

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

THE FEDERATION OF SAINT CHRISTOPHER AND NEVIS

NEVIS CIRCUIT

(CIVIL)

A. D. 2026

CLAIM NO. NEVHCV2025/0014

Linked to NEVHCV2025/0015

**IN THE MATTER OF AN APPLICATION
PURSUANT TO SECTION 24 OF THE NEVIS
INTERNATIONAL EXEMPT TRUST
ORDINANCE**

BETWEEN

NATHAN PERRY

Claimant

AND

TRIDENT TRUST COMPANY (NEVIS) LIMITED

Defendant

Appearances

Ms Nadia Chiesa with Ms Iasha Usher for the Claimant.

Mr Richard Wilson KC, Ms Jackie Hunkins-Taylor, and Ms Asha Joseph for the Defendant.

2026: July 20

JUDGMENT

Concerning inheritance of trust fund

- 1 **Morley J:** In this claim, Nathan Perry aged 44 seeks US\$5.2m be payable to him arising out of the 'Frigate Bay' trust fund benefitting his late father James Perry, who died in 2022 aged 78, run by Trident Trust of Charlestown, where the trust documents show the successor beneficiary instead to be the United Church of Guatemala (UCG).
- 2 Nathan argues James¹, in his will and by his pre-decease actions, intended Nathan as his sole heir, being his only child, to be named as the successor beneficiary of the trust, and so to be inherited by him, and in the alternative that Trident has been in negligent breach of a duty of care to make it so, meaning the monies are recoverable from Trident if not from the trust fund.
- 3 Trial occurred on 13 and 14.07.26, with judgement today 20.07.26, there having been live evidence from Nathan led by Counsel Chiesa, other claimant evidence was agreed, so that Counsel Wilson KC for Trident did not call any evidence, and instead made a closing submission that:
 - a. there was insufficient evidence to show James' true intent was to make Nathan a trust beneficiary of Frigate Bay; and
 - b. in any event, on reading the trust and will, Nathan could not be a beneficiary for failing to fulfil documentary requirements;
 - c. while Trident had done all it could to assist James and so could not be in breach of duty if there was one.
- 4 As background:
 - a. The Perry family in Guatemala led by Grandfather Nathan in 1941 established a successful meat business, Productos Perry, famous for hot dogs, inherited by James and his sister Alice with her husband Bob. Alice died in 2011 and Bob in 2020 without children, (Bob being survived today by his brother Edward). Alice was the matriarch, making most business decisions, with Bob too, while James was active in the butchery industry, having trained in Germany, managing more than 700 employees, his being more a 'do-er' than in finances.
 - b. Nathan had been born in Guatemala, as the only child between Alice, Bob, and James, but domestic unhappiness took him with his mother to the US, where growing up he had limited

¹ First names will be used for clarity and to avoid repeating the Perry surname, with no disrespect intended.

contact with his father James, seeing him annually for about a week, always monitored by his mother, while there were also at least two chaperoned visits to Guatemala including when his grandmother died. Nathan went on to Duke university to read physics, changing to political science, and from 2008 aged 26 became close to James, plus Bob and Alice, being embraced by the family as the only next-generation member.

- c. Thereafter, biannually, Nathan would see James in New York for about two weeks each time, and would also visit Guatemala each time for 2-4 weeks.
- d. James developed a condition of congestive heart failure, and by 2022 was aware he would soon die, having had earlier surgeries in April 2021 and summer 2022, and in August 2022 Nathan was involved with James in seeking to put various trusts in order ahead of his demise.
- e. This trial has made much inquiry into what happened from then to James' death on 21.11.22.

5 Various trusts were established for members of the Perry family, including after the meat business was sold to Cargill in 2001.

- a. Nathan told the court Bob in 2014 had discussed with him the complication of putting him on the trusts as a US citizen, who may attract fines of US\$50k if not declaring them.
- b. Further, Nathan reported a number of trusts were managed by a company named 'Continental' based in Turks & Caicos, distilling to 'Lighthouse' valued at about US\$2.2m, 'Beacon' at US\$800k and 'Chriswell' at US\$64k, totalling about US\$3m, but which do not concern this case, and whose funds have already been inherited without litigation by Nathan.
- c. However of relevance here, there were two managed by Trident under Nevis law and with similar trust terms:
 - i. 'Navigator'², set up on 21.07.00, valued as at 31.12.25 at US\$1871426³ (1.9m), being claim NEVHCV2025/0015; and
 - ii. 'Frigate Bay'⁴, set up on 18.08.11, valued as at 31.12.25 at US\$5189848⁵ (5.2m), being claim NEVHCV2025/0014.

² Bundle B2Ap272.

³ B2Bp107.

⁴ B2Ap356.

⁵ B2Bp122.

6 While there will be later obiter reference to Navigator, this case is concerned with Frigate Bay, where the primary documents to consider are the trust deed and James' will.

- a. Concerning James' will, created on 26.12.12, translated from Spanish, as it was created in Guatemala, clause 3⁶ is important:

THREE: That it is his will to declare as the sole and universal heir of all his assets, rights, and shares his son NATHAN ALEXANDER PERRY DOWNING, to the absolute exclusion of any other person.

- b. Concerning Frigate Bay, where James was the settlor, the important clauses in the trust document are 3.3⁷, 6.1⁸, and 6.5⁹.

3.3. The Trustees may with the consent of the Current Beneficiary by Deed, vary amend, add to, delete or make such consequential amendments to this Deed as they may deem necessary or desirable better to conform the provisions hereof to the laws of such other jurisdiction which may pursuant to the provisions of Clause 3.2 hereof be declared to apply to this Trust or to any severable aspect thereof, to any amendment or variation to the applicable law of Trust, to the applicable law of any severable aspect of this Trust or to any modifications of applicable tax laws and for the more effective administration hereof, or to effect the addition of a beneficiary as provided for specifically herein or pursuant to any binding agreement hereinafter provided for, Provided further that they shall have obtained the prior written opinion of competent legal counsel as to the effect of such variation, amendment, addition or deletion.

6.1. Upon the death of the Settlor the Trustees shall distribute any part or all of the income or principal or both to and for the benefit of whomsoever, on such terms (including in trust) and in such proportions and interests as the Settlor may by will admitted to probate appoint making special reference to this special testamentary power of appointment, provided however that such will shall not take effect so as to revoke a prior inter vivos appointment made by him *and provided further that such testamentary appointment may not be made in favour of the creditors of the Settlor, the Settlor's Estate or the creditors of the Estate of the Settlor.*

6.5. Upon the death of the last to die of the Settlor, Alice, and Bob, any of the Trust Fund whether interest or principal or both that is not effectively disposed of in accordance with the foregoing provisions of this Deed shall be distributed to one or more non-Governmental organizations established exclusively for charitable purposes including the advancement of health and education, the relief of poverty or other purpose of a charitable nature as determined under the applicable law of this Deed and which would qualify as charitable purposes ("charities") as the Trustees in their discretion shall select. The question as to whether the organization would qualify as a charitable purpose shall be determined under applicable law and the Trustees shall refer the matter to and rely upon the advice of competent legal counsel.

⁶ B3p88.

⁷ B2Ap357.

⁸ B2Ap359.

⁹ B2Ap360.

- 7 A pivotal feature of the litigation has been the will, making Nathan heir to ‘*all assets, rights and shares*’, makes no ‘*special reference*’ to clause 6.1 of the Frigate Bay trust as required if there is to be settlement of the trust monies on Nathan, failing which the monies under 6.5 are to be distributed to charity.
- 8 In answer, there has been evidence offered by Counsel Chiesa of an expert in Guatemala law, opining ‘all assets’ is domestically a wide-ranging concept, capable of embracing a trust, and there may be no mention of it in a will for fear, as a public document, it may attract kidnappers.
- a. However, this argument is weak when looking for example at Bob’s Guatemala will where he lists various high value assets, including an aircraft, while there would be nothing alarming in just mentioning the trust, as this does not reveal its value, nor in theory mentioning in the will it should be read in conjunction with a perhaps private letter to the family lawyer, where non-public special reference to Frigate Bay could be made.
 - b. Further, it needs to be remembered, money in trust does not technically in law belong to James to distribute as his asset, which is the point of the trust, namely to distance him from the money, so as to mitigate liabilities created for James by it, so that if it is to be passed by the will it makes sense there needs to be special reference to it.
 - c. Finally, the trust is under Nevis law, not Guatemala law, and applying Nevis law and basic legal principles of construction of the trust clauses, it is painfully explicit there needs to be special reference in the will, irrespective of why there may not be under Guatemala law, meaning absent special reference, the trust does not pass to Nathan under the will in Nevis law.
- 9 Next, alternatively, considering 3.3, in theory James was capable of making Nathan a beneficiary of the trust under 6.5 by inviting the trustee, Trident, to amend it by deed, if it so agreed, which is not the same as James passing the trust by special reference in his will. There is evidence to explore which follows. However, Counsel Wilson argued amendment under 3.3 was not pleaded, requiring amended pleadings, and so should not be considered; in response, applying the overarching test to deal with cases justly, and therefore not technically, though the point was well made, this court will not follow it, knowing Counsel Wilson has not been taken by surprise amendment under 3.3 would feature in argument as the case evolved toward trial.

- 10 However, it is a fact there was no amendment deed, and so Nathan has not become a beneficiary. However, the argument moves at this point to whether Trident should have amended, and in not doing so was in breach of a duty.
- 11 Counsel Wilson countered the pleading of the claim at para 44 declared there had been a breach of an 'express duty' in 3.3, where no such duty can have been 'express' as it had not been expressed anywhere in the clause or anywhere else; however, the court considers this a 'lawyer's point', and again in seeking to deal justly, I set it to one side, and proceed to examine whether 3.3 implied a duty of care to act quickly and separately on James' wishes, here breached by not doing so.
- 12 At this point, evidence of various emails and in court from Nathan become central, and on this, the following facts emerge.
- a. On 18.02.22 at 12.46hrs¹⁰, Vernesia Walters of Trident wrote to James, reporting their meeting, where he had expressed a preference for the charity under clause 6.5 to be the UCG, requesting the name and address of the church, contact person, their telephone number, and email address.
 - b. On 03.03.22 at 11.52hrs¹¹, Rosario Silizar, James' right-hand, wrote to Walters in James' name attaching the UCG information, from rosariosil@gmail.com.
 - c. On 04.03.22, James then signed a formal amendment deed¹², with impressive lawyerly seal, making UCG the charitable beneficiary under 6.5, which must mean he knew to amend there would be need of a lawyer and fancy seal to perfect the paperwork.
 - d. In August 2022, having had surgery in the summer, James believed his time was shortening, telling Nathan he was to inherit all, with Nathan pressing for the trusts to be settled, which James told him was covered in his will, but which was as can be seen from the will not correct, he also told Nathan a lawyer may be needed, therefore requiring further action,

¹⁰ B2Ap375.

¹¹ B2Ap375.

¹² B2Ap373.

- known to Nathan, as Nathan then reported in an email to the family lawyer 'Keke' on 05.09.22 at 10.53hrs¹³, in para 1e, saying 'my dad would like to include the trusts in his will'.
- e. On 07.09.22 at 13.41hrs¹⁴, James sent a pithy email to Vernesia Walters at Trident, as was his style, where in the subject box it read 'to include my son on all the trusts' and in the body 'Nathan Alexander Perry Downing', with nothing more.
 - f. On 09.09.22, James told Nathan he had taken care of the trusts¹⁵.
 - g. On 23.09.22 at 11.56hrs¹⁶, Nathan wrote to Walters to introduce himself as James' son, helping his father, with polite reply from Walters at 12.41hrs¹⁷, though there was no discussion of the trusts.
 - h. On 14.10.22 at 15.04hrs¹⁸, in reply to the email of 07.09.22, Walters wrote to James:

Further to your email and our telephone conversation, could you please provide us with the following: 1. A signed letter requesting that your son Nathan Alexander Perry Downing be added as a beneficiary to the Frigate Bay Trust and provide a notarized copy of his passport and a current utility bill as proof of his residential address; 2. Advise in your letter whether you would like for a charity per second 6.5 of the deed (see attached) be named a beneficiary upon the death of your son – usual password.'
 - i. Also on 14.10.22 at 15.12hrs¹⁹, Walters sent a further email to James attaching 'the most recent amendment to section 6.5', being the amendment deed of 04.03.22.
 - j. On 26.10.22 at 16.14hrs²⁰, not having heard from James, Walters sent a follow-up email to what was sent on 14.10.22 at 15.04hrs.
 - k. Also on 26.10.22, now at 16.53hrs²¹, still not having heard from James, Walters sent yet another follow-up email, to what was sent on 14.10.22 at 15.12hrs, which included in chain the one at 15.04hrs, this time copied to right-hand Rosario, so that Rosario who had attended to the UCG amendment would be fully cognisant of the correspondence of 14.10.22.
 - l. During evidence, Nathan told the court in the October he had received a call from Walters chasing James, asking after his father, who he reported was in Los Angeles.

¹³ Disclosed in court during trial.

¹⁴ B2Ap388.

¹⁵ B2Ap12, para 86 of Nathan's witness statement of 05.12.25.

¹⁶ B2Ap187.

¹⁷ B2Ap186.

¹⁸ B2Ap389.

¹⁹ B2Ap391.

²⁰ B2Ap394.

²¹ B2Ap400.

- m. On 04.11.22 at 14.09hrs²², Walters wrote to James, reporting pleasure at speaking with him, seeking permission to bill fees of US\$3500, to which James replied by email at 18.26hrs, saying *'please proceed'*²³.
 - n. On 21.11.22 at 07.30hrs²⁴, James died at home in Guatemala, recorded as from congestive heart failure, tragically when Nathan was due to return from the US to see him the next day 22.11.22.
 - o. In evidence at trial, Nathan reported his father had asked he bring his passport though he could not recall if asked for a utility bill, and as at 22.11.22, Nathan had not known of James' email of 07.09.22, nor the correspondence of 14 and 26.10.22, and 04.11.22.
 - p. After James passed, Nathan found handwritten notes by James²⁵, in some detail assessing trusts issues, and what his bequest wishes could be concerning UCG²⁶, and among which notes were included these words: *'What do I need to give for my son to access to the trusts, can it be with email?'*²⁷
- 13 Before analysing the implications of the factual matrix above, it is helpful to set out what else Nathan inherited and what is the UCG.
- a. In evidence at court, Nathan explained he had received while James was living about US\$8-900k out of the trusts at James' direction. Further, following James passing, he has inherited, still being gathered, probate not yet having settled:
 - i. In the US, a home in Connecticut valued at about US\$500k, 2 parcels of land in California worth maybe US\$45k, and bank accounts with likely US\$1-2m;
 - ii. In Guatemala, 3 properties valued at up to US\$3m;
 - iii. In Turks & Caicos, a parcel of land with a greenhouse worth maybe US\$50k, and the contents of the 3 trusts above managed by Continental valued at about US\$3m; and
 - iv. In Belize, Nathan believes there may be land and bank accounts owing to business by Bob, but value unknown for now.

²² B2Ap406.

²³ Email disclosed during trial.

²⁴ B2Ap75.

²⁵ B3p276-317.

²⁶ B3p308.

²⁷ B3p276.

- b. Concerning the UCG, it is a large well-kept church building in Guatemala City, at 12 calle 7-37 zona 9, Plaza Espana, established in the 1940s, serving the English-speaking community, online at www.unionchurchguatemala.com, built inter alia by Grandfather Nathan, and with which the family has been much in connection over many decades, with Nathan reporting James attending most Sundays, while Nathan had attended 30-40 times. There is in the church a specific room dedicated to the Perry family, with portraits of family members, kept pristine, with a photo of James and separately of Alice on a mantelpiece.

14 At this point in the case discussion, it is a fact on the court documents James did not make special reference to Frigate Bay in his will to pass it to Nathan, nor did he complete a deed of amendment to Nathan's benefit, as he had done on 04.03.22 to UCG's benefit. This means as a matter of simple construction of the documents, Nathan has not inherited Frigate Bay, begging why not.

15 In my judgment, review of the evidence leads to the following findings:

- a. On 18.02.22, meeting with Trident, I find James made a conscious decision to leave Frigate Bay to UCG, notwithstanding he had developed a relationship with Nathan, and had made him 10 years earlier his sole heir in his will on 26.12.12; to this end, his assistant Rosario responded in his name on 03.03.22, and he signed the highly legalistic deed amendment, on 04.03.22, returning it to Trident.
- b. I further find James was aware he did not have long, Nathan too, and together in August 2022 there was discussion about the trusts, where James told Nathan he wanted him to inherit them, saying he thought it was covered in his will, but which both had come to know was in fact wrong, as shown by Nathan writing to Keke on 05.09.22 at para 1e implying James' will would need amending.
- c. However, what James had said to Nathan is not determinative, as I find
 - i. he was aware a lawyer would be needed to settle matters, and told Nathan so, as Nathan said to the court,
 - ii. with James knowing formal paperwork needed to follow, as he had seen dealing with the UCG deed,
 - iii. and it would likely not be enough just to send an email, as he queried in his notes,

- iv. in combination with the notes showing he was giving detailed thought to how to proceed with settling his affairs, meaning he was in active contemplation about how to proceed,
 - v. while in good enough health to travel in October 2022 to Los Angeles, showing his mind active and not incapacitated by illness.
- d. In sending the pithy email of 07.09.22 to Trident, implicitly seeking an amendment concerning both Navigator and Frigate Bay, being the two trusts Trident managed, nevertheless I find it is clear from the Trident email of 14.10.22 he had decided not to amend Navigator, as the email referred after conversation having occurred to amending, going forward, only Frigate Bay.
- e. Further, on 14.10.22, from Trident, first, James received instructions to send a signed letter confirming he wanted Nathan on Frigate bay, with his details as to passport plus utility bill to prove address, as routine Trident requirement as to KYC ('know your customer'), with second, an email attaching the amendment deed of 04.03.22, showing what was the last amendment, implicitly showing what would be needed to amend; concerning this, he did nothing, and nor did Rosario, copied in follow-up on 26.10.22, who had on 03.03.22 been James' response to the UCG amendment, plus with phone call by Trident to Nathan chasing James, such that the implication of this non-response is I find James was prevaricating as to whether he would go through with putting Nathan on the Frigate Bay trust, which would have the practical effect of setting aside that the UCG would inherit Frigate Bay monies on his likely soon death.
- f. I am fortified in this finding by the fact James did correspond with Trident on 04.11.22, on fees, where there was a conversation, and then an exchange of emails, which I find shows that if James had wanted to respond to the emails of 14 and 26.10.22, he would have done, meaning I find he did not want to respond at that time, and had not settled his mind to send the letter and Nathan's details.

16 Looking at the family circumstance in overview, it comes as no surprise to this court James, as the last of his Perry generation, surviving Alice and Bob, wanted to leave a sizeable sum to the UCG, as the Perry family had through two generations been so closely associated with it, helped to build it, pretty much weekly attended worship in it, James was in attendance in his last days,

at one point in November 2022 intimating to an architect friend at church the Sunday before he died he did not expect to live much longer, and there is a room there specifically dedicated to his family with their portraits and pictures. With James imminently passing, and Nathan based in the US, James could see the Perry family association with Guatemala was likely weakening, and it would make sense as the family may be in the process of exiting from the country, as Perry legacy he would leave a substantial sum to the congregation his family loved for the worship of God whom he was soon to meet.

- 17 Moreover, James had ensured substantial inheritance for Nathan in any event, valued so far at about US\$8m, so that he was not choosing UCG over him, but rather was sharing out the family wealth, though loving Nathan, leaving some specifically to benefit Guatemala, recalling Nathan had been mostly disconnected from Guatemala through his upbringing, with his adult life based largely in the US.
- 18 As to argument Trident in breach of duty it did not do enough to process an intent to put Nathan on Frigate Bay, I find this argument fails because:
- a. It has not been established at the time of his death James actually intended Nathan to inherit it;
 - b. In any event, Trident through the efforts of Walters could not realistically have done more to press James, through two emails on 14.10.22, a call, a call to Nathan to chase James, two emails on 26.10.22, including to James' right-hand Rosario, while also having maintained contact with him on 04.11.22, where James responded on fees, but his silence persisted on Nathan, notwithstanding he knew from the UCG amendment that response and lawyer work would be needed; and
 - c. Further, Trident could not act unilaterally and just set up the deed, as it would always require James' signature as acceptance, which James did not give, and I find had not finally decided he would give.
- 19 This case turns on the documents, and the implications of what James did and did not do in 2022, being different from what he told Nathan, knowing he was dying, without exhaustive need of review of precedent.

- 20 The simplicity of the case failing on the documents was pressed by Counsel Wilson, that there had been no inheritance of Frigate Bay under the will or by amendment, nor negligence by Trident on review of the emails, such that he called no evidence, making his closing submissions on 14.07.26 after evidence was received from Nathan. Further, Counsel Chiesa rightly conceded that to have any prospect of arguing against the documents, she would first have to show on balance James at the time of his death was trying to pass the trust to Nathan, which for the reasons above I find she has courageously failed to do.
- 21 As to costs, I am sympathetic to why Nathan brought this action, in grief on the loss of his father, having been in tears in court, it was inevitable attempt to challenge would have to be made, especially as James had told him he would settle the trusts on him, though I find he did not have such clear intent as to Frigate Bay. In this circumstance, I consider each side should bear their own costs, rather than Nathan pay those of Trident, which would be out of his inheritance, and instead I expect Trident's costs to be met as indemnity under trust clause 13.2²⁸ by the Frigate Bay fund, but I will wish to assess what they are²⁹, so they are not excessive and depriving of the UCG, who I shall also wish to monitor receives the monies³⁰.
- 22 Therefore, reviewing the relief sought, the defendant Trident succeeds, and I declare on its counterclaim the Frigate Bay trust fund of about US\$5.2m is held on Trust by Trident for the Union Church of Guatemala, but make no order as to costs³¹.
- 23 Finally, *obiter*, as to Navigator, I remind myself of paras 6 and 15d above, and here make this further observation. There is linked litigation concerning Navigator as NEVHCV2025/0015, where Nathan has also sought these funds to be inherited by him, of US\$1.9m, which otherwise go to Edward, brother of Bob, and on 11.03.26, this court acceded to a preliminary point raised by Counsel Wilson, so that Nathan's claim for Navigator was dismissed, which may yet be the subject of appeal. The point arising is, as an inevitable result of these proceedings, there is now a formal finding, following exploration of the evidence, that James did not intend Nathan to inherit

²⁸ B2Ap362.

²⁹ If not agreed by the UCG.

³⁰ If not received by the UCG.

³¹ With further direction a copy of this judgment be made immediately available on email by Trident to legal representative Carlos Pascual of the UCG, fluent in English, who has been in attendance on zoom from Guatemala for the reading of the judgement.

Navigator either, which therefore goes to Edward, who was James' brother in law as brother of Bob, the implication being James decided he wanted Edward to inherit, that not every cent of Perry money should pass only to Nathan, as evident from Navigator not being processed for amendment going forward from 14.10.22, notwithstanding the earlier email of 07.09.22. This finding may be relevant to any further proceedings if on appeal.

- 24 I wish to thank counsel for their excellent submissions and assistance to the court in reaching decision, which I know will disappoint Nathan, though by not acceding on 11.03.26 earlier to Counsel Wilson effectively striking out the Frigate Bay claim, at least Nathan has been fully heard, and the evidence thoughtfully examined.

The Hon. Mr. Justice Iain Morley KC

High Court Judge

20 July 2026