that amounts deposited in the bank were nil. It shall also explain the treatment of the **Ninety-three Dollars Forty-five Cents (\$93.45)** credit-card balance and reconcile the stated inventory total. Relevant banking records shall be produced insofar as available.
8. The Defendants shall identify the value and disposition of the Sandyport properties, Ports shares and HMH shares and disclose all lawful dividends, distributions or other receipts arising from those shares following the Testatrix's death. They shall also identify material transfers or advancements made to or for the son. This order does not

- treat the underlying corporate assets or retained profits of Ports or HMH as Estate property.
9. Following the presentation of the account, the Court shall determine, if not agreed, the designated property applicable to the three demonstrative dispositions, the amount discharged from that source and the remaining pecuniary balances. It shall thereafter apply Section 64 of the Probate Act and Part II of the Schedule and determine any necessary abatement.
 10. No present order is made directing sale or realization of the Sandypoint lands or the specifically bequeathed Ports or HMH shares. Whether resort must ultimately be had to specific property is reserved until the net Estate and application of prior statutory classes are known. Nothing in this paragraph declares specific property immune from the statutory order if that stage is eventually reached.
 11. The Claimant's allegation of improper preference of the son and any issues of personal liability of the Defendants are reserved. That reservation includes breach, causation, loss, any applicable defense or protection and the appropriate remedy. There have been no findings of fraud, dishonesty, mala fides, willful default or devastavit.
 12. NPC's request for an immediate unconditional order for payment of the entire **Three Hundred Thousand Dollars (\$300,000.00)** is deferred pending completion of the account. Its declaration of entitlement to a demonstrative legacy with a face amount of **Three Hundred Thousand Dollars (\$300,000.00)** is unaffected. Prejudgment interest is reserved until the amount and proper payment date are determined.
 13. NPC shall have its costs of the principal construction and validity issue to be assessed if not agreed. All costs relating to the account, abatement, alleged preference, personal liability and other reserved matters are reserved.
 14. There shall be liberty to apply.

Dated this 20th day of October, A.D. 2026

The Hon. Madame Justice Hope Strachan