



[2021] JMSC Civ 191

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2015HCV01452

BETWEEN	CHEVAUGHN TAUREAN LAWTON (suing by his Mother and Next Friend)	CLAIMANT
AND	IRENE COLLINS (the Executor of the Estate of Keith Anthony Lawton otherwise called Keith Lawton, deceased)	DEFENDANT

CONSOLIDATED WITH:

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. SU2019CV01845

BETWEEN	IRENE COLLINS	CLAIMANT
AND	CHEVAUGHN TAUREAN LAWTON (sued by his Mother and Next Friend) STACEY ANN BASCOE	1ST DEFENDANT
AND	NADIA LAWTON	2ND DEFENDANT
AND	RICARDO LAWTON	3RD DEFENDANT
AND	VICTORIA LAWTON	4TH DEFENDANT

Glenroy Mellish and Mrs Sonja Anderson-Byfield instructed by Byfield, Mellilsh and Campbell for the claimant in 2015HCV01452 and the defendants in SU2019CV01845

Joseph Jarrett for the defendant in 2015HCV01452 and the claimant in SU2019CV01845

HEARD: 8th November and 20th December, 2021

Civil Procedure - Rule of the Civil Procedure Rules - Removal of executor - Law of Succession - Whether Grant of colligenda should be made - Law of Succession - Whether the chain of representation should be bypassed.

MASTER C THOMAS (AG)

Introduction

[1] There are two applications for my consideration in these two claims, which concern the estate of Keith Lawton, who died on 25th May 2009. In an application filed on 22 December 2020, the 2nd - 4th defendants (hereafter referred to as the Lawtons), seek the following substantive orders:

1. That a Grant *Ad Colligenda* Bona is hereby issued in the Estate of Keith Lawton, who died testate on 25th day of May 2009 late of Lot 1731 Trelawny East, Waterford in the parish of Saint Catherine to **NADIA LAWTON** and **VICTORIA LAWTON**, the beneficiaries of his estate for the purposes of, inter alia:
 - (a) Protecting and/or preserving the assets of said estate;
 - (b) To let, lease, mortgage or otherwise deal with the estate's property situated at 408 Breadnut Close, Bridgeview, Portmore in the parish of Saint Catherine and to

execute deeds, lease, contracts of tenancy, mortgages, charges, surrenders, releases, options, notices and other instruments in respect thereof.

- (c) To take possession of, manage, administer, operate, maintain, improve and control the said property, and to pay any and all taxes that may be imposed on the said property.
 - (d) To accept payment of and give good receipt for rent and any other monies due and owing in the estate of Keith Lawton.
 - (e) To continue to pay maintenance to the deceased's minor child pursuant to the interim court order made by Justice C Brown Beckford on the 9th day of January 2017.
2. That the *Grant Ad Colligenda Bona* shall be effective and in force until such time as a full Grant of Representation is issued in the Estate of the deceased, Keith Anthony Lawton.
3. That the claimant, **IRENE COLLINS**, be removed as the legal representative of the estate Keith Anthony Lawton and that any personal representative appointed in her estate be disallowed from taking any Grant of Representation in the Estate of Keith Anthony Lawton or from having any dealings in respect thereof, whether by virtue of a chain of representation or otherwise;

4. That the said **NADIA LAWTON** and **VICTORIA LAWTON** be allowed to take the full Grant of Administration with the Will Annexed de bonis in the said estate of Keith Anthony Lawton.
5. That the said original Grant of Probate obtained by Irene Collins in the estate of Keith Anthony Lawton be returned to the Probate registry of this Honourable Court for cancellation and/or revocation.

[2] The second application was filed by Beverley James and Michael Collins, the children of Irene Collins, on 17 June 2021 seeking the following substantive orders:

1. That Beverley James and Michael Collins be appointed the personal representatives of the late Mrs Irene Collins for the purpose of the consolidated claims, pending the granting of probate of the Will of Irene Collins, deceased.
2. That the application by the 2nd, 3rd and 4th Defendants to take over the administration of the Estate of Keith Anthony Lawton be refused.
3. That the administration of the Estate of Keith Anthony Lawton be granted to the said Beverley James and Michael Collins pending the Grant of Probate of the Will of the late Irene Collins.

Background

[3] The deceased Keith Lawton died leaving a will in which Irene Collins, his mother, was named as his executor and trustee. By this will, which was made on 28 November 1997, the deceased devised premises known as 408 Breadnut Close, Bridgeview, Portmore in the parish of St Catherine (“the Breadnut Close property”) to the 4th defendant, who was his wife at the time, and the 2nd and 3rd defendants, who were his children. The will further stated that if the 2nd and 3rd defendants had

not reached the age of majority at the time of his death, Irene Collins should hold their shares upon trust until they reached that age. The Breadnut Close property was the only property that was mentioned specifically in the will; the residuary clause stated that the “rest, residue and remainder of the estate, both real and personal of whatsoever kind and wheresoever situated was devised and bequeathed to his trustee. Chevaughn Lawton, the minor child of Keith Lawton, was born on 3 July 2004 subsequent to the making of the will.

[4] Irene Collins had control and possession of the assets of the estate until in or around November 2013 when the death of Keith Lawton was reported to the Administrator General’s Department which then assumed responsibility for the administration of the estate.¹ The Administrator General collected rental income from a two storey dwelling house, which was located on the property and applied for a grant of Letters of Administration in the estate on 31 October 2013. Upon discovering the existence of the will made by Keith Lawton, the Administrator General discontinued the application and returned control of the estate to Irene Collins in February 2015.²

[5] On 5th May 2015, the first of the two fixed date claims herein was commenced by Chevaughn Lawton (suing by his mother, Stacy Ann Bascoe) against Irene Collins, as executor of the estate of the deceased. The orders sought were for provisions to be made for Chevaughn Lawton from the estate. Specifically, it sought orders for:

- i. The establishment of a trust fund of at least one quarter of the net estate of the deceased, for the benefit of the minor claimant

¹ See paragraph 7 of Affidavit of Stacy Ann Bascoe in Support of Fixed Date Claim Form

² See paragraph 3p of Affidavit of Candice Hinds in Response to Fixed Date Claim Form

- ii. Alternatively, the payment by the defendant to Stacy Ann Bascoe such lump sum payment for the maintenance of the child
- iii. Alternatively, the transfer to Stacy Ann Bascoe, in trust for the claimant, such property comprised in the estate for the maintenance of the child or that the estate be liquidated and a lump sum or such proportionate sum be paid to Stacy Ann Bascoe;
- iv. The appointment of Stacy Ann Bascoe as trustee of any trust fund established;
- v. The furnishing to the court and to the claimant/Stacy Ann Bascoe of a statement of account of the administration of the estate of the deceased from the time of his death to the bringing of the claim, including the rental income collected from the real property and any expenditure made on behalf of the estate.

[6] An interim order was made on 9th January 2017 for Irene Collins to make payment of \$7,000.00 per month to Stacy Ann Bascoe. until further order of the court. Subsequently, on 13th December 2008, it was ordered that Irene Collins should “make full account of the income from the assets of the estate from the date of death, excluding the period for which the Administrator General for Jamaica was in charge of the estate”. Pursuant to the latter order, a statement of account was filed on 23rd January 2019 but was disapproved by the court as being insufficient, which resulted in a “Statement of Account of Irene Collins/ Addendum to Affidavit filed 23/1/2019” being filed. The addendum was also disapproved by the court and a third attempt at filing a statement of account was made on 6 January 2020 by way of a “Supplemental Statement of Account of Irene Collins/Addendum to Affidavit filed 23/1/2019”. The Lawtons filed a joint affidavit indicating that they had

no objection to Chevaughn Lawton “being allowed to equally share with [them] in the residuary estate after a liquidation of all the estate’s assets to include” the Breadnut Close property.³

[7] Irene Collins obtained a Grant of Probate in the estate of Keith Lawton on 18th April 2018 and on 23rd January 2019, she filed an application seeking orders concerning a share or interest in the estate and for reimbursement of monies spent in relation to funeral expenses and administration of the estate. As a result of an order of the court for the filing of a separate claim “to deal with Ms Irene Collins’ claim to an interest in the estate”, the second fixed date claim herein supported by an affidavit of Irene Collins was filed on 1st May 2019. The claim, which reproduced much of the reliefs which were being sought in the application, seeks the following orders:

- i. A declaration that Irene Collins be granted 50% interest in the Breadnut Close property. Alternatively, that she be repaid the sum of \$1,595,159.55 for discharging the mortgage on the aforementioned property with interest at the rate of 12% per annum until payment.
- ii. That Irene Collins be paid the sum of \$1,170,988.73 with interest at the rate of 12% per annum from the sale of the Breadnut Close property.
- iii. That Irene Collins be compensated for all relevant expenses to do with the management of the estate of Keith Anthony Lawton and the sale of the Breadnut Close property.
- iv. That the gift to Victoria Lawton made in the Will of Keith Anthony Lawton is cancelled in light of her divorce from the

³ See paragraph 3 of Joint Affidavit of Nadia Lawton, Ricardo Lawton and Victoria Lawton

deceased on the 14th May 1999 and her subsequent marriage to Jason Bradshaw on 5th February 2001.

- v. The consolidation of the claim with the claim filed by Chevaughn Lawton.

[8] Irene Collins died and on 24th November 2020, an order was made extending the time for the defendants to file affidavits in response to the affidavit of Irene Collins, for instructions to be taken with regard to the appointment of a representative in light of Irene Collins' death and for the filing of an affidavit speaking to her death, whether she died leaving a will and exhibiting her death certificate. On 21st May 2021, a Notice of Filing of Death Certificate of Irene Collins was filed and on 21st June 2021 a Notice of Filing Copy of the Last Will and Testament of Irene Collins, Deceased was filed.

The affidavits in support of the applications

[9] I will not attempt to set out the evidence relied on in support of the application in its entirety as the evidence is quite comprehensive. In addition, it seems that Beverley James and Michael Collins' affidavit comprise evidence in support of their application as well as a response to the affidavit of the Lawtons that was filed in 2019 in response to the affidavit of Irene Collins. However, I will endeavour to summarise those areas of the evidence that are necessary for an appreciation of the applications, the submissions and my reasoning. I should add that this should by no means be interpreted to mean that I have not considered all the evidence contained in the affidavits in support of the application as I have done so. Also, in the context of the claims and the orders being sought, it may be necessary to refer to other affidavits or documents filed in the claim.

[10] In their joint affidavit, Nadia Lawton, Ricardo Lawton and Victoria Lawton depone that they had learnt that in or around August 2020, Irene Collins had died and this fact was confirmed by her attorney, Mr Josph Jarrett and her daughter Beverley James. They had subsequently made enquiries as to who is collecting the rental

income from the Breadnut Close property and had sought to intervene but were advised that an individual who is unconnected to the estate had started to collect rent on the instruction of Beverley James. They had not been advised as to the authority of this person or Beverley James to collect the rent. Also, since Irene Collins' death, no payments of the monthly sum had been made to Stacy Ann Bascoe on behalf of Chevaughn Lawton. They also deponed that they were unaware as to whether Irene Collins had died leaving a Will or if steps had been taken to obtain a Grant of Probate in her estate. They were concerned, they deponed that the estate is at great risk of further intermeddling as there were individuals who are acting in the capacity of the deceased executor without a Grant of Probate or any chain of representation to clothe them with any authority to do so.

[11] In their joint affidavit, Beverley James and Michael Collins depone that their mother Irene Collins died on 30th July 2020 and her death certificate had been filed in this court on 21st May 2021 and served on the defendants' attorney-at-law. They deponed that towards the end of 2020, they had discovered that their mother had died leaving a Will. The Will was in the safe keeping of a family member who is waiting for one or both of them to return to Jamaica to surrender it. As a result of COVID restrictions, they had not been able to return to Jamaica since the burial of their mother in 2020.

[12] They further deponed that there were three houses in their mother's name including the Breadnut Close property. Their mother had not only obtained the Grant of Probate in the estate of Keith Lawton, she had also completed the transmission of the property in her name and was taking steps to have the property sold so that the proceeds could be distributed to the beneficiaries. It was their intention, they deponed, to see to it that the beneficiaries of Keith Lawton get their rightful share of the proceeds from the sale of the property. They requested that the court make a ruling on their mother's application to be repaid the monies she spent in saving the Breadnut Close Property from foreclosure in 1999, for the

money she spent on the funeral of the deceased Keith Lawton and for her commission as the sole executor of his estate.

[13] They further deponed that their mother worked a higgler and when she attained the age of 61 in 2001 the deceased Keith Lawton insisted that she should retire and that her retirement was after she had saved the Breadnut Close property from foreclosure and ultimate sale using her own savings. They were aware of the agreement between their mother and the deceased Keith Lawton for their mother to take the rental from the bottom apartment for herself in recognition of her interest in the Property. After the death of Keith Lawton in 2009, their mother became solely responsible for the Breadnut Close property until the Administrator General's Department took over in 2013 before returning the property to their mother in 2015 on the discovery of the Will of Keith Lawton. They further deponed that by the time the property was returned to their mother, it was returned in a state of disrepair and required expenditure on the electrical and plumbing systems. The top floor tenant had moved out leaving just the income from the bottom floor apartment and this has remained the case up to the time of the making of their affidavit. The top floor was not rented because it was in need of repairs.

[14] Beverley James and Michael Collins also deponed that they are opposed to the transfer of the property to the Lawtons because of their mother's interest in the property. The property should be sold to satisfy the interest of the parties. They deponed that the interest of Chevaughn Lawton, who was not a party to the request for the transfer of the property instead of a sale, was in conflict with the interest of the Lawtons. Also, there was no indication of the Lawtons' capacity to pay off their mother's interest. They agreed that Chevaughn Lawton should be paid a lump sum but they required supporting documents such as receipts and the proof of the earnings of Stacy Ann Bascoe in support of her expenses so that they could "make an informed decision/recommendation to the court" after taking into account expenses of the estate including funeral expenses, legal fees and commissions as well as compensation to their mother's estate for saving the property from foreclosure.

[15] They also asked the court to accept their mother's efforts to answer the request for her to account contained in her affidavits filed on 23rd January 2019, 25th November 2019 and 6th January 2020 as this was the best their mother could do in the circumstances. They also deponed that they did not accept the interest of Victoria Lawton as she had divorced the deceased Keith Lawton in 1999. They also were opposed to her being given any grant pending the outcome of the application and were also opposed to Nadia Lawton being appointed to administer the estate of Keith Lawton as they were concerned, among other things, that she would be subject to the influence of her mother, Victoria Lawton. Neither they nor their representatives were collecting the rent from the tenant of the Breadnut Close Property since their mother's death. The tenant had informed Beverley James' attorney-at-law that she would not be paying over the rent until she received proof that a Will had been made appointing an executor. They also deponed that when Victoria Lawton had migrated overseas from the Breadnut Close property which she had been living at, she had allowed the mortgage fall into arrears and that it was their mother who had rescued the property.

Submissions

Submissions on behalf of the Lawtons

[16] Mr Mellish submitted that order No. 1 of the application of Beverley James and Michael Collins would have to be granted in order for the applications to proceed.

[17] In respect of the order for the *Grant Ad Colligenda Bona*, it was submitted that there is no one in charge of the estate of Keith Lawton at this time. The executors in the estate of Irene Collins can only rely on the chain of representation to take charge of the estate of Keith Lawton once her Will is proved, that is, once they obtain a Grant of Probate in her estate. As such, they have no authority over the estate and had no greater rights than the beneficiaries at this juncture. They cannot obtain a limited grant as administrators pendent lite since nothing in these proceedings would prevent them from getting an unlimited grant. Rule 68.31 of the

Civil Procedure Rules (“CPR”) was relied on for this latter submission. Mr Mellish also submitted that a limited grant is needed to safeguard the only asset of the estate as the property was at risk of depreciation and abuse.

- [18]** It was also submitted that an emergency grant is needed as the circumstances were urgent as the property is tenanted and no one is collecting rent since the tenant had rightfully refused to pay over the rental to any person. Also, the interim order for the payment of the monthly sum to Chevaughn Lawton was not being fulfilled and therefore the object of the order was defeated. It was also submitted that the application for a “full grant” could take a substantial time.
- [19]** It was submitted that the beneficiaries under the will of Keith Lawton should receive the grant. Beneficiaries of an estate, it was argued, have an inherent interest in safeguarding the asset and maximizing its worth in keeping with the interest they maintain in the inheritance thereof. Given their interest in the estate, they are fit and proper persons as they have no interest that would be adverse to the estate. On the other hand, the first and highest duty of the executors of the estate of Irene Collins is to administer her estate in the interest of her beneficiaries.
- [20]** Mr Mellish submitted that Irene Collins had interests adverse to the estate demonstrated by: her claim to have made payments on behalf of the estate without providing proof of the source of funds and; her arrangement for the sale of the property without a proper accounting being provided, which was contrary to the wishes of the beneficiaries and without her demonstrating the need for such action to be taken. The property, it was argued, was an income earning property and the income being produced was more than capable of meeting the estate’s expenses so there should be no need for a sale to satisfy the creditors. The will, it was argued, gave a clear grant of the Breadnut Close property to the Lawtons and did not prevent absolute ownership by them. Any sale of the property would be repugnant to the grant of an absolute devise to the beneficiaries.

- [21] Irene Collins, it was submitted, had a conflict of interest in that: she had shown a clear intention to assert an entitlement and claim against the estate's only property, which would result in the terms of the deceased's will not being achieved. In bringing the claim, she had put herself in a position that would contradict her duty of preservation of the estate for the benefit of the beneficiaries. She was technically acting as claimant and defendant as she was suing the estate while being called upon to defend it. This claim was being continued by her executors and any person representing Irene Collins would be affected by the same disabilities as Irene Collins. It was submitted that the intervention of the court is needed to prevent such a conflict between her personal interest and her duty as trustee.
- [22] On the issue of the gift to Victoria Lawton failing as a result of her divorce from the deceased Keith Lawton, Mr Mellish submitted that there are no statutory provisions in our Wills Act similar to section 18A of the English Wills Act which provides for the disqualification of a gift to a beneficiary on divorce. Divorce does not amount to an automatic failure of the gift unless the testator himself remarries.
- [23] Mr Mellish submitted that the elementary principles on which trusts rest are fairness and transparency. All beneficiaries have the right to know what the trust property is and how it is being administered and that the court retains a supervisory jurisdiction over all trusts and can bring the behaviour of trustees to account at the suit of beneficiaries. The court was being asked to intervene given Irene Collins' breaches of trust to prevent the continuation thereof by opening a doorway for her executors to take charge of the estate of Keith Lawton. The court, he submitted, is also being asked to remove them as personal representatives of the estate or to pass them over as executors under the chain of representation given their personal bias and self-interest.

Submissions on behalf of Irene Collins

- [24] Mr Jarrett submitted that the intention of Beverley James and Michael Collins is to ensure that the estate of Keith Lawton is administered. The administration was at

an advanced stage as Irene Collins had been registered on transmission on the duplicate certificate of title for the Breadnut Close property. He referred to the will of Keith Anthony Lawton and submitted that the will did not state that the property should be transferred to the beneficiaries; it gave the trustee power to sell and distribute the shares. He submitted that the claim brought on behalf of Chevaughn Lawton had sought that Chevaughn should get his share from the proceeds of the property, but he was now changing his position.

[25] It was necessary for the property to be sold, Mr Jarrett submitted as the interests of Chevaughn could not be satisfied without this being done as a lump sum payment was being sought in the claim. In this regard, he submitted that the interests of Chevaughn in the lump sum from the property was in conflict with the interests of other beneficiaries. Also, the estate had racked up a lot of legal fees because of the numerous applications which had been filed which required the response of an attorney, who had been retained. The estate was heavily indebted and so it would be virtually impossible for the transfer of the Breadnut Close Property to the Lawtons without finding monies to deal with the outstanding expenses. All of this Irene Collins was trying to resolve with the limited income from the rental of the premises, he argued.

[26] He submitted further that there was evidence that demonstrated the capacity of Victoria Lawton to endanger the Breadnut Close property and this would be contrary to the intention of the will and the interests of all the beneficiaries. He also submitted that the gift to Victoria Lawton should fail upon her divorce from the deceased Keith Lawton. For this last submission, Mr Jarrett relied on section 13 of the Wills Act and the case of **Re Sinclair (deceased)** [1985] 1 All ER 1066.

The issues

[27] It is my view that the following issues arise for consideration:

- (i) Whether Beverley James and Michael Collins should be appointed as representatives for the estate of the deceased Irene Collins for the purposes of these claims;
- (ii) Whether Irene Collins should be removed as the personal representative of the estate of Keith Lawton;
- (iii) Whether Beverley James and Michael Collins should be granted the administration of the estate of Keith Lawton pending probate of the will of Irene Collins;
- (iv) Whether the gift to Victoria Lawton failed upon her divorce of the deceased Anthony Lawton;
- (v) Whether Victoria Lawton and Nadia Lawton should be appointed as personal representatives of the estate of Keith Lawton under a grant of administration *be bonis non*;
- (vi) Whether a grant *colligenda bona* should be made to Victoria Lawton and Nadia Lawton until the grant of administration is made.

Issue (i) - Whether Beverley James and Michael Collins should be appointed as representatives for the estate of the deceased Irene Collins for the purposes of these claims:

[28] In the light of the well-established principles that the natural personality of a person comes to end upon his death, that his legal estate has no personality and there must be in existence some person natural or artificial and recognised by law against whom an action can be brought (see *Piggott v Aulton* [2003] EWCA Civ 24); and given the provisions of rule 21.7 of the Civil Procedure Rules, I agree with Mr Mellish that this issue must be determined first. Given that there was no

opposition to the order and having regard to the evidence of Beverley James and Michael Collins, I find that they can fairly and competently conduct the proceedings and have no interest adverse to the estate of Irene Collins. Accordingly, they are appointed representatives of the estate of Irene Collins for the purpose of these claims.

Issue (ii) Whether Irene Collins should be removed as the personal representative of the estate of Keith Lawton;

[29] Rule 68.61 of the CPR is relevant to the determination of this issue. It provides for applications to be made for the substitution and removal of a personal representative. Rule 68.61(2) states that where the application is made in existing proceedings, it must be made by an application under Part 11; and in any other case, by fixed date claim form. It provides for the following information to be included in an affidavit in support so far as is known to the applicant or claimant: brief details of the property comprised in the estate, with an approximate estimate of the capital value and or any income derived from it; brief details of any liabilities in the estate; the names and addresses of the persons who are in possession of any documents relating to the estate; the names of the beneficiaries and their respective interests in the estate; and the name, address and occupation of any proposed substituted personal representative. The affidavit in support of the application did not comply with the requirements of rule 68.61(2); however, I am of the view that this is a procedural irregularity which, pursuant to **the provisions of rule 26.9 of the CPR**, should be waived as this information is before the court by way of the various affidavits that have been filed in the claims.

[30] Rule 68.61 is entirely procedural and therefore is not the source of the court's jurisdiction to make such an order. In respect of the court's power to make such an order, Lewison J in ***Thomas and Agnes Carvel Foundation v Carvel and another*** [2007] EWHC 1314 (Ch) had this to say:

[18] *The court has no inherent jurisdiction to remove a personal representative: **Re Ratcliff** [1898] 2 Ch 352*

*at 356. The traditional remedy was an administration action. But an administration action was (in the words of the Law Reform Committee's 23rd report (The Powers and Duties of Trustees (1982, Cmnd 8733))) 'an extremely clumsy, costly and time consuming procedure and in practice it is only in exceptional cases that it can be recommended'. However, once the estate has been administered, the personal representative becomes a trustee: and at that stage the court's inherent jurisdiction to control trusts arises: **Re Smith, Henderson-Roe v Hitchens** (1889) 42 Ch D 302. A power to remove a personal representative was also introduced by the 1896 Act. But the practice and procedure under the 1896 Act was also considered to be cumbersome and over-formal, with the result that a new power to remove a personal representative was introduced by s50 of the 1985 Act.*

There appears to be no like statutory provisions in our jurisdiction that gives the court the power to remove a personal representative and I have not unearthed any case which that suggests that the position at common law is otherwise than as stated by Lewison J above. Accordingly, I regard his statements as to the applicability of the inherent jurisdiction of the court upon the administration of the estate as being applicable in our jurisdiction.

- [31] It is noteworthy that in this case, the application is being made after the death of the executor and so a necessary issue that arises is whether such an order can be made after the executor's death as it appears that usually this order is sought during the lifetime of the deceased. Mr Jarrett had submitted that the application is unfair to the deceased, it having been made at the time when she is unable to provide an answer. However, it seems to me that the matters being relied on as the basis for the application are facts that are already before the court by way of the claims and as a consequence, matters to which Irene Collins' position or response would be apparent from her evidence filed in the claims.

[32] Also, Irene Collins died testate and her executor Beverley Collins having made clear her intention to obtain a grant of probate in the estate, the chain of representation would apply as soon as the grant is obtained, with the consequence that the executors of Irene Collins' estate would be required by law to administer the estate of Keith Lawton. However, this is the precise result that the Lawtons are seeking to avert by way of their application. It seems to me that the Lawtons could only obtain the result they are seeking if the court removes Irene Collins as the personal representative of the estate of Keith Lawton. I have not been able to unearth any case which forbids such a course being embarked upon. I therefore am of the view that the court is empowered to determine whether Irene Collins should be removed as the personal representative of the estate of Keith Lawton, deceased, notwithstanding the fact that she has died.

[33] There can be no dispute that the deceased Irene Collins had started to administer the estate of Keith Lawton. In this regard, Mr Jarrett submitted that it had almost been completed. This, in my view, is sufficient to ground the court's jurisdiction to grant the order. Accordingly, I will now consider whether having regard to the circumstances, the order should be granted.

[34] Rule 68.61 of the CPR does not include any factors to guide the court in the exercise of its discretion whether to grant the order. However, in light of the principle that upon the administration of the estate, the personal representative becomes a trustee, it follows that the grounds upon which a trustee may be removed are equally applicable. In **Letterstedt v Broers and another** [1881-85] All ER Rep 882, Lord Blackburn, delivering the judgment of their Lordships' Board, which required the board to consider the removal of old trustees and substitute new ones, stated:

It is not disputed that there is a jurisdiction 'in cases requiring such a remedy', as is said in STORY'S EQUITY JURISPRUDENCE s1287, but there is very little to be found to guide us in saying what are the cases requiring

such a remedy - so little that their Lordships are compelled to have recourse to general principles.

STORY says, s1289:

But in cases of positive misconduct, courts of equity have no difficulty in interposing to remove trustees who have abused their trust; it is not indeed every mistake or neglect of duty; or inaccuracy of conduct of trustees, which will induce courts of equity to adopt such a course. But the acts or omissions must be such as to endanger the trust property or to show a want of honesty, or want of proper capacity to execute the duties, or a want of reasonable fidelity.

Later, Lord Blackburn stated:

In exercising so delicate a jurisdiction as that of removing trustees, their Lordships do not venture to lay down any general rule beyond the very broad principle above enunciated, that their main guide must be the welfare of the beneficiaries.

[35] It may be said that the main basis of the order sought for the removal of Irene Collins is to be found at ground (f) of the application filed by the Lawtons. It states as follows:

- f. That the executrix, Irene Collins is the claimant herein and is seeking orders adverse to the interest of the estate and for her personal benefit. As such, it presents a conflict of interest and represent grounds for her removal as personal representative of the estate. Consequent on her death, it is presumed that her estate will pursue the said claim and as such, if a chain of representation allows for her personal representative to take charge of the estate of Keith Anthony

Lawton, the court is being asked to disallow her estate to similarly act for the estate of Keith Anthony Lawton.

- [36] Mr Mellish also relied on the case of **Bray v Ford** (1896) AC 44 to support his contention that conflict of interest represents a ground for disqualification of a trustee. In that case, Lord Halsbury LC, delivering the judgment of the House of Lords stated:

It is an inflexible rule of a Court of Equity that a person in a fiduciary position such as the respondent's is not, unless otherwise expressly provided, entitled to make a profit; he is not allowed to put himself in a position where his interest and duty will conflict.

- [37] **Letterstedt v Broers and another** establishes that the court may remove a personal representative where his conduct does not accord with the welfare of the beneficiaries in that it puts the property comprised in the deceased's estate at risk or in danger. One such situation in which this will usually occur is where the personal representative has a conflict of interest. The reason for this is readily apparent in that if the personal representative takes a course of conduct which is in her personal interest but is against the estate, there will no doubt be a conflict of interest as in those circumstances, he/she will have competing positions that will impair his/her judgment and ability to adequately protect the interests of the estate.

- [38] I am of the view that I need go no further than the claim that was commenced by Irene Collins against the estate to be satisfied that there existed a conflict of interest and ostensibly grounds for disqualification. In the claim, Irene Collins is seeking a 50% interest in the Breadnut Close property, which appears to be the main, if not the only property comprising the estate. (In her affidavit in support of Chevaughn Lawton's claim, his mother had indicated that the estate also included a Lexus motor car. However, there is no other evidence, documentary or otherwise, in proof of that assertion.) Irene Collins, in effect, brought a claim

against herself. In those circumstances, it is beyond argument that she would be conflicted in that in bringing her claim, she would be constrained to act in a way that protects her claim to the 50% interest whereas in defending the claim on behalf of the estate, she would be required to resist her claim for the 50% share as the latter would seriously deplete the assets or property of the estate. In these circumstances, it seems to me to be an irresistible conclusion that Irene Collins could not remain as personal representative had she been alive and must therefore be removed or substituted as personal representative. Mr Jarrett has submitted that she did not intend to take any of the property and would be bound by the decision of the court. However, that is not sufficient to allay any fears or concerns of the estate being endangered because, as I have attempted to show, in the very act of defending the claim, there lies the possibility that she would be inclined to act in a manner not in keeping with the welfare of the estate.

[39] My conclusion accords with the decision of Lewison J in **Thomas and Agnes Carvel Foundation**. In respect of legal proceedings brought by the executor against the estate in that case, Lewison stated:

The foundation's application to remove Pamela is mainly based on her conduct of the proceedings thus far. It is a striking fact that after the Surrogate had ruled that the foundation was entitled to receive Agnes' residuary estate (a decision that Pamela knew about) she issued proceedings in the High Court in England in which she was both claimant and defendant, seeking payment of monies from the estate without notifying the foundation As I have said, the claim was based on three categories of expense: (i) sums which Pamela said she had incurred on behalf of Agnes during her lifetime; (ii) debts which Agnes had contracted but had not paid; and (iii) sums which Pamela had incurred as Agnes' personal representative and in respect of which she claimed to be entitled to indemnity from the estate.

The first of these categories was a claim as creditor of the estate against the estate. In other words, this was Pamela's personal claim against the estate. The second category is more obscure, but seems also to have been Pamela's personal claim against the estate. The third was a claim in her representative capacity (in effect against the beneficiaries). A pause for thought ought to have led Pamela to realise that there was an obvious conflict of interest between her personal claims and her duties as personal representative. ...

[40] If further basis were needed for the removal of Irene Collins as personal representative of the estate of Keith Lawton, this, I think, is patent from her evidence that between the death of her son Keith Lawton and the intervention of the Administrator General's Department, the income from the Breadnut Close property was being used to support her grandchildren and the medical bills of another son who had died from kidney failure.⁴ It is clear from this evidence that the income from the estate was being used to support persons who, although they were family members, were not beneficiaries of the estate. It cannot seriously be argued that this was in the interest of the beneficiaries.

[41] In light of the forgoing, I find that Irene Collins would must be removed as personal representative.

Whether Beverley James and Michael Collins should be granted the administration of the estate of Keith Lawton pending probate of the will of Irene Collins.

[42] It seems to me that in light of the fact that neither Beverley James nor Michael Collins is a beneficiary under the Will of Keith Anthony Lawton, their application for administration of the estate of Keith Lawton pending probate of the will of Irene Collins must be based on the chain of representation which would apply when they

⁴ See paragraph 20 of the affidavit in support of fixed date claim form filed on 1 May 2019

have obtained a grant of probate in the estate of Irene Collins and the need to obtain an interim grant until the grant of probate is obtained.

[43] I am of the view that the application made by Michael Collins must fail as the document which has been filed in this court as being a copy of the Will of Irene Collins reveals that Mr Collins' application is groundless in that of the two executors named in the Will, Michael Collins name does not appear as either of them. While Michael Collins is a beneficiary, the two executors are Beverley Denise James and Winsome Maria Williams. In these circumstances, the chain of representation would clearly not be applicable to Mr Collins.

[44] In respect of Beverley James, the conclusion I have arrived at in relation to the previous issue as to the removal of Irene Collins as personal representative renders it unnecessary for me to consider whether Beverley Collins should be granted an interim grant as the chain of representation would not apply.

Whether the gift to Victoria Lawton failed upon her divorce from the deceased Anthony Lawton

[45] The deceased Keith Lawton made his Will in 1997. Beverley James and Michael Collins in their affidavit depone that Victoria Lawton and the deceased Keith Lawton divorced in 1999 and she has married. There is no evidence from Victoria Lawton disputing this. Thus, at the time of Keith Lawton's death in 2004, he and Victoria Lawton were no longer married.

[46] Mr Jarrett has submitted that by virtue of section 13 of the Wills Act, the gift to Victoria Lawton failed. Section 13 of the Wills Act reads:

Every will made by a man or woman shall be revoked by his or her marriage except a will made in exercise of a power of appointment when the real or personal estate thereby appointed would not in default of such appointment pass to his or her heir.

I am of the view that a reading of the section according to the plain and ordinary meaning of the words used does not produce the result contended for by Mr Jarrett. It is plain that what is significant is the marriage of the testator. The section is not strictly speaking relevant to a divorce; unless, as was submitted by Mr Mellish, it later leads to the remarriage of the testator. The section has nothing to do with marriage or remarriage of a beneficiary.

[47] Section 13 of our Act may be compared with the UK legislation that was the subject of **Re Sinclair** which was relied on by Mr Jarrett. Section 18A of that Act, in so far as relevant, provides:

“(1) Where, after a testator has made a will, a decree of a court dissolves or annuls his marriage or declares it void –

(a) the will shall take effect as if any appointment of the former spouse as an executor or as the executor and trustee of the will were omitted; and

(b) any devise or bequest to the former spouse shall lapse, except in so far as a contrary intention appears by the will...

(2) ...

(3) ...

Although the issue before the court in **Re Sinclair** is not for present purposes relevant, it is notable that the Court of Appeal held in that case that on a true construction of section 18A of the Act, if a devise or bequest to a testator's spouse 'lapsed' by reason of the parties' divorce it failed without qualification and irrespective of the consequences.

[48] Given the clear wording of section 13 of our Wills Act, I find that the gift to Victoria Lawton under the Will of Keith Lawton, her deceased former husband, did not fail by reason of her remarriage and she is therefore a beneficiary under the will.

Whether Victoria Lawton and Nadia Lawton should be appointed as personal representatives of the estate of Keith Lawton under a grant of *administration de bonis non*

[49] Having determined that Victoria Lawton is still a beneficiary under Keith Lawton's will, it is now necessary to decide whether she and Nadia Lawton, who is also a beneficiary, should be appointed *administrators de bonis non* to complete the administration of the estate of Keith Lawton.

[50] Rule 68.48(1) of the CPR provides for an application for a "grant de bonis non administratis" to be made where "a grant of administration has been issued by the court but the grantee, through death or other reason, has failed to complete the winding of the estate". This is usually made to the registrar. These provisions do not seem to contemplate this type of grant being made where a grant of probate was obtained. It seems to me that the rule presupposes that where a grant of probate has been obtained and the executor dies before the administration of the estate is complete, the chain of representation would apply. It is significant that rule 68.48(2)(d) requires that the oath to lead the grant where the application is made to the registrar, must include a statement that there is no personal representative either in his own right or by the chain of representation. In any event, since I have determined that Irene Collins ought to be removed, then the chain of representation would not apply.

[51] The learned authors of Halsbury's Laws of England explain the nature of the grant in this way:

Where a sole or last surviving executor or administrator to whom a grant has been made dies without having fully administered the deceased's estate and the chain of representation does not apply it

*is accordingly necessary to appoint, under a second grant, an administrator to administer the property of the original deceased left unadministered. This second grant is a grant of administration de bonis non administratis (that is, 'for unadministered goods')*³.

[52] Therefore, the grant may be obtained where a grant of probate was obtained but the chain of representation is broken. Neither the CPR nor Halsbury's Laws provides any factors to guide the court in its determination as to whether the grant should be made. However, it seems to me that the primary consideration that is applied in relation to the removal of a personal representative, that is, what accords with the welfare of the beneficiaries would be equally applicable to this issue. For this reason, it seems to me that it would be reasonable to assume that the beneficiaries of an estate ought to act in accordance with the welfare of all beneficiaries in preserving the contents of the estate so that it will be available for distribution to all beneficiaries.

[53] Mr Jarrett argued that there was evidence that Victoria Lawton would put the estate in danger. The evidence to which Mr Jarrett refers is that which is contained in the joint affidavit of Beverley James and Michael Collins.⁵ They depone that in the 1990s, the deceased Keith Lawton had migrated and left Victoria Lawton at the Breadnut Close property where they had both resided and that she had later migrated and left the mortgage in arrears. In the joint affidavit of the Lawtons filed in response to the claim brought by Irene Collins, it is not disputed that the mortgage had been left in arrears upon Victoria Lawton's migration. However, the explanation given is that the family was under a threat of violence which led to a portion of the property being deliberately set on fire; and therefore, their migration was unplanned and was out of a need for the preservation of their lives. It was deponed that after migration, it took some time for them to resettle in the United States, not only physically but emotionally and financially.⁶

⁵ See affidavit filed on 17 June 2021 at paragraph 18

⁶ See affidavit filed on 21 December 2020 at paragraphs 7 & 8

[54] The actions complained of occurred some twenty years ago. It seems to me that though the situation concerns the same property and the same persons, the relationship of these persons to the property is somewhat different. In addition, there is no evidence from Beverley and Michael contradicting what may be said to be a reasonable explanation given by Victoria Lawton for leaving the mortgage on Breadnut Close property in arrears. There is also no evidence that the circumstances surrounding the Lawtons' departure from the property still exist. Taking into account all these factors, I am of the view that there is not sufficient basis to conclude that it is more likely than not that Nadia Lawton and Victoria Lawton will endanger the property, a property in which they both have a real and substantial share.

[55] It is of significance also that the Lawtons have filed an affidavit indicating that they do not object to Chevaughn Lawton receiving a share of the estate. In that regard, Mr Jarrett has said that their interests in keeping the property is in conflict with the interest of Chevaughn Lawton and on this basis, no grant should be made to them.

[56] It is true that the Lawtons have resisted the idea of the Breadnut Close property being sold and this is on the basis that the income from the property is capable of sustaining or maintaining the property. However, this is their position in relation to the property as it now stands, prior to an order being made by the court as to the provisions from the estate that are to be made to Chevaughn Lawton. Their wishes will therefore be subject to the order of the court. In this regard, section 6 of the Inheritance (Provisions for Family and Dependents) Act provides for a variety of orders that the court may make, which are:

- (a) an order for the making to the applicant out of the net estate of the deceased of such periodical payments and for such term as may be specified in the order;
- (b) an order for the payment to the applicant out of that estate of a lump sum of such amount as may be so specified;

- (c) an order for the transfer to the applicant of such property comprised in that estate as may be so specified;
- (d) an order for the setting up of a trust fund out of the net estate for the benefit of two or more applicants;
- (e) an order for the settlement for the benefit of the applicant' of such property comprised in that estate- as may be so specified;
- (f) an order for the acquisition, out of property comprised in that estate, of such property as may be so specified and for the transfer of the property so acquired to the applicant or for the settlement thereof for his benefit.

It can readily be seen from the above orders that the court may make an order for provisions from the estate on terms which are different from the orders that are being sought by Chevaughn Lawton. It follows that Chevaughn's wishes are really irrelevant as what is decisive is the order of the court; and as a consequence, the Lawton's wishes as to the future of the estate, and in particular the Breadnut Close property, will have to yield to the order of the court. It therefore seems to me that the issue as to whether the orders that are being sought by Chevaughn Lawton are in conflict with the wishes of the beneficiaries cannot be the paramount, if at all, a relevant factor that would prevent the grant from being made to Victoria and Nadia Lawton. I therefore find that in the circumstances a grant of administration de bonis non should be made to Victoria and Nadia Lawton.

Whether a grant colligenda bona should be made to Victoria Lawton and Nadia Lawton until the grant of administration is made

[57] The Lawtons rely on rule 68.46 of the CPR in support of this order. While rule 68.46 of the CPR makes provision for a grant ad colligenda bona, it provides no guidance on the circumstances in which such a grant may be issues. However, it is clear from its wording that such a grant is issued in cases of emergency. It provides:

An application for an emergency grant may be made to the registrar and must be supported by evidence on affidavit setting out the grounds of the application.

The learned authors of Halsbury's Laws of England shed further light on the circumstances in which the grant may be issued. At paragraph 881, it is stated:

A grant (known as a grant ad colligenda bona) for getting in and preserving the assets of a deceased person may be made where delay in obtaining the full grant might prove detrimental to the estate. The grant may be made even to a stranger connected as an agent or otherwise with the deceased's affairs. Application for an order for a grant of administration ad colligenda bona may be made to a district judge or registrar usually without notice and must be supported by an affidavit or a witness statement setting out the grounds of the application.

The grant is usually limited to the collection and preservation of the estate, the giving of discharges for debts due to the estate, and the preservation of the assets collected either by investment or by payment into court.

[58] I do not think that it can be disputed that the process involved in obtaining the actual grant to continue the administration of Keith Lawton's estate, even where this is being done pursuant to a court order, is not one that will be completed overnight. This is especially so given that there are other estates in respect of which similar applications have been made to the court. I also think that the following circumstances point to the urgent need for a grant to be obtained in the estate of Keith Lawton:

- (i) The upper section of the Breadnut Close property is tenanted and no rent is being collected. It is not clear for how long this state of affairs has been continuing, but almost a year has

passed since the death of Irene Collins. There is nothing to indicate that the non-payment of the rent by the tenant is for any reason other than a desire to ensure that the party legally entitled to receive the rent is in receipt of same. I also bear in mind that the personal representative of Keith Lawton's estate will have a remedy to recover the outstanding rents if it remains unpaid after they are appointed by the court. However, for all practical purposes the effectiveness or availability of the remedy is only effective in so far as the tenant remains on the premises or his/her whereabouts are known. The longer the period of time that the estate remains without a personal representative, the greater the risk to the collection of all the income from the rental of the property to which the estate is entitled.

- (ii) The lower section of the property is in such a state of disrepair that it cannot be rented. The evidence as to the precise condition of the property is lacking. Notwithstanding this, it seems to me that the longer the property remains in this state of disrepair, the greater is the risk of ruin to the physical state of the property.
- (iii) The minor claimant Chevaughn Lawton has not been in receipt of the monthly interim payment that was ordered by the court. While it is not clear for how long his mother has not been in receipt of payment, it is certain that he has been without these payments for at least a year, the payments having stopped at least at the time of Irene Collins' death in November 2020.

[59] Having regard to these circumstances, I am of the view that *a grant ad colligenda* should be made to Victoria Lawton and Nadia Lawton to whom a full grant of

representation will be made. I, however, do not think that the order for the grant need at this time include for the purpose of mortgaging the property.

[60] In light of the forgoing, I make the following orders:

1. Beverley James and Michael Collins are appointed representatives of the estate of Irene Collins for the purpose of these claims.
2. That **IRENE COLLINS** is removed as the legal representative of the estate Keith Anthony Lawton.
3. That the said original Grant of Probate obtained by Irene Collins in the estate of Keith Anthony Lawton be returned to the Probate registry of this Honourable Court for cancellation and/or revocation.
4. That the said **NADIA LAWTON** and **VICTORIA LAWTON** be allowed to take the full Grant of Administration with the Will Annexed de bonis in the said estate of Keith Anthony Lawton.
5. That a *Grant Ad Colligenda Bona* is hereby issued in the Estate of Keith Lawton, who died testate on 25th day of May 2009 late of Lot 1731 Trelawny east, Waterford in the parish of Saint Catherine to **NADIA LAWTON** and **VICTORIA LAWTON**, the beneficiaries of his estate for the purposes of, *inter alia*:
 - a. Protecting and/or preserving the assets of said estate;
 - b. To let, lease, or otherwise deal with the estate's property situated at 408 Breadnut Close, Bridgeview, Portmore in the parish of Saint

Catherine and to execute deeds, lease, contracts of tenancy, mortgages, charges, surrenders, releases, options, notices and other instruments in respect thereof.

- c. To take possession of, manage, administer, operate, maintain, improve and control the said property, and to pay any and all taxes that may be imposed on the said property.
 - d. To accept payment of and give good receipt for rent and any other monies due and owing in the estate of Keith Lawton.
 - e. To continue to pay maintenance to the deceased's minor child pursuant to the interim court order made by Justice C Brown Beckford on the 9th day of January 2017.
6. That the *Grant Ad Colligenda Bona* shall be effective and in force until such time as the Grant of Administration de Bonis Non is issued in the Estate of the deceased, Keith Anthony Lawton.
 7. Paragraphs 2 and 3 of the notice of application filed on behalf of Beverley James and Michael Collins are dismissed.
 8. Costs of both applications are to be paid from the estate of Keith Anthony Lawton.