



GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

FSD CAUSE NO. OF 2022 ()

ENILDA MARIA RAMSAY

PLAINTIFF

-AND-

(1) EFG BANK & TRUST (BAHAMAS) LIMITED

(2) EFG WEALTH MANAGEMENT (CAYMAN) LIMITED

DEFENDANTS

WRIT OF SUMMONS

TO: EFG BANK & TRUST (BAHAMAS) LIMITED

2nd Floor, Centre of Commerce
1 Bay Street
P.O. Box SS-6289
Nassau
New Providence
Commonwealth of the Bahamas

EFG WEALTH MANAGEMENT (CAYMAN) LIMITED

Suite 3208
9 Forum Lane
Camana Bay
P.O. Box 10360
Grand Cayman KY1- 1003
Cayman Islands

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff in respect of the claim set out on the next page.

Within 14 days after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court Office, P.O. Box 495G, George Town, Grand Cayman, the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

ISSUED this the 6th day of October 2022.

NOTE - This Writ may not be served later than 4 calendar months (or, if leave is required to effect service out of the jurisdiction, 6 months) beginning with the date of issue unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

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DEFENDANTS

STATEMENT OF CLAIM

1. In spite of various requests over the course of several years, the Plaintiff does not possess and has not seen much of the underlying documentation in the Defendants' possession relating to the matters complained of in this Statement of Claim. In the circumstances, the Plaintiff reserves the right to apply to include further allegations and further details of allegations after discovery or earlier production of relevant documents.

THE PARTIES

2. The Plaintiff is, and has at all material times since 2014 been a resident in Canada. She is a dual citizen of Canada and Cuba. She is currently the sole beneficiary under two discretionary settlements, known as the Succession Trust and the Amparo Investment Trust (the "**Settlements**").
3. The First Defendant (the "**Trustee**") is a company registered under the laws of the Bahamas. It carries on business as a professional trust company. At all material times the Trustee has

held itself out (and holds itself out) as having specialist expertise in and as being competent to provide (whether directly or indirectly through affiliated companies): private banking services; investment services; corporate services; and international trust services and other wealth services. The Trustee is the sole trustee of each the Settlements and these proceedings are brought against it in that capacity.

4. The Second Defendant, EFG Wealth Management (Cayman) Limited ("**EFG Cayman**"), is a company registered under the laws of the Cayman Islands. EFG Cayman was (as more fully explained below) formerly trustee of the Succession Trust. At all material times EFG Cayman has held itself out (and holds itself out) as having specialist expertise in and as being competent to provide (whether directly or indirectly through affiliated companies): private banking services; investment services; corporate services; and international trust services and other wealth services.
5. The Trustee and EFG Cayman are part of a group of affiliated companies across various jurisdictions carrying on business in private banking and wealth management ("**EFG Group**").

THE SUCCESSION TRUST

6. The Succession Trust was established by irrevocable settlement (the "**Succession Trust Deed**") dated 12 August 2002 between Roland Wilfred Ramsay ("**Mr Ramsay**") and HSBC Financial Services (Cayman) Limited ("**HSBC**").
7. The Succession Trust Deed contains the following express provisions:
 - 7.1. By clause 1(a) and Part II of the Second Schedule, the beneficiaries of the Succession Trust were, at the time the Succession Trust was established:
 - 7.1.1. Mr Ramsay;
 - 7.1.2. Mr Ramsay's wife, Enilda Amparo Perez Perez ("**Mrs Perez**");
 - 7.1.3. Mr Ramsay's son, Roland Joseph Ramsay ("**Roland**");
 - 7.1.4. the Plaintiff;
 - 7.1.5. Mr Ramsay's remoter issue; and
 - 7.1.6. Germaine Claire Ramsay.
 - 7.2. By clauses 4 and 5, the Trustee holds the trust fund upon discretionary trusts as to income and capital for such one or more of the beneficiaries as it thinks fit.

- 7.3. By clause 7(a) the Trustee has the power to wholly or partially exclude any person or class of persons (including any beneficiary) from future benefit under the Succession Trust.
- 7.4. By clause 8(a) of the Succession Trust Deed, the Trustee's powers are exercisable at its absolute discretion.
- 7.5. By clause 11(a) the Succession Trust is established under Cayman Islands law and the rights of the beneficiaries and the rights, powers and duties of the trustees and the construction and effect of the Succession Trust Deed are governed by and shall be construed in accordance with Cayman Islands law and the courts of the Cayman Islands shall be the forum for the administration of the Succession Trust.
- 7.6. By clause 9 and paragraph 1 of the First Schedule, the Trustee is conferred wide investment powers, including:
- 7.6.1. the power to delegate in writing any of his functions to any person anywhere in the world; and
- 7.6.2. the power to vest trust property in any person anywhere in the world as nominee, and may place trust property in the possession or control of such person.
- 7.7. By clause 9 and paragraph 5 of the First Schedule, the statutory powers of appointing new and additional trustees shall be exercisable by the trustees.
- 7.8. By clause 9 and paragraph 7 of the First Schedule:
- 7.8.1. a trustee carrying on a business which consists of or includes the management of trusts may charge for work done in connection with the Succession Trust, including work which a layman could have done personally;
- 7.8.2. a trustee may receive reimbursement from the trust fund of any expenses incurred by him purely by reason of his duties relating to the Succession Trust. In particular, any fees charged by any legal or other professional advisors to the trustees shall be charged against the trust fund;
- 7.8.3. a trustee which is a corporate body shall be entitled to act and be remunerated as a trustee hereof on such terms as shall be agreed by the trustee and Mr Ramsay and in default of such agreement in accordance with the Trustee's published terms and conditions in force at the date of the Succession Trust Deed, provided that if new terms and conditions (including charging rates) are subsequently published the trustee shall be

entitled to remuneration in accordance with such new terms and conditions;

7.8.4. a trustee, or any affiliate of the trustee, which is a corporate body may act as banker and perform any service on behalf of the trusts hereof on the same terms as would be made with a customer without accounting for any resultant profit. The trustees may establish accounts and contracts for services with any affiliate of the trustees and any principle or rule of law restricting those dealings because of conflict of interest is waived; and

7.8.5. the trustees may make arrangements to remunerate themselves for work done for a company connected with the trust fund.

7.9. By clause 9 and paragraph 11 of the First Schedule:

7.9.1. no trustee shall be liable for any loss to the trust fund arising out of the depreciation of any investment made in good faith or by reason of any act or omission made in good faith, unless that loss was caused by his own wilful default;

7.9.2. each trustee shall be indemnified out of the trust fund in respect of any loss, cost or expense (including legal expenses) suffered by him in connection with his acting in good faith as trustee hereof, except where such loss is incurred as a result of his own wilful default.

7.9.3. a trustee shall not be liable for acting in accordance with the advice of qualified professional advisers with respect to the Succession Trust unless when he does so:

7.9.3.1. he knows or has reasonable cause to suspect that the advice was given in ignorance of material facts; or

7.9.3.2. proceedings are pending to obtain the decision of the court on the matter; and

7.9.4. a trustee shall not be responsible for the default of a person to whom his powers are delegated (even if the delegation of this power was not strictly necessary or expedient) provided that he took reasonable care in his selection and supervision.

8. Mr Ramsay was a Canadian citizen and he died on 22 February 2003.

9. Germaine Claire Ramsay is also deceased.

10. The Plaintiff has no children and Roland has one (minor) daughter, Sophie Victoria Ramsay Gonzales (“**Sophie**”). Mr Ramsay has no other remoter issue currently in existence.
11. Mrs Perez, Roland and Sophie are currently resident in Cuba.
12. Mrs Perez is a dual-citizen of Cuba and Spain, and Roland is a dual-citizen of Canada and Cuba.
13. The Trustee holds (and at all material times has held) all of the issued shares in the capital of T & N International Limited (“**T&N**”), formerly known as Yastel Limited, pursuant to the terms of the Succession Trust. T&N has acted as an investment vehicle for the said trust and holds an investment portfolio. From about 10 February 2011 until about 14 February 2017, Fort Directors Limited (“**Fort Directors**”) was the sole director of T&N. Fort Directors is an affiliate company of the Trustee. It is (and has at all material times been) a company incorporated in the Cayman Islands. At all material times from about 14 February 2017, the directors of T&N have been (and remain) Fornacis Limited and Geminorum Limited, both of which are affiliates of the Trustee and incorporated in the Bahamas.
14. On about 18 February 2011, Fort Directors (as sole director of T&N) authorised EFG Bank, Cayman branch, to make investments on a discretionary basis on behalf of T&N. From about the middle of 2014 until about 4 September 2018 (at which point the investments had been frozen, as set out in more detail below) EFG Asset Management (“**EFGAM**”) was appointed as investment manager for the Succession Trust.
15. On about 10 December 2010, EFG Cayman was appointed as sole trustee of the Succession Trust. To the best of the Plaintiff’s knowledge, by deed of appointment and retirement of trustees dated 14 February 2017, (i) EFG Cayman appointed its affiliate, the Trustee, as trustee, and (ii) EFG Cayman retired as trustee of the Trust. However, the Plaintiff is not aware of the circumstances of the said appointment and retirement, nor as to the circumstances concerning the transfer of title and/or control of the assets and investments held within the trust fund of the Succession Trust from EFG Cayman to the Trustee. In emails dated 19 June 2018 (at which point the investments had already been frozen, as set out in more detail below), Bernadette Heastie (“**Ms Heastie**”), then senior compliance officer at the Trustee, stated that:

“I have deleted the clients from this chain of communication.

The Trust Department [of EFG Group] has had to become involved as there are documentation which requires an update before I can provide it.” (*sic*)

“There was a change of trustees that was not documented.”

THE AMPARO INVESTMENT TRUST

16. The Amparo Investment Trust was established by irrevocable deed of settlement (the "**Amparo Trust Deed**") dated 29 March 2013 between Mrs Perez and the Trustee.
17. The Amparo Trust Deed contains the following express provisions:
 - 17.1. By clause 1.1(b) and the Second Schedule, the beneficiaries of the Amparo Investment Trust were, at the time the Amparo Investment Trust was established:
 - 17.1.1. Mrs Perez;
 - 17.1.2. Roland;
 - 17.1.3. the Plaintiff; and
 - 17.1.4. such other persons as may be added pursuant to the trustee's power to add beneficiaries.
 - 17.2. By clause 3.1:
 - 17.2.1. the Amparo Investment Trust was established under Bahamian law;
 - 17.2.2. the law to the exclusive jurisdiction of which the rights of all parties and the construction and effect of each and every provision of the Amparo Investment Trust are subject and by which such rights, construction and effect are to be construed and regulated is Bahamian law; and
 - 17.2.3. the courts of the Bahamas shall be the forum for the administration of the Amparo Investment Trust.
 - 17.3. By clauses 5 and 6, the Trustee holds the trust fund upon discretionary trusts as to income and capital for such one or more of the beneficiaries as it thinks fit.
 - 17.4. By clause 10.1, the Trustee has power to declare that any person or member of a class who is, would or might be or become a beneficiary shall (i) be wholly or partially excluded from future benefit under the Amparo Investment Trust, or (ii) cease to be a beneficiary.
 - 17.5. By clause 13:
 - 17.5.1. the trustees shall exercise the powers and discretions vested in them as they shall think most expedient for the benefit of all or any of the beneficiaries; and
 - 17.5.2. every power vested in them shall be exercisable at their absolute and uncontrolled discretion.

- 17.6. By clause 14 the trustees have power by deed to delegate to any person any of the powers or discretions given to the trustees without being liable for any loss to the trust fund arising from the acts or defaults of any such person.
- 17.7. By clause 16:
- 17.7.1. Mrs Ramsay, as settlor, may without assigning any reason therefor remove from office all or any of the Trustees (without the necessity for any of the Trustees so removed to concur in or otherwise be parties to any such removal) and at the same time appoint one or more persons to be a trustee or trustees in place of any of the Trustees so removed provided that:
- 17.7.1.1. any person so appointed shall honour all liabilities outstanding at the time of such removal;
- 17.7.1.2. the outgoing trustee shall take such acts and deeds to properly vest the trust fund in the new trustee; and
- 17.7.1.3. any transaction entered into in good faith by a trustee or by a person dealing with the trustees shall be valid in all respects as if no such change had taken place; and
- 17.7.2. Mrs Ramsay, as Settlor, may appoint any person to be an additional trustee of the Amparo Investment Trust.
- 17.8. By clause 19, no trustee shall be liable for any loss to the Trust Fund arising in consequence of:
- 17.8.1. the failure, depreciation or loss of any investments made or retained in good faith;
- 17.8.2. by reason of any mistake or omission made in good faith; or
- 17.8.3. any other act, omission, matter or thing whatever,
- 17.8.4. except for breach of trust arising from fraud, wilful misconduct or gross negligence on the part of the trustee who is sought to be made liable.
- 17.9. By clause 20 any trustee being a company shall except as otherwise agreed be entitled in addition to reimbursement of its proper expenses to receive remuneration for its services in accordance with its published terms and conditions for trust business in force from time to time.
- 17.10. By clause 21 the trustees may with the prior written consent of the settlor make any alterations or additions to the provisions of the Amparo Trust Deed which they

consider in their discretion to be for the benefit of all or any one or more of the beneficiaries.

- 17.11. By clauses 1 and 12 and the Third Schedule the Trustee is conferred wide investment powers, including the power to deposit any property comprised in the trust fund with any person in any jurisdiction.
- 17.12. By clause 12 and paragraph 2.11 of the Third Schedule the Trustee is under a duty to exercise its wide investment powers in good faith and in the best interests of the Beneficiaries and shall exercise reasonable care and caution and the skill that a reasonably prudent person of comparable experience would exercise in comparable circumstances, the whole in accordance with the investment guidelines to be determined by the Trustees from time to time and authorised by the settlor.
18. The Amparo Investment Trust holds an investment portfolio. In or about April 2013, the Trustee appointed itself to act as investment manager for the Amparo Investment Trust. The Trustee remained as investment manager until about the middle of 2014 when the Trustee appointed EFGAM to manage all of the investments in the Amparo Investment Trust portfolio. EFGAM remained in that role until about 4 September 2018 (at which point the investments had been frozen, as set out in more detail below).
19. The portfolio of the Amparo Investment Trust, together with the portfolio held by T&N (in respect of the Succession Trust) are referred to as the "**Accounts**".

THE CUBAN ASSETS CONTROL REGULATIONS

20. Pursuant to the Cuban Assets Control Regulations, 31 CFR Part 515 ("**CACR**"), the United States of America ("**USA**") has a trade embargo with Cuba and Cuban nationals, administered by the US Department of the Treasury's Office of Foreign Assets Control ("**OFAC**"). The Plaintiff will seek to rely on expert evidence as to the legal effect of CACR. CACR prohibits "*persons subject to US jurisdiction*" from dealing in any property in which Cuba or a Cuban national has or had any interest.
21. At all material times, as a matter of the law of the USA and the practice of OFAC:
 - 21.1. The CACR prohibited and prohibits (subject to limited general licence authorisation) US financial institutions from engaging in most transactions with Cuban nationals, including the opening and maintaining of accounts in which they maintain an interest of any nature whatsoever.
 - 21.2. Financial institutions that are not persons subject to US jurisdiction were not and are not subject to US laws or regulations (and were not and are not regulated by

- OFAC or the CACR) and (consequently) were not and are not barred by US law from opening and maintaining accounts for Cuban nationals.
- 21.3. A financial institution (whether itself subject to the jurisdiction of the USA or not) might and may seek specific licence authorisation from OFAC to conduct a transaction which would otherwise be in breach of the rules under CACR.
 - 21.4. An ongoing investigation by OFAC was not and is not a bar to OFAC issuing a licence.
 - 21.5. (Subject to application on the particular facts) to the extent that persons permanently resident outside Cuba are the sole beneficiaries of a trust, such persons' interests are not deemed to block any assets of the trust that may be subject to US jurisdiction.
 - 21.6. (Subject to application on the particular facts) financial institutions are generally authorised under CACR to unblock any account that had been previously blocked solely because of an interest of one or more such "unblocked Cuban nationals".
 - 21.7. A single application to OFAC for a licence could (and can) address multiple assets or transactions.
22. At all material times the Trustee (and EFG Cayman) knew that Mrs Perez and Roland were and remain Cuban nationals resident in Cuba. In particular:
- 22.1. At the request of the trustees (both the Trustee and EFG Cayman at the relevant times), all Cuban resident beneficiaries of the Settlements provided (so the Plaintiff understands) W8-BEN forms stating their Cuban residence to the Trustee and EFG Cayman.
 - 22.2. The residential address of Mr Ramsay in Cuba was set out (*inter alia*) in the Succession Trust Deed.
 - 22.3. The residential address of Mrs Perez in Cuba was set out (*inter alia*) in the Amparo Investment Trust Deed.
 - 22.4. Included in the trust papers provided to EFG Cayman and (it is to be inferred, subsequently) the Trustee in the Succession Trust file was a letter dated 5 March 2010 (which was signed by Mrs Perez, Roland and the Plaintiff) addressed to a potential new trustee (which was not ultimately appointed). That letter requested that (in the investment of the trust fund) the trustee not purchase any United States securities and that any and all accounts held by the trustee or any underlying company be blocked against the purchase or acquisition of United States securities, including United States currency.

- 22.5. At various times the Trustee and EFG Cayman requested, and the Plaintiff and certain members of her family who were, at the relevant times, beneficiaries of the Settlements, provided proof of their addresses as part of the Trustee's and EFG Cayman's obligations under relevant anti-money laundering regulations.
- 22.6. The Trustee (so the Plaintiff understands) classified each of the Settlements as "high-risk" in its annual review processes as a result of the nationality and/or residency of some of the respective beneficiaries and settlors in Cuba.
23. As a result of the risks presented by CACR and the characteristics of various of the relevant parties being Cuban nationals (as aforesaid):
 - 23.1. EFG Group, the Trustee and (in the case of the Succession Trust) T&N, exclusively invested and/or ought to have exclusively invested in stocks and other investments outside the United States nexus.
 - 23.2. EFG Group and its constituent entities ensured and/or ought to have ensured that each of the Accounts and all the cash held under the Settlements were denominated in Canadian dollars (or any other currency except for US dollars).
 - 23.3. EFG Group and its constituent entities ensured and/or ought to have ensured that, in respect of the Settlements, it only used non-US service providers, including custodians and sub-custodians.
24. Such steps were taken (and/or ought to have been taken) so as to prevent the trust assets of either of the Settlements from being or becoming subject to CACR and frozen.
25. As the professed expert provider of international trusts and banking services, *inter alia* in the Caribbean, each of the Trustee, EFG Cayman and other entities within the EFG Group (and their respective staff) knew and know, alternatively ought to have known, the serious risks associated with the application of CACR.
26. At all material times, by reason of the foregoing matters, the investment guidelines and/or mandate and/or parameters in respect of the Succession Trust and/or T&N and/or in respect of the Amparo Investment Trust ought to have provided that:
 - 26.1. investments should be made exclusively outside the United States nexus;
 - 26.2. investments and cash should not be denominated in US dollars; and
 - 26.3. investments should not be placed with service providers (including custodians and sub-custodians) subject to US jurisdiction (in particular service providers located in the USA).

DUTIES – SUCCESSION TRUST

27. As trustee of the Succession Trust, each of the Trustee and EFG Cayman owed the following duties to the beneficiaries thereof at all material times from the date of their respective appointment as such (until, in the case of EFG Cayman, its retirement as trustee):
- 27.1. To get in the trust property and place it under its control.
 - 27.2. To make proper enquiries as to the nature and circumstances of the trust property on appointment.
 - 27.3. To review the investment strategy adopted in relation to the Succession Trust (including by any underlying company) on appointment and from time to time and to direct changes as appropriate or necessary.
 - 27.4. To take appropriate and proper steps to investigate any failures or breaches of duty of any former trustee or any investment manager for the time being in respect of the Succession Trust and/or any director of T&N.
 - 27.5. To exercise the standard of skill and care to be expected of a professional corporate trustee which holds itself out as possessing special expertise, knowledge and skill in relation to the administration and management of international trusts.
 - 27.6. To take proper care of and/or safeguard the trust property.
 - 27.7. To preserve and manage the trust property for the benefit of the beneficiaries.
 - 27.8. An undivided fiduciary duty of loyalty, to act in good faith in the interests of and for the benefit of the beneficiaries.
 - 27.9. A fiduciary duty not to advance the interests of the EFG Group and/or its constituents at the expense of the beneficiaries.
 - 27.10. To identify, and/or to review, the base currency of the trust by reference to the purpose of the trust and the interests of the beneficiaries.
28. As director of T&N, Fort Directors owed T&N a duty to exercise the standard of skill and care to be expected of a professional corporate services provider which holds itself out as possessing special expertise, knowledge and skill in relation to the administration and management of companies.
29. It was an express, alternatively an implied term of the agreement whereby EFGAM and/or any other entity within the EFG Group that provided services as investment manager at the relevant times to T&N and/or the Succession Trust that EFGAM (or the other relevant entity) would act in relation to all investments with the standard of skill and care to be expected of a professional investment adviser and manager.

DUTIES – AMPARO INVESTMENT TRUST

30. As trustee of the Amparo Investment Trust, the Trustee owed the following duties to the beneficiaries thereof at all material times under the law of the Bahamas:
- 30.1. To get in the trust property and place it under its control.
 - 30.2. To make proper enquiries as to the nature and circumstances of the trust property on appointment.
 - 30.3. To ascertain the terms of the trust which it is required to administer including becoming familiar with the beneficiaries, the specific duties placed on it and the powers it enjoys.
 - 30.4. To have regard to the suitability of individual investments, not in isolation, but in the context of the trust property as a whole, with a view to obtaining an overall balance of risk and return reasonably suited to the trust.
 - 30.5. To determine the investment strategy and/or guidelines to be adopted in relation to the Amparo Investment Trust on appointment and to obtain authorization from the Settlor in conjunction thereto as required by the terms of the trust.
 - 30.6. To make reasonable efforts to verify facts relevant to their investment decisions.
 - 30.7. To exercise the standard of skill and care to be expected of a professional corporate trustee which holds itself out as possessing special expertise, knowledge and skill in relation to the administration and management of international trusts.
 - 30.8. To take proper care of and/or safeguard the trust property.
 - 30.9. To preserve and manage the trust property for the benefit of the beneficiaries.
 - 30.10. An undivided fiduciary duty of loyalty, to act in good faith in the interests of and for the benefit of the beneficiaries.
 - 30.11. A fiduciary duty not to advance the interests of the EFG Group and/or its constituents at the expense of the beneficiaries.
 - 30.12. To identify, and/or to review, the base currency of the trust by reference to the purpose of the trust and the interests of the beneficiaries.
31. It was an express, alternatively an implied term of the agreement whereby EFGAM and/or any other entity within the EFG Group that provided services as investment manager at the relevant times to the Amparo Investment Trust that EFGAM (or the other relevant entity) would act in relation to all investments with the standard of skill and care to be expected of a professional investment adviser and manager.

FREEZING OF THE ACCOUNTS

32. As explained above, in spite of numerous requests over the four years prior to the issue of these proceedings, the Plaintiff still has limited knowledge of the events giving rise to the matters of complaint pleaded herein. The Plaintiff reserves the right to apply to amend to include additional allegations and/or claims upon discovery or the earlier production of documents. The best details that the Plaintiff can currently provide are set out below.
33. In spite of the risks referred to in paragraphs 20 to 24 above, at some point in (alternatively by) about mid-to-late 2014 or early 2015, the Trustee and/or EFG Cayman and/or T&N (acting through Fort Directors as its sole director) and/or some other entity or entities within the EFG Group caused or permitted:
- 33.1. the Accounts to be held on custody with one or more custodians and/or sub-custodians resident in the USA (or otherwise subject to US jurisdiction); and/or
 - 33.2. the denomination of the Accounts and cash held in the respective trust funds in US dollars; and/or
 - 33.3. the investment of assets and underlying assets (in respect of the respective trust funds) in US securities.
34. In about February 2018, at the request of the Plaintiff and her family (the then beneficiaries of the Settlements), the Trustee started the process to change the investment manager in respect of each of the Succession Trust and the Amparo Investment Trust to Clairmont Advisers (Cayman) Limited ("**Clairmont**"). The reasons for changing the investment manager were: (i) concerns with EFGAM's performance as investment manager; and (ii) a personal relationship between the Plaintiff and her family and Paul-Martin Séguin ("**Mr Séguin**"), a director of Clairmont (and former employee of the EFG Group). The proposed change of investment manager was never, in fact, completed due to the facts described in the following paragraph.
35. On 27 February 2018, Ms Heastie (the Trustee's compliance officer) sent an email to the Plaintiff and other members of her family. In that email, the compliance officer stated that the Accounts were "*currently blocked because of an internal review to ensure full compliance with US sanctions laws*". The Trustee (and EFG Cayman) did not provide any further information as to the blocking of the accounts, propose a solution to the blocking of the Accounts, offer any legal assistance to find a solution, give any further explanation as to the nature of the internal review or give any indication that it was taking any action in that respect.

SUBSEQUENT CONDUCT CONCERNING THE ACCOUNTS

36. Since the blocking of the Accounts (consequent upon the inaction of and lack of communication from the Trustee), the Plaintiff has taken numerous steps: to try to identify the issues giving rise to the blocking; to attempt to establish the steps being taken by the Trustee in order to release the assets so frozen; and to liaise with the Trustee in an attempt to resolve the issue. However, the Trustee did not meaningfully engage in this correspondence and has instead adopted an obstructive approach towards the Plaintiff's efforts.
37. In about April 2018, the Plaintiff (together with certain members of her family) instructed a Bahamian law firm, Glinton Sweeting O'Brien ("**GSO**"), to in and amongst other things, formally request the Trustee to take all steps necessary to unblock the Accounts. GSO sent letters to the Trustee dated 26 April 2018, 5 June 2018 and 26 June 2018 setting out the complaints of the Plaintiff and her family against the Trustee.
38. In about late April or early May 2018 the Plaintiff (together with certain members of her family) engaged sanctions specialist attorneys, Ferrari & Associates, P.C. ("**Ferrari**"), to advise on the legal position of the Settlements under CACR. Ferrari provided two legal opinions (dated 10 September 2018 and 19 June 2020), copies of which were provided to the Trustee, based upon the limited circumstances disclosed to the Plaintiff by the Trustee.
39. On 23 August 2018 GSO sent a letter to Tom Joksimovic and Daniel Noste of EFG Group. In that letter GSO stated that the blocking had arisen from the fault of the EFG Group, that the Plaintiff and her family had been deprived of any prospect of benefitting from the vast majority of their wealth for five months and that the EFG Group was being elusive and miserly with information.
40. On about 2 October 2018, Roland and the Plaintiff sent a letter to the Trustee (*inter alia*) to complain that the funds in the Accounts were still blocked.
41. On 15 February 2019, GSO sent a letter to EFG Bank AG complaining at the position in which entities in the EFG Group (including the Trustee and EFG Cayman) had put the Plaintiff and her family.
42. On 4 March 2019, GSO sent an email to Natalia Napoleon de Bens ("**Ms de Bens**", the EFG Group's general counsel for the United Kingdom and the Americas). In that email GSO stated that only EFG was able to apply for the licence from OFAC and that obtaining such a licence could take a year or more. GSO requested to know whether the Trustee (or another entity from the EFG Group) had applied.
43. On 29 March 2019, GSO attended a meeting with Ms de Bens, at which GSO asked Ms de Bens a number of times to confirm that the Trustee had made the OFAC licence application

required to unblock the Accounts. That same day Ms de Bens (on behalf of the Trustee) sent an email to GSO and stated that the Trustee had instructed Clifford Chance LLP, Washington to seek a licence from OFAC to unblock the Accounts. Ms de Bens admitted that the EFG Group had made mistakes with regard to the blocking of the Accounts, but she sought also to blame others (specifically Mr Séguin, who had been responsible for managing the client relationship until he left EFG Group on 31 December 2017, and the beneficiaries themselves).

44. Mr Séguin, then of Clairmont, (on behalf of, *inter alia*, the Plaintiff) sought an up-date on the progress of the Trustee's application for a licence from OFAC in an email on 8 July 2019.
45. On 4 September 2019, GSO sent a letter (by post and email) to EFG Bank AG complaining that there had been no response to its letter dated 15 February 2019, that the difficulties were entirely the fault of entities within the EFG Group and that GSO did not even know whether the Trustee (or any other entity in the EFG Group) had made an application to OFAC for the licence needed to unfreeze the trust assets. GSO requested to be informed whether an application had been made and, if so, when it had been made, what developments there had been, what the prospects were and when the necessary licence might be received.
46. In or about September 2019, the Trustee informed the Plaintiff that sub-custodians had blocked the Accounts (albeit without identifying the sub-custodians).
47. On about 25 October 2019, Ferrari (on behalf of, *inter alia*, the Plaintiff) asked Clifford Chance (on behalf of the Trustee and/or EFG Group) whether any progress had been made with any application to OFAC and the latter confirmed that it would seek instructions.
48. On about 31 October 2019, the Trustee informed Ferrari that it had not actually made any application to obtain an OFAC licence.
49. On 4 November 2019 Ferrari sent an email to the Trustee seeking confirmation of whether the Trustee was prepared to submit an application for a licence to OFAC. On 6 November 2019 Clifford Chance confirmed that neither the Trustee, nor any other entity in the EFG Group, had applied to OFAC for a licence.
50. On about 21 November 2019, Ferrari informed Clifford Chance during a telephone call that the Plaintiff and her family would like a realistic sense of how long the unblocking process would take.
51. In late 2019, the Trustee advised the Plaintiff that around one half of the assets in the Accounts had been unblocked. The Trustee gave the Plaintiff no explanation as to why some of the assets had been unblocked or why the balance remained blocked.
52. On 20 January 2020, the global head of legal and compliance and head of legal international for EFG International AG wrote to GSO, amongst other things, to advise the Plaintiff and her

family that the release of most of the assets still blocked in the Accounts would require a licence from OFAC and suggested that the Plaintiff and her family members seek a licence from OFAC to unblock the Accounts fully. The Plaintiff and her family members decided not to seek a licence from OFAC in respect of the Accounts because (as was the case) (i) they were the wrong persons to make the application, since they were not the legal owner of the assets; and (ii) an institutional applicant, such as EFG Group, would be more likely to receive a favourable and timely response. The said decision of the Plaintiff and her family member's not to apply for a licence was communicated to the Trustee, together with the said reasons therefor.

53. In an email dated 8 June 2020, Mr Séguin informed the Trustee that Ferrari had come up with a potential solution to the continued blocking of the Accounts.
54. Ferrari produced a further letter of advice dated 19 June 2020. Amongst other things, Ferrari advised (as a matter of United States law) that:
 - 54.1. to the extent that persons permanently resident outside Cuba are the sole beneficiaries of the Trusts, such persons' interests are not deemed to block any assets of the Trusts that may be subject to US jurisdiction; and
 - 54.2. financial institutions are generally authorised under the CACR to unblock any account that had been previously blocked solely because of an interest of one or more such "unblocked Cuban nationals".
55. As a result of this advice and with the agreement of Mrs Perez, Roland, the Plaintiff and Trustee, it was proposed that the Settlements be restructured to remove Mrs Perez and Roland and any other Cuban resident persons as beneficiaries of the Settlements. Following discussions between Ferrari and Clifford Chance in which the latter approved the proposal, the Trustee confirmed the next steps to implement the proposal and (inferentially) expressed its approval of, and agreement to the proposal as a means of unblocking the Accounts, in an email dated 29 July 2020 from Ian Atkins.
56. Thereafter, in accordance with the agreed proposal, the Plaintiff and her relatives signed and executed various correspondence and deeds. Roland sent a letter dated 12 August 2020 to the Trustee (as trustee of the Amparo Investment Trust) renouncing his interest thereunder. On about 26 August 2020 Roland signed a deed of disclaimer (produced and/or procured by the Trustee) in respect of the Succession Trust, which deed provided (*inter alia*) that Roland disclaimed his interest under the Succession Trust and released the Trustee from its obligations to him.

57. On about 28 September 2020, Octogone Fund Management Limited was appointed as investment manager with a discretionary mandate to make investments on a discretionary basis on behalf of T&N in respect of the assets that had been unblocked.
58. On 28 October 2020 the Trustee executed a deed of exclusion in respect of the Amparo Investment Trust, which deed provides that it is governed by the law of the Bahamas. The said deed provided that Mrs Perez and Roland are excluded as beneficiaries of the Amparo Investment Trust.
59. Mr Séguin sent emails on behalf of the Plaintiff chasing the Trustee for a response and/or up-date on 29 October 2020, 11 November 2020, 17 November 2020, 27 November 2020, 17 December 2020, 14 January 2021 and 18 January 2021.
60. On 2 March 2021, Mrs Perez and the Plaintiff sent a letter to the Trustee (as trustee of the Succession Trust, albeit incorrectly addressed) requesting that the Trustee remove Sophie as a beneficiary of the Succession Trust.
61. On 3 March 2021, Mrs Perez sent a letter to the Trustee (as trustee of the Succession Trust, albeit incorrectly addressed) renouncing her interest in the Succession Trust.
62. On 14 May 2021 the Trustee sent an email to Mr Séguin in which it raised some new points on the changes to the interests under the Settlements. Mr Séguin responded by email the following day to express astonishment that the Trustee, having agreed to the changes, had apparently changed its mind about the proposal.
63. After not receiving any meaningful response, Bedell Cristin Cayman Partnership (“**Bedell Cristin**”) sent a letter dated 3 June 2021 (on behalf of the Plaintiff) to the Trustee to express the Plaintiff’s dissatisfaction at the lack of meaningful progress to unblock the Account held indirectly by the Succession Trust and to ask the Trustee to exercise its power under the terms of the Trust to remove all Cuban resident beneficiaries.
64. Carey Olsen on the Trustee’s behalf wrote to Bedell Cristin on 18 June 2021, enclosing a draft deed of disclaimer by Mrs Perez and a deed of exclusion of beneficiaries. It was clearly implicit in this letter (in particular the description of the proposal as a “*constructive solution*” (emphasis added)) that the Trustee considered that, by removing all Cuban resident beneficiaries, the Accounts would be unblocked (albeit that there might be a little delay while the custodians satisfied themselves of the same).
65. There followed further correspondence on the terms of the draft deed, including the requirement of the Trustee that it be indemnified by Roland.
66. On about 23 July 2021, the Trustee, Mrs Perez, Roland and the Plaintiff executed a deed of exclusion of beneficiaries in respect of the Succession Trust. This deed provided that the Trustee declared irrevocably that any “Excluded Person” (which was defined as a person

who qualified as a national, designated national or specifically designated national and not as an unblocked national within the CACR) be excluded as a beneficiary and remain excluded while they continued to qualify as an Excluded Person. The deed also provided for a release (by the Plaintiff, Roland and Mrs Perez) of claims in connection with or relating to the exclusion and an indemnity (by Roland) in respect of any claim by Sophie related to the exclusion.

67. Neither the Plaintiff nor Bedell Cristin heard anything further from the Trustee or from Carey Olsen after the execution of the Deed in connection with the unblocking of the Accounts. Bedell Cristin sent letters to Carey Olsen on 20 August 2021 and 21 September 2021 asking for status updates. In those letters, Bedell Cristin also:
- 67.1. asked the Trustee to provide the identity of the custodians and sub-custodians where the Trustee or T&N had placed the Accounts;
 - 67.2. advised the Trustee that the Plaintiff was considering her options in connection with claiming her expenses in connection with the Trusts; and
 - 67.3. indicated that in the absence of material progress shortly thereafter, the Plaintiff would ask the Trustee to retire in favour of another (Cayman Islands) trust company.
68. Several holding emails were sent, but no substantive response was received until Carey Olsen sent a letter dated 29 September 2021 to Bedell Cristin in which it stated that:
- 68.1. the Trustee had been "actively engaging" with the custodians and that one had asked for further documentation, another had demanded the Plaintiff obtain a special license from OFAC, and the others had not responded;
 - 68.2. the Trustee refused to provide the identity of the custodians where the Trustee or T&N had placed the trust fund of the Trust of which, by this time, the Plaintiff was the sole beneficiary;
 - 68.3. the Trustee asserted that its retirement or removal would only complicate the matter and make its resolution more difficult and expensive; and
 - 68.4. "reserving the Trustee's position" in respect of the events which lead to the blocking of the Accounts. The Trustee disputed that it had acted inappropriately and denied that any of the costs incurred were for its account.
69. In response, Bedell Cristin wrote to Carey Olsen on 4 October 2021 advising that, given the Trustee's failure to unblock the Accounts, the Plaintiff had offered to have Ferrari liaise with the Trustee's sub-custodians to assist. Bedell Cristin also requested the identities of the sub-custodians and various documents and information.

70. Other than holding emails, neither Carey Olsen nor the Trustee have responded to Bedell Cristin's letter dated 4 October 2021.
71. On 20 January 2022 Bedell Cristin sent a letter to Carey Olsen complaining at the lack of response to the requests for information in its letter dated 4 October 2021 and threatening proceedings.
72. On 23 February 2022, Lennox Paton, Bahamas ("**Lennox**") wrote to Bedell Cristin:
- 72.1. explaining that the Trustee has been working "assiduously" to address the issues regarding the blocked assets but that certain clarification was required (without specifying what that clarification was);
 - 72.2. disputing the fact of the Trustee having received a copy of the letter dated 5 March 2010 referred to in paragraph 22.4 above;
 - 72.3. referencing a document described as "instructions" to the Trustee by Mrs Perez in which she approved investment into EFG's balanced portfolio, apparently as evidence of a beneficiary's role in the investment of the portfolio;
 - 72.4. explaining that the Trustee "continues to engage, on an urgent basis, with custodians and sub-custodians holding the blocked assets;"
 - 72.5. stating that the Trustee has begun the process of applying for a licence from OFAC in respect of one of the custodians and that this process may take at least one year to complete;
 - 72.6. explaining that another custodian is waiting for a reply from OFAC in respect of the unblocking of the assets that it holds on custody for the Trusts;
 - 72.7. explaining that a third custodian is still reviewing the position with its legal team;
 - 72.8. disputing that it had acted improperly or that the costs of the Plaintiff or the EFG Group were for the Trustee's account;
 - 72.9. explaining that the Trustee considers it is doing everything in its powers to resolve the blocking of the Trusts' assets as quickly as possible; and
 - 72.10. insisting that the Plaintiff remain patient and not complicate matters by commencing litigation (which, Lennox stated, would only result in significant legal costs and was likely to delay the unblocking).

BREACHES OF TRUST AND BREACHES OF DUTY – SUCCESSION TRUST

73. The Trustee and/or EFG Cayman acted wrongfully and/or in breach of trust and/or in breach of the duties at paragraph 27.1 and/or 27.2 and/or 27.3 and/or 27.5 and/or 27.6 and/or 27.7 and/or 27.10 above in respect of the Succession Trust in that it (or they):
- 73.1. Procured and/or permitted the making of investments (through T&N) which placed the trust assets subject to, alternatively at risk of being subject to, CACR and being frozen.
 - 73.2. Alternatively, failed to inform the other relevant entities within the EFG Group of the links of the settlor and the beneficiaries to Cuba and the need to avoid United States securities, currencies and custodians.
 - 73.3. Alternatively, failed to ensure that the investment guidelines and/or mandate and/or parameters excluded investments or custodians or sub-custodians or currency with a United States nexus.
 - 73.4. The Trustee and/or EFG Cayman thereby disabled itself (or themselves) from dealing with the trust assets of the Succession Trust in the interests of the beneficiaries.
74. Further and alternatively, in permitting and/or procuring the investment of the T&N investment portfolio in investments and with custodians and sub-custodians which were subject to the CACR, Fort Directors and/or EFGAM and/or such other entities within the EFG Group as were involved acted in breach of the respective duties of skill and care as set out in paragraphs 28 and 29 above.
75. Upon its appointment, wrongfully and in breach of each (alternatively one or more) of the duties at paragraphs 27.1 to 27.7 and 27.10 above, the Trustee made no or insufficient enquiries as to the losses occasioned to the T&N investment portfolio by the conduct of EFG Cayman (or other affiliated entities within the EFG Group) in losing control of the trust assets pursuant to the application of CACR or as to the prospect of recovering such losses from such parties.
76. After discovering the issues concerning potential breaches of CACR, the Trustee and/or EFG Cayman failed (in breach of the duties set out in paragraphs 27.1 and/or 27.5 and/or 27.6 and/or 27.7 above) to take all reasonable or proper steps to unblock the accounts for the benefit of the beneficiaries. In particular, the Trustee and/or EFG Cayman failed to apply for a licence from OFAC within a reasonable or proper time, or (to the best of the Plaintiff's knowledge) at all. The Trustee and/or EFG Cayman thereby failed to take appropriate steps to obtain control of the trust assets so that they might be managed and applied for the benefit of the beneficiaries of the Succession Trust.

77. Further, it is to be inferred that the Trustee and/or EFG Cayman (in breach of the fiduciary duties set out in paragraphs 27.8 and/or 27.9 above) so acted in their own interests, alternatively in the interests of affiliated entities within the EFG Group, rather than in the interests of the beneficiaries. The Trustee and/or EFG Cayman and/or other entities within the EFG Group had breached the CACR and/or were at risk of doing so and/or were (actually or potentially) subject to investigation by OFAC and/or the relevant entities within the EFG Group were trying to avoid or minimise their personal risk as to cost and/or expense and/or reputational damage and/or commitment of employee time.
78. In the absence of the provision of any proper explanation for the failure of the Trustee and/or EFG Cayman to apply for a licence from OFAC within a reasonable time of the freezing of the accounts referred to in paragraph 35 above, it is to be inferred that the conduct of the Trustee and/or EFG Cayman in that regard (as pleaded above at paragraphs 76 and 77) amounted to wilful default:
- 78.1. Each of the Trustee and EFG Cayman is a professional trust company which (as pleaded at paragraph 3, 4 and 25 above) at all material times held and/or holds itself out as possessing expertise in the provision of international trusts services, including in the Caribbean.
- 78.2. The Trustee and/or EFG Cayman knew that a licence from OFAC was necessary, alternatively likely to be necessary, in order to unblock the Accounts, alternatively the fastest way to unblock them, and that there would be some delay in obtaining one.
- 78.3. The Trustee and/or EFG Cayman knew that it was in the interests of the beneficiaries of the Succession Trust to apply for a licence and (as a corollary thereto) that it was contrary to the interests of the beneficiaries not to do so, alternatively to delay doing so.
- 78.4. The Trustee informed the Plaintiff that it was instructing its lawyers to make an application for a licence from OFAC, but in fact did not make any such application at that time or at all (alternatively for some three years thereafter).
- 78.5. To the best of the Plaintiff's knowledge, EFG Cayman has never made an application for any licence from OFAC in respect of the investments held in respect of the Succession Trust.
- 78.6. It is to be inferred (from the foregoing) that the Trustee and/or EFG Cayman was acting in the interests of itself and/or other entities within the EFG Group in order to minimize the exposure of itself and other EFG Entities to: liabilities or penalties or other regulatory action by OFAC in respect of breaches or potential breaches of

CACR; and/or costs and/or expenses for which they would have to account themselves; and/or reputational damage; and/or the commitment of employee time required.

78.7. In the premises, the Trustee and/or EFG Cayman:

78.7.1. knew that it was in the interests of the beneficiaries of the Succession Trust to make an application to OFAC for a licence, and (as a corollary thereto) that it was contrary to the interests of the beneficiaries not to do so or to delay doing so; alternatively

78.7.2. was reckless as to whether it was necessary to apply for a licence to OFAC and did not do so (within a reasonable time or at all), thereby acting in the interests of itself or themselves and/or EFG Group (and contrary to the interests of the beneficiaries). The Trustee thereby failed to perform its duty and knew (alternatively was reckless) as to whether it acted in breach of trust.

79. By reason of the aforesaid breaches of trust and/or breaches of duty and/or breaches of fiduciary duty the estate of the Succession Trust has suffered loss and damage. In the premises, the Trustee is liable to account to the Plaintiff on the ground of its breaches of trust and/or to reconstitute the trust estate. Further and alternatively, the Trustee is liable to pay damages or equitable compensation. Paragraphs 75 to 78 above are repeated.

80. Had the Trustee applied for a licence from OFAC in about February 2018 then the licence would (in the usual course) have been obtained by within about one year (two years at the absolute latest) and the accounts would have been unblocked in about early to mid-2019, but by mid-2020 at the latest.

81. The sums currently blocked in accounts as at the date of this Statement of Claim and to the best of the Plaintiff's knowledge (and on a basis amalgamated between the two trusts, and subject to some correction to account for personal monies of Mrs Perez) consist of the following:

Custodian	Amount (USD)
BBH and Franklin Templeton	4,264,673
SIX SIS	89,021
JP Morgan Chase	435,100
TOTAL	4,788,694

82. There is currently (so far as the Plaintiff understands) no realistic prospect of any of the funds referred to becoming unblocked or otherwise being released or made available to the Trustee (or any subsequent trustee of the Succession Trust) within any reasonable period or at all. In essence and in effect, the situation is such that the trust assets have been constructively lost and the Trustee and/or EFG Cayman are liable to reconstitute the trust fund in respect of all blocked sums and/or to pay damages and/or equitable compensation of such quantum.
83. Further and alternatively, as a result of the blocking of the accounts, the trust assets of the Succession Trust have not been properly managed and invested (and it has been impossible properly to manage and invest them) and the trust fund has therefore suffered loss and damage and has been diminished in value.
84. The Plaintiff will provide details of her loss upon obtaining proper information as to the performance of the investments and will seek to rely on expert evidence. The best particulars that the Plaintiff can currently provide are that the losses are constituted by the difference between the actual value of the trust fund (as blocked) and the value which it would have had if the funds had been unblocked in early to mid-2019, but by mid-2020 at the latest, and invested and/or managed actively and properly in the period thereafter (without the restrictions of the blocking).
85. Further and alternatively, as a result of the breaches of trust and/or breaches of duty and/or fiduciary duty referred to in paragraphs 76 to 79 above, the Plaintiff has suffered loss and damage, in particular:
- 85.1. The Plaintiff has had to incur and pay for significant legal costs, both in respect of Bahamian law and in respect of United States law concerning CACR and sanctions. To the extent that such costs are not recoverable as legal costs in these proceedings, the Plaintiff claims compensation for such costs.
86. Further and alternatively, the Trustee has purported to charge fees, costs and expenses to the Succession Trust and/or to deduct fees, costs and expenses from the trust fund held under the Succession Trust. Such fees costs and expenses have not been properly incurred and are not reasonable and/or are for the Trustee's account.

BREACHES OF TRUST AND/OR BREACHES OF DUTY AND/OR FIDUCIARY DUTY AND/OR NEGLIGENCE – AMPARO INVESTMENT TRUST

87. In the premises, the Trustee acted wrongfully and/or negligently and/or in breach of trust and/or in breach of each (alternatively one or more) of the duties at paragraphs 30.1 to 30.9 and 30.12 above under Bahamian law in respect of the Amparo Investment Trust in that it:

- 87.1. Procured and/or permitted the making of investments which placed the trust assets subject to, alternatively at risk of being subject to, CACR and being frozen.
 - 87.2. Alternatively, failed to inform the other relevant entities within the EFG Group of the links of the settlor and the beneficiaries to Cuba and the need to avoid United States securities, currencies and custodians.
 - 87.3. Alternatively, failed to ensure that the investment guidelines and/or mandate and/or parameters excluded investments or custodians or sub-custodians or currency with a United States nexus.
 - 87.4. The Trustee thereby disabled itself from dealing with the trust assets of the Amparo Investment Trust in the interests of the beneficiaries.
88. The Trustee's said conduct and/or negligence (as set out in paragraph 87) amounted to gross negligence. It constituted a serious and/or unusual and/or marked departure from the normal standards of professional trustees. Paragraphs 20 to 26 above are repeated.
89. Further and alternatively, in permitting and/or procuring the investment of the Amparo Investment Trust investment portfolio in investments and with custodians and sub-custodians which were subject to the CACR, EFGAM and/or such other entities within the EFG Group as were involved acted in breach of the respective duties of skill and care as set out in paragraphs 31 above.
90. After discovering the issues concerning potential breaches of CACR, the Trustee (in breach of the duties set out in paragraphs 30.7 and/or 30.8 and/or 30.9 above) failed to take all reasonable or proper steps to unblock the accounts for the benefit of the beneficiaries. In particular, the Trustee failed to apply for a licence from OFAC within a reasonable or proper time, or (to the best of the Plaintiff's knowledge) at all. The Trustee thereby failed to take appropriate steps to obtain control of the trust assets so that they might be managed and applied for the benefit of the beneficiaries of the Amparo Investment Trust.
91. Further, it is to be inferred that (in breach of the fiduciary duties set out in paragraphs 30.10 and/or 30.11 above) the Trustee so acted in its own interests, alternatively in the interests of affiliated entities within the EFG Group, rather than in the interests of the beneficiaries. The Trustee and/or other entities within the EFG Group had breached the CACR and/or were at risk of doing so and/or were (actually or potentially) subject to investigation by OFAC and/or the relevant entities within the EFG Group were trying to avoid or minimise their personal risk as to cost and/or expense and/or reputational damage and/or commitment of employee time.
92. In the absence of the provision of any proper explanation for the Trustee's failure to apply for a licence from OFAC within a reasonable time of the freezing of the accounts referred to

in paragraph 35 above, it is to be inferred that the Trustee's conduct in that regard amounted to wilful default:

- 92.1. The Trustee is a professional trust company which (as pleaded at paragraphs 3 and 25 above) holds itself out as possessing expertise in the provision of international trusts services, including in the Caribbean.
- 92.2. The Trustee knew that a licence from OFAC was necessary, alternatively likely to be necessary, in order to unblock the Accounts, alternatively the fastest way to unblock them, and that there would be some delay in obtaining one.
- 92.3. The Trustee knew that it was in the interests of the beneficiaries of the Amparo Investment Trust to apply for a licence and (as a corollary thereto) that it was contrary to the interests of the beneficiaries not to do so, alternatively to delay doing so.
- 92.4. The Trustee informed the Plaintiff that it was instructing its lawyers to make an application for a licence from OFAC, but in fact did not make any such application at that time or at all (alternatively for some three years thereafter).
- 92.5. It is to be inferred (from the foregoing) that the Trustee was acting in the interests of itself and/or other entities within the EFG Group in order to minimize the exposure of itself and other EFG Entities to: liabilities or penalties or other regulatory action by OFAC in respect of breaches of breaches of CACR; and/or costs and expenses for which they would have to account themselves; and/or reputational damage; and/or the commitment of employee time required.
- 92.6. In the premises, the Trustee:
 - 92.6.1. Knew that it was in the interests of the beneficiaries of the Amparo Investment Trust to make an application to OFAC, and (as a corollary thereto) that it was contrary to the interests of the beneficiaries not to do so or to delay doing so; alternatively
 - 92.6.2. Was reckless as to whether it was necessary to apply for a licence to OFAC and did not do so (within a reasonable time or at all), thereby acting in the interests of itself and/or EFG Group (and contrary to the interests of the beneficiaries). The Trustee thereby failed to perform its duty and knew (alternatively was reckless) as to whether it acted in breach of trust.
93. By reason of the aforesaid breaches of trust and/or breaches of duty and/or breaches of fiduciary duty the trust fund of the Amparo Investment Trust has suffered loss and damage.

94. The Trustee is liable to account to the Plaintiff under Bahamian law on the ground of its breaches of trust and/or to reconstitute the trust estate. Further and alternatively, the Trustee is liable to pay damages or equitable compensation under Bahamian law.
95. Had the Trustee not acted wrongfully and/or negligently and/or in breach of trust and/or in breach of duty as set out in paragraphs 87 and 88 above, then the Accounts would not have been blocked. Further and alternatively, had the Trustee applied for a licence from OFAC in about February 2018 then the licence would (in the usual course) have been obtained within around one year (two years at the absolute latest) and the accounts would have been unblocked in about early to mid-2019, but by mid-2020 at the latest.
96. The sums currently blocked in accounts as at the date of this Statement of Claim and to the best of the Plaintiff's knowledge (and on a basis amalgamated between the two trusts) are set out above at paragraph 81.
97. There is currently (so far as the Plaintiff understands) no realistic prospect of any of the funds referred to becoming unblocked or otherwise being released or made available to the Trustee (or any subsequent trustee of the Amparo Investment Trust) within any reasonable period or at all. In essence and in effect, the situation is such that the trust assets have been constructively lost and the Trustee is liable to reconstitute the trust fund in respect of all blocked sums and/or to pay damages and/or equitable compensation of such quantum.
98. Further and alternatively, as a result of the blocking of the accounts, the trust assets of the Amparo Investment Trust have not been properly managed and invested (and it has been impossible properly to manage and invest them) and the trust fund has therefore suffered loss and damage. The Plaintiff will provide details of its loss upon obtaining proper information as to the performance of the investments and will seek to rely on expert evidence. The best particulars that the Plaintiff can currently provide are that the losses are constituted by the difference between the actual value of the trust fund (as blocked) and the value which it would have had if the funds had been unblocked in early to mid-2019, but by mid-2020 at the latest, and invested and/or managed actively and properly in the period thereafter (without the restrictions of the blocking).
99. Further and alternatively, as a result of the breaches of trust and/or breaches of duty and/or fiduciary duty and/or gross negligence referred to in paragraphs 87 to 92 above, the Plaintiff has suffered loss and damage, in particular:
- 99.1. The Plaintiff has had to incur and pay for significant legal costs, both in respect of Bahamian law and in respect of United States law concerning CACR and sanctions. To the extent that such costs are not recoverable as legal costs in these proceedings, the Plaintiff claims compensation for such costs.

100. Further and alternatively, the Trustee has purported to charge fees, costs and expenses to the Amparo Investment Trust and/or to deduct fees, costs and expenses from the trust fund held under the Amparo Investment Trust. Such fees costs and expenses have not been properly incurred and are not reasonable and/or are for the Trustee's account.

UNSUITABILITY OF THE TRUSTEE TO CONTINUE TO ACT AS TRUSTEE OF THE SUCCESSION TRUST

101. Further and in the alternative, the Plaintiff seeks an order pursuant to the inherent jurisdiction of the Court that the Trustee be removed from office as trustee of the Succession Trust and to appoint Genesis Trust & Corporate Services Limited ("**Genesis**"), alternatively such other person as the Court thinks fit, to be trustee in its place.
102. In the premises, the Trustee is unsuitable to continue to act as trustee of the Succession Trust and/or it is in the interests and/or welfare of the beneficiaries for the Court to remove the Trustee as trustee of the Successor Trust
103. The Plaintiff relies, in particular, on the following facts and matters:
- 103.1. The Trustee has adopted an obstructive attitude in response to enquiries made by or on behalf of the Plaintiff.
- 103.2. The Trustee and/or an affiliate of the Trustee acted so as to cause and/or permitted the investment of trust assets in a manner that was caught or potentially caught or at risk of being perceived to be caught by CACR. The Trustee and/or EFG Cayman thereby endangered the trust assets, put them at risk of being blocked and disabled itself from being able to control the trust assets in the Accounts.
- 103.3. There is a potential or apparent conflict of interest between the Trustee and the beneficiaries. The Trustee and/or other entities within the EFG Group are at risk of penalties and/or other consequences as a result of the breaches of CACR and (in the premises) the Trustee has prioritized those concerns over the interests of the beneficiaries. The Trustee has failed to recognize such conflict and has failed to take steps to ensure that its duties prevail over its interests.
- 103.4. The Trustee failed to apply for a licence from OFAC within a reasonable or proper time, alternatively (so far as the Plaintiff is aware) at all. Alternatively, the Trustee failed to take necessary or appropriate steps, either within proper time or at all, to resolve the blocking of the accounts.
- 103.5. The Trustee has failed to keep the Plaintiff properly apprised of any conduct by it to resolve the blocking of the accounts.

- 103.6. The Trustee has deferred to, and/or acted in, its own interests and/or the interests of other affiliated entities in the EFG Group in its response to the blocking of the accounts (and/or lack thereof), rather than acting in the interests of the beneficiaries (whether wholly or at all).
- 103.7. The Trustee and/or its affiliates within the EFG Group have exhibited hostility towards the Plaintiff: for example in the form of implicit threats that the Plaintiff should not act against the Trustee for fear of causing significant delay to the process of unblocking the accounts.
- 103.8. The Trustee procured the execution of various letters and the deed of exclusion of beneficiaries referred to in paragraph 56 and 66 above on the basis of an agreement with the relevant beneficiaries and the Plaintiff that such would permit the unblocking of the accounts. The Trustee so acted in circumstances where it alone had access to engage with the relevant custodians and sub-custodians.
- 103.9. In the circumstances, there has been a breakdown in the relationship between the Trustee and the Plaintiff. As a result of the matters set out in this Statement of Claim, the Plaintiff has lost any semblance of trust or confidence in the Trustee in the administration of the Succession Trust and the situation is liable to hinder due performance by the Trustee of its duties.

UNSUITABILITY OF THE TRUSTEE TO CONTINUE TO ACT AS TRUSTEE OF THE AMPARO INVESTMENT TRUST

104. Further and in the alternative, the Plaintiff seeks an order pursuant to the inherent jurisdiction of the Court that the Trustee be removed from office as trustee of the Amparo Investment Trust and to appoint Genesis, alternatively such other person as the Court thinks fit, to be trustee in its place.
105. In the premises, the Trustee is unsuitable to continue to act as trustee of the Amparo Investment Trust and/or it is in the interests and/or welfare of the beneficiaries for the Court to remove the Trustee as trustee of the Amparo Investment Trust.
106. The Plaintiff relies, in particular, on the following facts and matters:
 - 106.1. The Trustee has adopted an obstructive attitude in response to enquiries made by or on behalf of the Plaintiff.
 - 106.2. The Trustee and/or an affiliate of the Trustee acted so as to cause and/or permitted the investment of trust assets in a manner that was caught or potentially caught or at risk of being perceived to be caught by CACR. The Trustee and/or its affiliate

thereby endangered the trust assets, put them at risk of being blocked and disabled itself from being able to control the trust assets in the Accounts.

- 106.3. There is a potential or apparent conflict of interest between the Trustee and the beneficiaries. The Trustee and/or other entities within the EFG Group are at risk of penalties and/or other consequences as a result of the breaches of CACR and (in the premises) the Trustee has prioritized those concerns over the interests of the beneficiaries. The Trustee has failed to recognize such conflict and has failed to take steps to ensure that its duties prevail over its interests.
 - 106.4. The Trustee failed to apply for a licence from OFAC within a reasonable or proper time, alternatively (so far as the Plaintiff is aware) at all. Alternatively, the Trustee failed to take necessary or appropriate steps, either within proper time or at all, to resolve the blocking of the accounts.
 - 106.5. The Trustee has failed to keep the Plaintiff properly apprised of any conduct by it to resolve the blocking of the accounts.
 - 106.6. The Trustee has deferred to, and/or acted in, its own interests and/or the interests of other affiliated entities in the EFG Group in its response to the blocking of the accounts (and/or lack thereof), rather than acting in the interests of the beneficiaries (whether wholly or at all).
 - 106.7. The Trustee and/or its affiliates within the EFG Group have exhibited hostility towards the Plaintiff: for example in the form of implicit threats that the Plaintiff should not act against the Trustee for fear of causing significant delay to the process of unblocking the accounts.
 - 106.8. The Trustee procured the execution of various letters and the deed of exclusion of beneficiaries referred to in paragraphs 56 and 58 above on the basis of an agreement with the relevant beneficiaries and the Plaintiff that such would permit the unblocking of the accounts. The Trustee so acted in circumstances where it alone had access to engage with the relevant custodians and sub-custodians.
 - 106.9. In the circumstances, there has been a breakdown in the relationship between the Trustee and the Plaintiff. As a result of the matters set out in this Statement of Claim, the Plaintiff has lost any semblance of trust or confidence in the Trustee in the administration of the Amparo Investment Trust and the situation is liable to hinder due performance by the Trustee of its duties.
107. Further, in the circumstances, the Trustee is liable to be obstructive to the vesting of the trust assets in the new trustee, thereby potentially further delaying the unblocking of the accounts, in the absence of a court-ordered removal.

DIRECTIONS

108. Further and in the alternative, the Plaintiff seeks directions and/or orders for the administration of the Succession Trust and/or the Amparo Investment Trust.

INTEREST

109. The Plaintiff claims interest in equity, alternatively pursuant to Section 34 of the *Judicature Act (2021 Revision)* and the *Judgment Debts (Rates of Interest) Rules (2021 Revision)* for such periods and at such rates as the Court thinks fit.

AND THE PLAINTIFF claims:

1. Damages and/or equitable compensation (as against the Trustee and/or EFG Cayman) for breach of trust and/or breach of duty and/or breach of fiduciary duty in respect of the administration of the Succession Trust.
2. Damages and/or equitable compensation (as against the Trustee) for breach of trust and/or breach of duty and/or breach of fiduciary duty and/or gross negligence in respect of the administration of the Amparo Investment Trust.
3. An account of the dealings of the Trustee and/or EFG Cayman with the trust property held under the Succession Trust on the footing of wilful default, whether involving any breach of trust, fiduciary duty or otherwise.
4. Further and alternatively, an order that the Trustee and/or EFG Cayman account in respect of the Succession Trust for an amount equal to the total assets currently in the hands of the custodians and sub-custodians which have been constructively lost to that trust.
5. An account of the Trustee's dealing with the trust property held under the Amparo Investment Trust on the footing of wilful default, whether involving any breach of trust, fiduciary duty or otherwise.
6. Further and alternatively, an order that the Trustee account in respect of the Amparo Investment Trust for an amount equal to the total assets currently in the hands of the custodians and sub-custodians which have been constructively lost to that trust.
7. Further and alternatively, an order requiring the Trustee (and/or EFG Cayman) to reconstitute the estate the subject of the Succession Trust by making good all loss which

has accrued or might accrue by reason of the respective breach of trust and/or breach of duty and/or breach of fiduciary duty of the Trustee and/or EFG Cayman.

8. Further and alternatively, an order requiring the Trustee to reconstitute the estate the subject of the Amparo Investment Trust by making good all loss which has accrued or might accrue by reason of the Trustee's respective breach of trust and/or breach of duty and/or breach of fiduciary duty.
9. An order that the Trustee (and/or EFG Cayman) account for the total legal fees incurred by it in connection with the issues arising from the blocking of the Accounts that have been paid from or reimbursed out of the estate of the Succession Trust.
10. An order that the Trustee account for the total legal fees incurred by it in connection with the issues arising from the blocking of the Accounts that have been paid from or reimbursed out of the estate of the Amparo Investment Trust.
11. An order requiring the Trustee (and/or EFG Cayman) to account for the fees which it has wrongfully charged to the estate of the Succession Trust and to reconstitute the said estate in respect thereof.
12. An order requiring the Trustee to account for the fees which it has wrongfully charged to the estate of the Amparo Investment Trust and to reconstitute the said estate in respect thereof.
13. An order removing the Trustee as trustee of the Succession Trust.
14. An order appointing Genesis Trust & Corporate Services Limited or such other fit and proper person to be the trustee of the Succession Trust in place of the Trustee and all necessary orders for vesting the trust property of the Succession Trust in such new trustee.
15. An order removing the Trustee as trustee of the Amparo Investment Trust.
16. An order appointing Genesis Trust & Corporate Services Limited or such other fit and proper person to be the trustee of the Amparo Investment Trust in place of the Trustee and all necessary orders for vesting the trust property of the Amparo Investment Trust in such new trustee.
17. Further and alternatively, if and insofar as necessary, administration of the Succession Trust and/or the Amparo Investment Trust by the Court.
18. All necessary accounts and inquiries against the Trustee and/or EFG Cayman in respect of its trusteeship of the Succession Trust and/or the Amparo Investment Trust.
19. Such ancillary orders and directions as may be required to give effect to the relief sought.
20. Such further or other relief as the Court thinks fit.

21. Interest.

22. Costs.

Dated this the 6th day of October 2022



BEDELL CRISTIN
ATTORNEYS AT LAW FOR THE PLAINTIFF

DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE OF WRIT OF SUMMONS

1. The accompanying form of Acknowledgment of Service should be completed by an Attorney acting on behalf of the Defendant or by the Defendant if acting in person.
After completion it must be delivered or sent by post to the Law Courts, P.O. Box 495G, George Town, Grand Cayman.
2. A Defendant who states in his Acknowledgment of Service that he intends to contest the proceedings must also serve a defence on the Attorney for the Plaintiff (or on the Plaintiff if acting in person).
If a Statement of Claim is indorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2), the Defence must be served within 14 days after the time for acknowledging service of the Writ, unless in the meantime a summons for judgment is served on the Defendant.
If the Statement of Claim is not indorsed on the Writ, the Defence need not be served until 14 days after a Statement of Claim has been served on the Defendant.
If the Defendant fails to serve his defence within the appropriate time, the Plaintiff may enter judgment against him without further notice.
3. A Stay of Execution against the Defendant's goods may be applied for where the Defendant is unable to pay the money for which any judgment is entered. If a Defendant to an action for a debt or liquidated demand (i.e. a fixed sum) who does not intend to contest the proceedings states, in answer to Question 3 in the Acknowledgment of Service, that he intends to apply for a stay, execution will be stayed for 14 days after his Acknowledgment, but he must, within that time, issue a Summons for a stay of execution, supported by an affidavit of his means. The affidavit should state any offer which the Defendant desires to make for payment of the money by instalments or otherwise.

Notes for Guidance

4. Each Defendant (if there are more than one) is required to complete an Acknowledgment of Service and return it to the Courts Office.
5. For the purpose of calculating the period of 14 days for acknowledging service, a writ served on the Defendant personally is treated as having been served on the day it was delivered to him.
6. Where the Defendant is sued in a name different from his own, the form must be completed by him with the addition in paragraph 1 of the words "sued as (the name stated on the Writ of Summons)".

7. Where the Defendant is a FIRM and an attorney is not instructed, the form must be completed by a PARTNER by name, with the addition in paragraph 1 of the description "Partner in the firm of (.....)" after his name.
8. Where the Defendant is sued as an individual TRADING IN A NAME OTHER THAN HIS OWN, the form must be completed by him with the addition in paragraph 1 of the description "trading as (.....)" after his name.
9. Where the Defendant is a LIMITED COMPANY the form must be completed by an Attorney or by someone authorised to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on its behalf.
10. Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian ad litem.
11. A Defendant acting in person may obtain help in completing the form at the Courts Office.

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

FSD CAUSE NO. OF 2022 ()

ENILDA MARIA RAMSAY

PLAINTIFF

-AND-

(1) EFG BANK & TRUST (BAHAMAS) LIMITED
(2) EFG WEALTH MANAGEMENT (CAYMAN) LIMITED

DEFENDANTS

ACKNOWLEDGMENT OF
SERVICE OF WRIT OF SUMMONS

If you intend to instruct an Attorney to act for you, give him this form IMMEDIATELY.

Important. Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED.

Delay may result in judgment being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.

12. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

13. State whether the Defendant intends to contest the proceedings (tick appropriate box)

Yes

No

THIS WRIT OF SUMMONS AND STATEMENT OF CLAIM was FILED by BEDELL CRISTIN of 18 Forum Lane, Suite 5305, 3rd Floor, Camana Bay, P.O. Box 1990, Grand Cayman KY1-1104, Cayman Islands, Attorneys-at-law for and on behalf of the Plaintiff whose address for service is that of its said Attorneys-at-law.

14. If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest the proceedings, state if the Defendant intends to apply for a stay of execution against any judgment entered by the Plaintiff (tick box)

Yes

No

Service of the Writ is acknowledged accordingly,

(Signed).....
Attorney for

Please complete overleaf

THIS WRIT OF SUMMONS AND STATEMENT OF CLAIM was FILED by **BEDELL CRISTIN** of 18 Forum Lane, Suite 5305, 3rd Floor, Camana Bay, P.O. Box 1990, Grand Cayman KY1-1104, Cayman Islands, Attorneys-at-law for and on behalf of the Plaintiff whose address for service is that of its said Attorneys-at-law.

Notes on address for service

Attorney: where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

Defendant in person: where the Defendant is acting in person, he must give his post office box number and the physical address of his residence or, if he does not reside in the Cayman Islands, he must give an address in Grand Cayman where communications for him should be sent. In the case of a limited company, "residence" means its registered or principal office.

Indorsement by Plaintiff's Attorney (or by plaintiff if suing in person) of his name, address and reference, if any, in the box below.

<p>Bedell Cristin 18 Forum Lane Suite 5305 3rd Floor Camana Bay PO Box 1990 Grand Cayman KY1-1104 Cayman Islands REF: JMC/138068.0006</p>

Indorsement by defendant's Attorney (or by defendant if suing in person) of his name, address and reference, if any, in the box below.

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THIS WRIT OF SUMMONS AND STATEMENT OF CLAIM was FILED by **BEDELL CRISTIN** of 18 Forum Lane, Suite 5305, 3rd Floor, Camana Bay, P.O. Box 1990, Grand Cayman KY1-1104, Cayman Islands, Attorneys-at-law for and on behalf of the Plaintiff whose address for service is that of its said Attorneys-at-law.