

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
FEDERATION OF ST. CHRISTOPHER AND NEVIS
NEVIS CIRCUIT
(CIVIL)**

SUIT NO: NEVHCV2013/0130

In the Matter of the Nevis International Exempt Trust Ordinance 1994 (as amended) And in the matter of Part 67 of the Civil Procedure Rules. And in the matter of a claim by Harney's (Nevis) Limited for Relief/Directions And in the matter of the Corona Trust. On the application of Harney's (Nevis) Limited as Trustee of the Corona Trust.

APPEARANCES:

Mr. Alan Boyle, Q.C, Ms. Myrna Walwyn and Ms. Kalisia Isaacs for the Applicant.

Ms. Elizabeth Harper for Summit Trustees (Cayman Limited) proposed Protector.

2014 February 12
2014 February 18

JUDGMENT

[1] **WILLIAMS, J. (Ag):** This is a fixed date claim form dated the 29th November 2013 with Affidavits of Andrew Ross Munro dated the 29th November, 5th December 2013 and an order of this Court dated the 7th February 2014 in this matter.

[2] The Applicants Harneys (Nevis) Limited seek relief from the court in the following manner.

- i. That Summit Trustees (Cayman) Ltd be appointed Protector over the Corona Trust.
- ii. That the Court approves the decision of the Trustee to amend the Provisions of the Trust Deed in the form of the draft amended Trust Deed.
- iii. That Harneys (Nevis) Limited be authorized to raise and payout of the Trust assets the costs of and incidental to the Claim.

BACKGROUND

[3] On the 27th August 2013, the Court appointed Harney (Nevis) Limited as Trustee of the Corona Trust in a Claim issued by Jennifer Connah, one of the beneficiaries of the Trust. Prior to this Harneys (Nevis) Ltd, had been appointed as additional Trustee by order of court dated the 13th February 2013. Harneys (Nevis) Limited predecessor trustee and former Protector were removed from that position by order of the Court dated the 27th August 2013, and their powers were suspended by the order of the Court dated 13th February 2013. No new Protector of the Trust has been appointed since that Court order, and the Court order of the 27th August 2013 is now the subject of an Appeal in the Court of Appeal.

[4] According to the Affidavit of Andrew Ross Munro dated the 29th November 2013. The Trust assets are substantial and in the region of US\$300 million and include

- a) A 100% interest in a number of BVI companies which perform various Investment Treasury and cash management functions on behalf of the Trust.

- b) M/Y Ubiquitous, a motor vessel worth approximately US\$10 million.
- c) Cash in excess of US\$60 million in various Bank accounts in various currencies in Switzerland, Hong Kong, Belgium and Cayman.
- d) An investment in a structured vehicle funding the construction of affordable housing for London Borough Council. The initial investment made through a BVI special purpose vehicle (SPV) wholly owned by the Trust was approximately US\$8 million.
- e) An Investment made through SPV in Red Mountain Resources Inc; a listed mining company purchased for approximately US\$5 million.
- f) A 50% share in the New Zealand Warriors, An Australian Rugby League franchise based in Auckland, purchased in March 2012 for approximately US\$4 million.
- g) A loan made to Sir Owen Glenn secured on Residential property in Sydney. The principal and interest on this facility amounts to approximately US\$10 million.

[5] Learned Queen's counsel Alan Boyle in his submissions requests that the

- i. Court appoint a protector of the Corona Trust under Section 22(iii) of the Nevis International Exempt Trust Ordinance 1994-1995.
- ii. Approve the making of amendments to the Trust Deed under Section 22 and Section 30 of the said Ordinance.

[6] Learned Queen's Counsel Alan Boyle further submits that the Trust Instrument cannot function without a Protector, that the Protector's functions are crucial to the protection of the Trust, that the Trustees are not prepared to exercise their powers without a Protector being appointed and that in

accordance with Section 9(5) of the Ordinance, the Protector owes a fiduciary duty to the Beneficiaries of the Trust or to the purpose for which the Trust is created.

[7] After careful consideration of the submissions made, and having reviewed the Nevis International Exempt Trust Ordinance 1994 as amended to January 2002, the Court is of the view that the said statute is the relevant statute that governs the Law in relation to International Trusts, and that Section 22(iii) vests the Power in the Court to appoint a Protector.

[8] I accept the submissions of the Learned Queen's counsel that by order of the court dated the 5th December 2013, the Learned Judge removed the persons appointed as Protectors to the Trust without making an order of appointment of a new Protector, thus rendering the Trust inoperable.

[9] The Court holds the view that it has inherent power to appoint a Protector where otherwise the office would not be filled¹.

[10] The Court is satisfied that under the inherent jurisdiction of the court as provided under S. 22 of the Nevis International Exempt Trust order as amended, a Protector of the Trust can be appointed and now appoints Summit Trustees (Cayman) Limited as the Protector of the Corona Trust.

[11] In relation to the submission for amendments to the Corona Trust Deed, the Court has reviewed the Trust document in particular:

- a) Provisions relating to an "Event of Duress", "Risk to Independent Action", and the appointment of an Emergency Trustee and Emergency Protector.

¹ Steele vs Paz (1993-95) Marx LR 102
Re Papadimitrian [2004] WTLR 1141 Para 71

- b) Clause 11(a) of the Trust Deed and the Eight schedule (Trustee charging clause).
- c) Clause 13(a) of the Trust Deed and Fifth schedule (Persons required to receive Notice of a retiring Trustee)
- d) Clause 22 of the Trust Deed (Compensation of the Protector)
- e) Clause 32 of the Trust Deed (No contest by Beneficiaries)

[12] While the Court holds the view that those widely drafted clauses in the Trust were designed to encourage caution on the part of any Trustee seeking to alter the Terms of the Trust. The Court has also reviewed the letters of consent from the Beneficiaries of the Corona Trust in relation to the proposed changes to the Trust Deed and they have all expressed their approval to the proposed changes. The court has reviewed in particular the letter from Sir Owen Glenn dated the 28th January 2014, who is the Chairman of the Glenn Family Foundation, which is a beneficiary of the Corona Trust and who is responsible for generating the assets of the said Corona Trust.

[13] The Court is therefore satisfied that the proposals for amendments to the Corona Trust Deed by Andrew Ross Munro- Director of Harneys (Nevis) Limited in his affidavit of the 29th November 2013 and as an Interim or additional Trustee by Order of the Court of the 13th February 2013 are bona fide and necessary for the proper administration of the Trust and are in consonance with the Settlor's intentions, and that a reasonable Trustee properly informed would have reached the decision to propose such amendments.

[14] The Court is of the considered view that none of the proposed changes for which the Court's approval is being sought by this application will have a significant or material bearing on the Beneficiaries.

[15] Additionally, the Court is of the opinion that because the proposals for amendments to the Corona Trust are Administrative in nature and are needed for the functional operation of the Trust, the existence of an Appeal No. 23/2013 filed on the 8th October 2013 by (a). Pizzarro Ltd, (b). David James, (c). Peter Plaxwell Dickson, (d). Galahad Company Ltd. Vs. Jennifer Diane Connah, should not be a bar to the relief sought in the Fixed Date Claim Form. The Court is of the view that the appellants are now to be considered strangers to the Trust in accordance with the Order of the court dated the 27th August 2013.

ORDER OF THE COURT

[16] The Court hereby orders that:

1. Summit Trustees (Cayman) Limited be appointed Protector over the Corona Trust.
2. The decision of the Trustee to amend the provisions of the Trust Deed is approved in the form of the draft amended Trust Deed exhibited at Tab 12, pages 130-179 of the exhibit ARM-1 to the Affidavit of Andrew Ross Munro sworn on 29 November 2013.
3. The Beneficiaries need not be joined as parties or otherwise served with these proceedings.
4. That the Protector, Summit Trustees (Cayman) Limited should be served with these proceedings.
5. That the former Trustee and Protector need not be served with the proceedings.

6. Harneys (Nevis) Limited be authorised to raise and pay out of the trust assets the costs of and incidental to the claim herein.

Lorraine Williams
High Court Judge (ag)