[2025] JMSC Civ 29

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
PROBATE AND ADMINISTRATION DIVISION
CLAIM NO. SU2024ES02516

IN THE MATTER OF the Estate of CHARLES LEOPOLD LEIBA also known as CHARLES LEIBA late of Apartment 7, 3 Liguanea Avenue, Kingston 6 in the Parish of Saint Andrew, Attorney-at-Law, deceased, intestate.

AND

IN THE MATTER OF an application for the revocation of a Grant of Administration issued in the Estate of CHARLES LEOPOLD LEIBA also known as CHARLES LEIBA.

AND

IN THE MATTER OF an application for a "fresh" Grant of Administration in the Estate of CHARLES LEOPOLD LEIBA also known as CHARLES LEIBA upon the revocation of the previous grant.

BETWEEN	**CHERYL ANTOINETTE LEIBA GAYLE** (Representative and Administrator Ad Colligenda Bona for and on behalf of the Estate of Chester Roy Leiba, deceased)	**1ST CLAIMANT**
AND	**CHERYL ANTOINETTE LEIBA GAYLE**	**2ND CLAIMANT**
AND	**GARY CHARLES ANTHONY WILLIAMS** (Administrator for and on behalf of the Estate of Charles Leopold Leiba, also known as Charles Leiba, deceased)	**1ST DEFENDANT**
AND	**BEVERLY VALLETTA WARREN**	**2ND DEFENDANT**

IN CHAMBERS VIA VIDEO CONFERENCE

Ms. Vinette Grant and Mr. Neco Pagon instructed by Vinette A. Grant appeared for the Claimants

Ms. Shanique Scott and Ms. Kayla Theeuwen instructed by McLeod Scott Law appeared for the Defendants

Heard: 10th, 16th, 17th, 22nd January and 14th and 19th February 2025

Injunctions – Granting an Injunction as an Interim Order – Proprietary Injunction vs. Mareva Injunction – Can a beneficiary of a deceased's Estate apply for an injunction against the assets of the Estate - Is there a serious issue to be tried – Are damages an appropriate remedy – Was there material non-disclosure – Is it just and convenient to grant the injunctive relief – Judicature (Supreme Court) Act, section 49(h) – Civil Procedure Rules, 68.9, 68.10, 68.18, 68.23 and 68.58

CORAM: A. MARTIN-SWABY J (ag)

BACKGROUND

[1] Charles Leopold Leiba died intestate on the 27th day of August 2011. Mrs. Beverley Valleta Warren ("Mrs. Warren") was declared to be his daughter, after proceedings were brought under Claim No. 2011HCV07344 before the Supreme Court for a declaration of paternity under the Status of Children Act. Having been declared his daughter, Mrs. Warren's son Mr. Gary Charles Williams ("Mr. Williams") successfully applied for a Grant of Administration in the Estate of Charles Leopold Leiba. His application was made on the authority of a Power of Attorney executed by his mother, Mrs. Warren.

[2] The Supplemental Oath of Administrator, filed in support of the application for a Grant of Administration, asserted that Charles Leopold Leiba was survived by only one child, Mrs. Warren. However, this is not so. Mr. Charles Leopold Leiba is named as father on the Birth Certificate of one Chester Roy Leiba, who is also now deceased, having died intestate in or around April, 2020.

[3] The 2nd Claimant, Mrs. Cheryl Antoinette Leiba Gayle ("Mrs. Leiba Gayle"), is the daughter of Chester Roy Leiba. She seeks the revocation of the Grant of Administration made to Mr. Williams and a declaration that her father, Mr. Chester Roy Leiba, is entitled to a 50% interest in the estate of his father, Charles Leopold Leiba. Mrs. Leiba Gayle challenges the Grant of Administration on the basis that the Power of Attorney did not contain such authority to apply for the Grant of Administration. A further challenge is mounted that the Oath (and Supplemental Oath) of Administrator contained serious and deliberate misrepresentations, one of which is stated above.

[4] At the time of filing the substantive claim, an ex parte Notice of Application for Court Orders was simultaneously filed seeking orders that Mrs. Leiba Gayle be granted Administrator Ad Colligenda Bona in the estate of Chester Roy Leiba as also

an injunction preventing the Defendants from taking any further steps in administering the estate of Charles Leopold Leiba. By virtue of the Order of the Honourable Mrs. Justice S. Millwood Moore, Mrs. Leiba Gayle was granted Administrator Ad Colligenda Bona. That Order is not being challenged in these proceedings.

[5] Before me is an inter partes hearing concerning an application for the extension of an interim injunction originally granted by the Honourable Mrs. Justice S. Millwood Moore on the 22nd day of October 2024. The injunction restrains Mr. Williams and his agents from further interfering with the estate of Charles Leopold Leiba until the inter partes hearing. The Claimants now seek to have the injunction extended until the final determination of the substantive claim for revocation of the Grant of Administration. Conversely, the Defendants have filed a competing application for the discharge of the said injunction.

[6] It remains unchallenged that at the material time when the Application for a Grant of Administration was made and the Supplemental Oath of Administrator was filed, that the Defendants were aware that Charles Leopold Leiba was in fact named on the Birth Certificate as the father of Chester Roy Leiba.

THE APPLICATIONS

[7] By way of the Notice of Application for Court Orders filed by the Claimants on the 30th day of September 2024 and refiled relisted on the 18th day of November 2024 the following orders are before me for consideration:

> …
>
> *3. That the Defendant of 33 Hurst Street, Acton, Ontario, L7J 2Z8, Canada appointed Administrator of the Estate of Charles Leopold Leiba (also known as Charles Leiba) be restrained and an injunction granted restraining him until judgment in this matter or until further Order of this Honourable Court whether by himself, or by his servants and/ or agents or any of them or otherwise howsoever from selling, removing from the jurisdiction or taking any steps to remove from the jurisdiction, disposing of, transferring, withdrawing, charging, diminishing the value of, parting with possession of or in any way howsoever dealing with any of the assets and property of the Estate of Charles Leopold Leiba (also known as Charles Leiba) ("Charles Leiba") situated within Jamaica whether held in the name of Charles Leiba or Charles Leopold Leiba and whether solely or jointly or beneficially or legally owned, said assets and property including*

(but not limited to) bank accounts, real and personal property, shares and dividends ("Jamaica Leiba Assets") pending the determination of the Claim herein.

4. *That within 30 days of this Order, or such other period ordered by this Honourable Court, the Defendant shall file in this Honourable Court and serve on the Claimant/Applicant's Attorney-at-Law an audited statement of account by a reputable auditor in Jamaica on the Estate of Charles Leiba verified by Affidavit which shall include disclosure of the nature, value and location of all the assets and property of the Estate of Charles Leiba wheresoever situate (including the Jamaican Leiba Assets) as at the date of this Order, as at the date of the said affidavit verifying disclosure and as at the date of his appointment as Administrator of the Estate of Charles Leiba.*

5. *That until the determination of the Claim herein for revocation of the Grant of Administration dated May 17, 2023 issued to the Defendant in his name, the Defendant shall lodge the original of the said Grant at the Supreme Court of Judicature of Jamaica when filing his acknowledgment of service.*

…

[8] As indicated above, the Defendants have also filed a Notice of Application for Court Orders to Discharge Ex parte Freezing Order and Other Interim Orders, together with Affidavits in support. In this Application which was filed on the 13th day of November, 2024, the following orders are sought:

1. *The ex parte freezing order granted on October 22, 2024 be discharged.*
2. *The time for the service of this application on the Claimants be abridged.*
3. *The Claimant pays the costs of this application, to be taxed if not agreed.*
4. *There be such further orders as this Honourable Court may deem fit.*

THE CLAIMANTS' SUBMISSIONS

[9] Counsel appearing for the 1st and 2nd Claimants, in both written and oral submissions, asserted that the primary purpose of the Application for an injunction in this case is the preservation of Charles Leopold Leiba's estate assets with a view to ensuring their availability at the conclusion of the substantive proceedings. Specifically, should the court recognize that Chester Roy Leiba is entitled to 50% interest in the estate of the deceased, Charles Leopold Leiba, the injunction serves to safeguard those assets for the benefit of his estate as a beneficiary. In essence, injunctive relief is being employed here as a protective measure to protect the assets

of the estate and uphold the interest of beneficiaries in the estate of Charles Leopold Leiba.

Is there a serious issue to be tried?

[10] Counsel also argued that in the substantive claim, there is a serious issue to be tried by virtue of a direct challenge to the Grant of Administration which the 1st Defendant, Mr. Williams, holds. Counsel argued that Mr. Williams holds the legal interest in the estate of Charles Leopold Leiba by virtue of having obtained a Grant of Administration on the basis of a Power of Attorney. He holds the legal interest on trust for the beneficiaries. Counsel argued that there are serious issues to be tried in respect of whether the Power of Attorney used to obtain the Grant of Administration breached Rules 68.23(1) of the Civil Procedure Rules, 2002, ("CPR"), as well as section 2 of the Record of Deeds, Wills and Letters Patent Act 1681 ("RDWLPA"), together with section 4 of the Probate of Deeds Act.

[11] The main challenge to the Power of Attorney is that there is no express authority within the document which authorizes Mr. Williams to obtain a Grant of Administration. Counsel directed the court to paragraph 7 of the Power of Attorney which he argued was the sole provision which allows the Attorney/Agent to approach the Court. Paragraph 7 reads as follows:

> *"For me and on my behalf to accept service of any Writ of Summons or other legal process and to appear in person to represent in any Court or Judicial or other officers whatsoever as by my Attorney shall be thought advisable and for me and in my name or otherwise to commence any action or other proceeding in any Court of Justice for the recovery of any debt sum of money right title interest property matter or thing whatsoever now due or payable or to become due or payable in any wise belonging to me by any means or on any account whatsoever and the same action or proceeding to prosecute or discontinue or become nonsuit therein if my Attorney shall see cause. And also to take such other lawful ways and means for the recovering or getting in any such sum of money or other things whatsoever which shall by my Attorney be conceived to be due owing belonging or payable to me by any person whomsoever and also appoint any Attorney-at-Law or firm of Attorneys-at Law and if necessary to engage Counsel to prosecute or defend in the premises aforesaid or any of them as occasion may require…".*

[12] Counsel urged the Court to consider that the above paragraph is insufficient to grant authority to pursue a Grant of Administration. A challenge was also mounted in respect of whether it was attested to by a Notary Public.

[13] Counsel further argued that there were misstatements made in the Supplemental Oath of Administrator which was sworn to by the 1st Defendant and submitted to this Honourable Court in support of his application for a Grant of Administration. Counsel submitted that these misstatements justify a revocation of the Grant of Administration and demonstrate the lack of confidence which the beneficiaries have in the ability of the 1st Defendant to carry out his fiduciary duties in the best interest of the beneficiaries. He invited the Court to consider the authority of **Estate Rupert Sammott v Narville Sammott** [2016] JMSC Civ. 74.

[14] A vexed issue which was raised is the fact that in paragraph 11 of the Supplemental Oath of Administrator filed on the 25th day of January 2023, which was referred to in the Affidavit of Cheryl Antoinette Leiba Gayle filed on the 30th day of September, 2024, the following was stated:

> *"The deceased had one child,* ***BEVERLY VALLETA WARREN*** *and was survived by her. The deceased was not predeceased by any child leaving an issue. To the best of my knowledge, information, and belief there is another individual who is claiming to be entitled to a share in the estate, namely one* ***CHESTER ROY****".*

[15] The above statement, although asserting that the deceased, Charles Leopold Leiba, had one child, Counsel brought to the Court's attention that a copy of the Birth Certificate of Chester Roy Leiba was attached to the Supplemental Oath of Administrator and presented as being the Birth Certificate of the deceased Charles Leopold Leiba. Counsel advanced that this was a deliberate attempt on the part of the 1st Defendant to mislead the Court.

[16] Counsel further argued that there is a serious issue to be tried concerning the fidelity of the 1st Defendant towards the beneficiaries in this estate as the 1st Defendant was aware that Chester Roy Leiba was in fact the son of Charles Leopold Leiba, and did have the former's Birth Certificate in his possession which was the reason for it being attached to the Supplemental Oath of Administrator.

[17] Further, that the 2nd Defendant was also aware of the existence of Chester Roy Leiba by virtue of a letter issued to the 2nd Defendant's Attorney-at-law Mrs. Marlene Malahoo-Forte by the Registrar General's Department on the 7th day of April 2016 confirming the birth record of Chester Roy Leiba. Counsel asserted that Mrs. Malahoo-Forte was counsel on record for Mrs. Beverly Valetta Warren in proceedings in this Court and which was pending at the time of the issuing of this letter. The caption of this letter addressed to Mrs. Malahoo-Forte reads **"Re: Chester Roy – Alleged Beneficiary of Intestate Estate of Charles Leopold Leiba**". The Registrar General's Department, by virtue of this letter, confirmed that the name Charles Leopold Leiba was added to the birth record for Chester Roy Leiba on the 26th day of February 1981 pursuant to the Status of Children Act, *"which makes provision for the mother and the person acknowledging himself to be father to sign a joint statutory declaration consenting to the addition of his particulars to the child's birth record…."*

[18] Counsel argued that the above letter being dated the 7th day of April 2016, was four months after the Court of Appeal made certain in Chambers orders related to the appeal of Claim No. 2011HCV07344. Notably, Mrs. Malahoo-Forte was recorded as Counsel on record appearing for Mrs. Warren in those proceedings, which pertained to matters concerning the Estate of Charles Leopold Leiba.

[19] For the above reasons, Counsel advanced that to make the assertion that Mrs. Warren was the only child of Charles Leopold Leiba when seeking a Grant of Administration in 2023 was simply untrue. Counsel asserted that notwithstanding the confirmation which came from the Registrar General's Department regarding Chester Roy Leiba, his legal status was expressly ignored and diminished to being an individual who was merely claiming an entitlement to an interest in the estate and his name was incorrectly reflected in the Supplemental Oath of Administrator void of his surname "Leiba".

[20] Counsel urged that the 1st Defendant stands in a fiduciary position of trust. He posed the question concerning whether the estate of Chester Roy Leiba can be confident that his beneficial interest will be preserved and realised. For this reason, he stated that the Court's intervention is sought to protect the asserts in furtherance of the interest of justice.

[21] Counsel argued that should the court proceed by applying the principles governing a Mareva injunction, Counsel has identified the first arm as being whether the Claimant has a good arguable case. This Counsel submitted was synonymous to serious issue to be tried under the principles of the **American Cyanamid Co v Ethicon Ltd** [1975] UKHL 1 ("**American Cyanamid Case**"). Reliance was placed on the case of **Isabel Dos Santos v Unitel S.A.** [2024] EWCA Civ 1109 in support of this point. Applying the foregoing arguments, Counsel submitted that the Claimants have a good arguable case.

Are damages an appropriate remedy?

[22] Counsel submitted that the Claimants do not presently seek damages and therefore it cannot be argued that damages would be an adequate remedy in the circumstances. The crux of the Claimants' claim is the revocation of the Grant of Administration and the subsequent appointment of the 2nd Claimant and the 2nd Defendant as Administrators to the Estate of Charles Leopold Leiba on a newly issued Grant of Administration. Subsequently, damages could not be adequate in the circumstances.

[23] Moreover, the Estate of Charles Leopold Leiba includes real estate which are unique assets that monetary compensation could not be enough to remedy. Reliance was placed on the case of **Tewani Limited v Kes Development Co Ltd and Another** (unreported), Supreme Court, Jamaica, Claim No 2008HCV02729 delivered on 9 July 2008. Furthermore, where the relief sought is the preservation of an asset, the weight accorded to the adequacy of damages as a remedy is minimal. Reliance was placed on the decision of Laing J in the case **Murray Haulage Ltd v The Registrar of Companies and Others** [2021] JMCC Comm 21 in support of this point.

Balance of Convenience

[24] Counsel for the Claimant submitted that this is a consideration both under the **American Cyanamid Case** and for the principle germane to the grant of a Mareva injunction and accordingly has considered them together.

[25] Counsel argued that the balance of convenience decisively favours the grant of injunction to preserve the assets in the Estate of Charles Leopold Leiba. It was

highlighted that the Defendants, who reside overseas have failed to disclose the 1st Defendant's mismanagement of the estate despite substantial depletion of its assets without recognition of the 1st Claimant's 50% entitlement. Moreover, the Grant of Administration being challenged means that the Estate of Charles Leopold Leiba should not be further administered and the status quo should be maintained pending the resolution of that claim.

[26] Given these circumstances, Counsel submits, the overriding objective supports the issuance of injunctive relief to safeguard the estate's assets.

Risk of Dissipation of the Assets

[27] In accordance with the principles for a Mareva injunction, Counsel submits that there is a real risk of dissipation of the assets given that the 1st Defendant has already caused a substantial portion of the estate of Charles Leopold Leiba to be distributed without adequately disclosing the full extent of its assets, liabilities or the precise nature of the depletion, Notably, no portion of the estate of Charles Leopold Leiba has been distributed to the 1st Claimant who has a 50% interest.

[28] Counsel argued that the objective test, established in **Peter Krygger & Ors v F1 Investments Inc. & Ors** (unreported) Supreme Court, Jamaica, Claim No. 2009HCV3034 delivered 30 November 2010, confirms that proof of an intention to dissipate is unnecessary and what matters is whether, on an objective view, such a risk exists. Reliance was also placed on the case of **Raziel Ofer v George C. Thomas** [2012] JMSC Civ 113 which establishes that an arguable case of fraud, dishonesty, or a pattern of evasive behaviour justifies a Mareva injunction even in the absence of specific evidence of dissipation. Counsel also argued that the Claimants' concerns are further heightened by the lack of transparency surrounding the 1st Defendant's handling of the estate of Charles Leopold Leiba and his failure to account for the 1st Claimant's rightful share.

[29] Counsel submits therefore that the Claimants have satisfied the requisite legal principles applicable to the grant of an injunction using the principles emanating from the **American Cyanamid Case** and for a Mareva injunction, justifying the preservation of the estate of Charles Leopold Leiba pending final determination of the substantive matter.

Submissions resisting the Defendants' Applications

[30] Counsel for the Claimants argue that the court should not allow the 1st Defendant to access the preserved assets to pay legal fees, citing authority from **Marino v FM Capital Partners Ltd** [2016] EWCA Civ 1301 and **AML Foods Limited & Anor v Rosalie McKenzie (Trustees of Bahamas Supermarkets Employee Retirement Fund) & Ors** (unreported) Supreme Court, The Bahamas, Claim No. 2018/CLE/gen/00169 judgment delivered on 27 March 2023.

[31] Counsel further submitted that the 1st Defendant has not demonstrated the availability of personal assets for funding his defence. Therefore, allowing such variation would contradict the overriding objective, especially given the 1st Defendant's alleged distribution of over 30% of the Charles Leopold Leiba's estate assets. The Claimants argue that the costs are excessively high and do not align with the relevant practice direction on cost assessment.

[32] Furthermore, Counsel contended that the Claimants refute claims of material non-disclosure, asserting that all relevant information was properly submitted to the court. The 1st Defendant, however, has failed to disclose essential information regarding the management of the estate of Charles Leopold Leiba, distributed assets, and incurred expenses, further hindering the court's ability to assess the status of the estate of Charles Leopold Leiba and prevent potential further dissipation of assets.

[33] The Claimants submit therefore that the court should exercise its discretion to maintain the injunction, award costs against the 1st Defendant, and reject the 1st Defendant's application for discharge or variation.

THE DEFENDANTS′ SUBMISSIONS

[34] Counsel for the Defendants, Ms. Scott, in her written and oral submissions stated that this is an application which is driven by "fear" that the assets may not be properly distributed. She asserted that neither the Estate of Chester Roy Leiba nor Mrs. Leiba Gayle in her personal capacity have any proprietary interest in the assets of Charles Leopold Leiba's estate to justify the order being sought to continue which is the imposition of a proprietary freezing injunction.

[35] Counsel invited the Court to consider the background in this matter and referred us to page 176 of the Index to Judge's Bundle filed on the 17th day of October 2024. Exhibited at page 176 is the first instance judgment of Batts J in the declaration of paternity proceedings brought by Mrs. Warren as recorded in the case **In the Matter of an Application by Beverley Valleta Warren to be declared the daughter of Charles Leopold Leiba** [2013] JMSC Civ 94. Counsel invited the Court to consider Batts J's documentation of the evidence of the 1st Defendant as given in that trial and the playing of a tape recording in those proceedings which reflected a conversation between Mr. Williams and Mr. Winston Leiba (brother of Charles Leopold Leiba), where Mr. Winston Leiba asserted that he did not know of Charles Leopold Leiba having any other child save and except Mrs. Warren. Counsel, having invited the Court to consider this aspect of Batts J's judgment, then made the point that the only person known or claiming to be a child of Charles Leopold Leiba was Mrs. Warren.

[36] Counsel further noted that at the conclusion of the foregoing matter, Mr. Williams was presented with a Birth Certificate for Chester Roy Leiba. Counsel accepts that it was a copy of this Birth Certificate of Chester Roy Leiba which was attached to the Supplemental Oath of Administrator. She indicates that this was done erroneously. Regarding this error, Counsel noted that there is no requirement for the Birth Certificate of Chester Roy Leiba to be submitted to ground an application for Grant of Administration and therefore this error is immaterial.

[37] Counsel indicated that the assertions in paragraph 11 of the Supplemental Oath of Administrator that Charles Leopold Leiba only had one (1) child was also an error. She asserts that these errors are not fatal to the Grant of Administration.

[38] Counsel argued that an individual with priority to apply for a Grant of Administration need not obtain the consent of others who hold an equal level of priority for the same grant. She urged that based on the requirements of Rule 68.18 of the CPR, such an individual need only be informed. Counsel argues that Chester Roy Leiba was notified as the Notice of the Application was served via registered post and the Certificate of Posting was dated the 28th day of June 2022 to an address outside of the jurisdiction and in the name of "Chester Roy".

[39] Counsel argued that what is being sought by the Applicant is a freezing/ proprietary injunction. However, in assessing the authorities which have been advanced by counsel for the Claimants, a proprietary injunction is only granted to a person with an existing proprietary interest in property which they are seeking to preserve. To ask for such an injunction, the assets which you are asking to be frozen must belong to you. Counsel further asserted that the serious issue to be tried must be a claim that justifies grant of a proprietary injunction.

[40] Counsel argued further that the injunction should not be granted as there was a misrepresentation made by Mrs. Leiba Gayle when the application for Administrator Ad Colligenda Bona was made. A material misrepresentation was to the effect that she was pursuing a Grant of Administration in the Estate of Chester Roy Leiba. Counsel relied on the Affidavit of Mallory Brianne Cramp Waldinspencer which shows that checks made in the United States and Jamaica reveal that there is no such application for a Grant of Administration. This counsel states amounts to a material non-disclosure and strikes at the core of whether the Court should extend the injunction.

[41] Counsel indicated that the Applicant breached Rule 68.9 and 68.10 of the CPR. In this case, by saying that the deceased was cremated without any documentary proof is insufficient. These documents are important in giving her the locus to make this application. Counsel asserted that the interim application appointing her as Administrator Ad Colligenda Bona was not properly made and therefore Mrs. Leiba Gayle is not authorized to seek the orders she is seeking. In any event, Counsel argues that even if the limited grant was properly made, it does not authorize Mrs. Leiba Gayle to seek the orders which she is seeking.

[42] Counsel noted that designating an individual as the Administrator Ad Colligenda Bona is done where the asset is in peril of spoilation or for any other reason. Counsel argued that the designation of Mrs. Leiba Gayle as Administrator Ad Colligenda Bona is in respect of Chester Roy Leiba's estate which in their view does not form part of the estate of Charles Leopold Leiba. A beneficiary in an estate has no legal right to the assets of the deceased's estate and neither does he have a proprietary interest. He has a right to compel the executor to carry out his duties. Reliance was placed on

the case of **George Mobay vs. Andrew Joel Williams** [2012] JMCA Civ 26 in support of this point.

[43] On this basis, Counsel has argued that even the limited grant does not give Mrs. Leiba Gayle standing to make an application to preserve the assets of the Estate. As a beneficiary, Chester Roy Leiba has no proprietary right to these assets. The limited grant only allows her the right to preserve Chester Roy Leiba's estate. Counsel argues that a right does not arise until the end of the administration process. The only right of the beneficiaries before the estate is administered is to compel you to do what you are supposed to do. An individual can only obtain a proprietary injunction where he/she has a proprietary interest in the assets that are the subject of the application.

[44] I wish to say at this juncture that there is no dispute regarding the designation of the Mrs. Leiba Gayle as the Administrator Ad Colligenda Bona. Rather, these arguments are advanced solely in support of the Defendants' assertion that there are material non-disclosures that justify the discharge of the existing injunction and that Mrs. Leiba Gayle as no standing to seek injunctive relief. However, I must add that the circumstances identified by Counsel for the Defendants as justifying the appointment of an Administrator Ad Colligenda Bona are sufficiently broad to encompass the present case. Even if the Estate of Chester Roy Leiba is not demonstrably at risk of spoilation, the applicable standards permits an appointment "for any other reason." Accordingly, I am satisfied that the designation was properly made in the circumstances.

[45] Rule 68.18 of the CPR outlines the order of priority in case of intestacy. Counsel made the point that before Mrs. Leiba Gayle can obtain a grant in the Estate of Charles Leopold Leiba, she must obtain a full grant in the Estate of Chester Roy Leiba. For these reasons, the Court should refuse to extend the injunction.

[46] Regarding the issue of whether the Power of Attorney gives Mr. Williams the authority to apply for a Grant of Administration for Mrs. Warren, Counsel argued that paragraphs 7, 10 and 24 of the Power of Attorney, when read together, give rise, cumulatively, to a power to embark on such an application. Counsel further argued that even if the Court finds that paragraphs 7, 10 and 24 does not expressly or implicitly

accord with what is required, the Power of Attorney allows Mrs. Warren to ratify any acts done.

PRELIMINARY ISSUE

[47] Before dealing with the substantive issues in this matter, the submissions have highlighted the need to dispense with what I consider to be a preliminary issue. This is whether the injunctive relief sought here ought properly to be considered under the **American Cyanamid Case** or the principles relating to a Mareva injunction.

[48] I will deal with this issue briefly as I see no reason to exhaustively examine the law and its operation in relation to an injunctive relief under these principles here.

[49] The **American Cyanamid Case** is frequently cited in matters of injunctive relief, particularly in relation to prohibitory injunctions that restrain parties from taking certain actions so that the status quo can be preserved. In contrast, the principles governing Mareva injunctions, established in **Mareva Compania Naviera SA v International Bulkcarriers SA** [1980] 1 All ER 213 ("**Mareva Case**"), pertain to freezing orders designed to secure assets to ensure the enforcement of a court judgment, typically concerning debt repayment. The objective in the **American Cyanamid Case** is to safeguard assets pending judicial determination of the underlying dispute, whereas in the **Mareva Case**, the focus is on preventing the dissipation of assets to preserve a defendant's ability to satisfy a potential judgment debt.

[50] Upon careful examination of the Orders sought by the Claimants, it is evident that the injunctive relief being pursued is primarily prohibitory in nature, aimed at preserving the assets of the Estate of Charles Leopold Leiba by restraining further administration. The clear objective is to maintain the status quo until the question of Chester Roy Leiba's entitlement to the Estate of Charles Leopold Leiba is definitively resolved. Notably, there is no evidential basis to suggest that the preservation of the Charles Leopold Leiba's estate assets is necessary to secure the satisfaction of any judgment debt**,** distinguishing the present relief from the principles underpinning a Mareva injunction**.**

[51] Having resolved this, it now brings into focus a secondary preliminary issue for consideration. That is, whether, the Claimants have the standing to seek a proprietary

injunction. It is well established that a beneficiary of an estate lacks a legal or proprietary interest in the estate's assets prior to the completion of administration. Consequently, the threshold issue is whether the Claimants can establish a sufficient proprietary claim to justify such injunctive relief in circumstances where their entitlement remains contingent and unascertained.

[52] While I concur with the Defendants' Counsel that, as a matter of law, a beneficiary does not hold proprietary ownership over the assets of an estate, I must respectfully disagree with the assertion that this precludes a beneficiary from seeking an injunction of this nature. Particularly so where the claim involves allegations that the Grant of Administration was improperly obtained and where there is a legitimate concern that assets which may rightfully belong to Chester Roy Leiba's estate could be misallocated or improperly administered. In these circumstances, the beneficiary may be entitled to seek injunctive relief to restrain further administration pending resolution of these issues.

[53] In the **AML Foods Case**, Stewart J delivering the decision of the Court opined at paragraph 61 that *"… [a] proprietary injunction is an injunction granted in an action which seeks to preserve property that a party in that action* ***claims is its property or that it has a right to****."*

[54] In my mind, a beneficiary of an estate possesses an equitable right or claim to the assets allocated to them under the estate, which entitles them to seek injunctive relief to preserve those assets pending resolution of any dispute concerning their entitlement. Using the principles in the **AML Foods Case**, the equitable interest grants the beneficiary standing to request an injunction aimed at safeguarding the assets that may ultimately be due to them (see also: section 49(h) of the Judicature (Supreme Court) Act which grants the court the power to grant injunctive relief whether the estates claimed are legal or equitable). In light of this, the Claimants possess a legitimate interest in protecting their inheritance. Accordingly, I am of the view that, under these circumstances, the Claimants are entitled to apply for a proprietary injunction to safeguard their claimed interest in the Charles Leopold Leiba's estate assets.

[55] Having made these findings here, it stands to reason therefore that any challenge to the discharge of the injunction on the foregoing bases cannot be maintained.

THE ISSUES

[56] The following issues must be ventilated in order to determine whether the injunctive relief sought should be granted:

a. Is there a serious issue to be tried?

b. Are damages an appropriate remedy?

c. Was there material non-disclosure?

d. Is it just and convenient to grant the injunction?

e. Is an undertaking as to damages required?

LAW AND ANALYSIS

Considerations of the Court in Granting an Injunctive Relief

[57] Firstly, the jurisdiction of the Court to grant injunctive reliefs is to be found in section 49(h) of the **Judicature (Supreme Court) Act (Jamaica)**. It provides as follows:

> "A mandamus or **an injunction may be granted** or a receiver appointed, by an interlocutory order of the Court, **in <u>all cases</u> in which it appears to the Court to be just or convenient that such an order should be made**; and such order may be made either unconditionally or upon such terms and conditions as the Court thinks just, and if an injunction is asked either before or at or after the hearing of any such cause or matter, **to prevent any threatened or apprehended waste or trespass, such injunction may be granted if the Court thinks fit, whether the person against whom such injunction is sought is or not in possession under any claim of title or otherwise**, or (if out of possession) does or does not claim a right to do the act to be restrained under any colour of title, and **whether the estates claimed by both or by either of the parties are legal or equitable**." *(Emphasis supplied)*

[58] In examining the above provision, the main principles which may be extracted is that the foundation of granting injunctive relief is the justice of the particular case and where the balance of convenience is in favour of such relief being granted.

[59] Section 49(h) creates a wide discretion within the Courts in granting such relief, provided that it accords within the parameters of it being convenient or just to do so. The provision also states that such relief may be granted regardless of whether the estates being claimed by both or either party is legal or equitable.

[60] In this case, the injunction being sought is aimed at preventing any further disposal of the assets in the estate of Charles Leopold Leiba until the determination of the substantive claim. The Court in arriving at a determination, thought it prudent to fully explore the principles enunciated by Lord Diplock in the **American Cyanamid Case** and was guided by them in arriving at its decision.

[61] These principles are: (i) whether there is a serious issue to be tried, (ii) whether damages are an appropriate remedy and (iii) whether it is just and convenient to grant the injunctive relief. Despite these distilled principles, the House of Lords reasoned that in all such cases involving interlocutory relief, the case must be determined on a balance of convenience. Lord Diplock noted that the grant of such relief is both temporary and discretionary.

[62] The decision whether to grant or not to grant an interlocutory injunction has to be taken at a time when ex-hypothesi, the existence of the right or the violation of it, or both is uncertain and will remain uncertain until final judgment is given in the action. The purpose of interlocutory relief is to:

a) mitigate the risk of injustice to the Claimant during that delicate period before the uncertainty outlined may be resolved;

b) protect the Claimant against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty is ultimately resolved in his favour at trial

[63] The Claimant's need for protection must be balanced against the Defendant being prejudiced and suffering injury consequent on the effects of the interlocutory

relief which prevents him from exercising his own legal rights for which he may not be adequately compensated under the Claimant's undertaking in damages if the uncertainty is ultimately resolved in his favour.

Is there a serious issue to be tried?

[64] In considering whether there is a serious issue to be tried, there is no rule that a strong prima facie case of a 50% chance of success must be established before such relief may be granted. Rather, the Court must be satisfied that the Claim is not frivolous or vexatious.

[65] It is no part of the Court's function at this stage of the proceedings to try to resolve factual disputes on which either party may ultimately depend nor is it to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at trial. Lord Diplock offered guidance in **American Cyanamid Case,** as to the approach to be taken in these matters. He stated as follows:

> *"The Court should consider whether if the plaintiff were to succeed at trial in establishing his right to a permanent injunction, he would be adequately compensated by an award of damages for the loss he would have sustained from the Defendant continuing to do what was sought to be enjoined between the time of the application and the time of trial. If damages in the measure recoverable at common law would be an adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the plaintiff's claim appears at that stage…"*

[66] Should the court determine that there is a serious issue to be tried, an examination should be conducted of where the balance of convenience lies in determining whether to maintain or discharge the injunction.

[67] In determining the issue, under the American Cyanamid test, there is no need to establish that there is a risk of dissipation. In **Madoff Securities International Limited & Another v Raven and Others** [2011] EWHC 3102, Justice Flaux noted as follows at paragraph 128:

> *"… [I]n particular, unlike in the case of a freezing injunction, it is not necessary to show any risk of dissipation of assets and, even if there has been delay in making an application which might lead to refusal of a freezing injunction, a proprietary injunction may nonetheless be granted…"*

[68] David Bean Q.C. in the text **Injunctions, 8th edition** at p.9 noted that the Court's discretion to grant or refuse an injunction is almost limitless provided that the applicant has a substantive cause of action. In listing examples where the Court has exercised its discretion to grant such applications, he notes that in terms of fiduciaries, such applications may be granted to restrain an executor or an administrator from continuing to act.

[69] The Claimants are ultimately seeking the revocation of the Grant of Administration made to the 1st Defendant. An issue to be determined during the trial of this matter will be whether the two errors which were disclosed in the Supplemental Oath of Administrator justify a revocation of the Grant of Administration. Additionally, the adequacy of the Power of Attorney which was used to obtain the Grant will be examined during the trial of this matter.

[70] In the matter of **In the Goods of William Loveday** [1900] P 154, a motion was brought by a next of kin for the revocation of an outstanding grant and the issuing of a fresh grant de bonis non. In granting the order for revocation, Jeune P stated as follows at page 156:

> *"After all, the real object which the Court must always keep in view is the due and proper administration of the Estate and the interests of the parties beneficially entitled thereto; and I can see no good reason why the Court should not take fresh action in regard to an estate where it is made clear that its previous grant has turned out abortive or inefficient. If the court has in certain circumstances made a grant in the belief and hope that the person appointed will properly and fully administer the estate and if, it turns out that the person so appointed will not or cannot administer, I do not see why the Court should not revoke an inoperative grant and make a fresh grant…"*

[71] I have carefully considered the case of **Estate Rupert Sammott v Narville Sammott** [2016] JMSC Civ 74. Particular emphasis is placed on paragraph 23 of the judgment where it is stated that:

> *"A grant of Administration may be revoked if the grant is wrongly made or where a will is discovered after a grant. See Parry & Kerridge – The Law of Succession 12th edition pp. 466-467. A grant is wrongly made if it was obtained as a result of false statements by the Grantee, whether made fraudulently or in ignorance of the truth…"*

[72] The case of **Chevaughn Lawton v Irene Collins and Others** [2021] JMSC Civ 191 has been cited by Counsel for the Defendants. In this case Master C. Thomas stated the following at paragraph 38:

> *[38] 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 on 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 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. [emphasis mine]***

[73] The interest of the beneficiaries in ensuring that the estate is properly managed cannot be overstated. The key point in this case is that over 30% of the estate of Charles Leopold Leiba has already been administered. This fact introduces a complication: while the Defendants argue that there is no risk to Chester Roy Leiba's entitlement being dissipated, the Court cannot simply rely on these assurances. The Court's role is to ensure that the administration of the estate aligns with the interests of the beneficiaries.

[74] In the matter of **In the Goods of William Loveday**, the Court emphasized that its role is to ensure the proper administration of the estate and safeguard the interests of those beneficially entitled. If it is found that the current Grant of Administration is flawed or insufficient, then the Court has the discretion to revoke the Grant and appoint a new administrator. The Court must keep in mind that the real object is to protect the interests of the beneficiaries, and if the original grant has been inefficient or abortive, revocation is an appropriate course of action.

[75] It is also significant that errors were disclosed in the Supplemental Oath of Administrator. Whether these errors justify the revocation of the Grant will be a key issue to address during the trial. If the Grant of Administration was obtained based on false statements or a lack of proper disclosure, this would further support the Claimants' position.

[76] In the instant case, the Defendants have conceded that the statement made in paragraph 9 of the Supplemental Oath of the Administrator was incorrect and has accepted that the Birth Certificate which was exhibited to the Supplemental Oath of Administrator was also incorrect. At this stage, it is not for the Court to pronounce whether these will result in a revocation. However, the question concerning whether this raises a serious issue to be tried must be resolved in the affirmative.

[77] That being said, another issue is whether a serious issue to be tried consist of the effectiveness of Power of Attorney used by the 1st Defendant to obtain the Grant of Administration. Therefore, the adequacy of the Power of Attorney used to obtain the grant will also be scrutinized. If the Power of Attorney was flawed or inappropriately used, this may have a direct impact on the validity of the Grant of Administration and whether the 1st Defendant was appropriately empowered to administer the estate of Charles Leopold Leiba.

[78] In this matter, the 1st Defendant applied for and obtained the Grant of Administration on the assertion that he is the duly appointed attorney of the 2nd Defendant. However, the Claimants have argued that there is no authority given to the 1st Defendant to apply for the Grant of Administration. A further argument is made that the Power of Attorney was not made and recorded in accordance with the law to

enable the 1st Defendant to take the Grant of Administration and to deal with the administration of the assets in the estate of Charles Leopold Leiba's.

[79] The Defendants on the other hand argue that the terms of the Power of Attorney when assessed cumulatively are capable of transferring this power to obtain a grant.

[80] Having taken all the arguments which have been advanced on both sides on this point, the Court considered the following authorities in determining whether there is a serious issue to be tried in this regard. CPR Rule 68.23 addresses the appropriate procedure for grants to attorney. It states as follows:

> "*68.23 (1) Where the person entitled to apply for a grant resides outside Jamaica, grants of administration for the use and benefit of that person may be made to his or her attorney acting under a* ***duly recorded Power of Attorney****.*
>
> *(2) Where the donor of the power is an executor, notice of the application must be given to any other executor unless the registrar otherwise directs.*
>
> *(3) A grant to an attorney may be limited until a further grant is made or in such other way as the registrar may direct." (Emphasis supplied)*

[81] In seeking to ascertain what constitutes a duly recorded Power of Attorney, section 2 of the RDWLPA and sections 4 and 6 of the Probate of Deeds Act were explored.

[82] Section 2 of the RDWLPA states as follows;

> *"2. (1) A deed made in due form of law and within three months after the date thereof acknowledged by the party or parties that grant the same or proved by the oath of one sufficient witness or more in accordance with law, and, recorded at length in the Record Office within the said three months, shall be valid to pass the same without livery, seisin, attornment, or any other act or ceremony in the law whatsoever.*
>
> *(2) No deed made after the year 1681 without such acknowledgment or proof and recording, shall be sufficient to pass away any freehold or inheritance, or to grant any lease for above the space of three years." (Emphasis supplied)*

[83] Has this requirement been fulfilled? In this matter, the Power of Attorney was purportedly signed on the 23rd day of November, 2017 and recorded on the 13th day December 2017. Therefore, at this stage there is no prima facie case that there was a breach in terms of the Power of Attorney being recorded outside of the period stipulated.

[84] Sections 4 and 6 of the Probate of Deeds Act read as follows;

> *"4. All deeds executed in any Commonwealth country shall be proved on the oath or affirmation of the subscribing witnesses, or be acknowledged by the parties before-*
>
> *(a) any person having authority to attest to such document in that country; or*
>
> *(b) any Jamaican diplomatic officer exercising his function in that country,*
>
> *and certified under the hand and official seal of such person or diplomatic officer, as the case may be, or, if there is no such official seal, certified under the hand and seal of such person or diplomatic officer and stating that no such official seal exists."*

….

> *"6. From and after the twenty-first day of April, 1886,* ***deeds executed in any country outside the limits of this Island may be proved on the oath or affirmation of any subscribing witness thereto, or be acknowledged by any party or parties thereto, before any Notary Public*** *or person exercising the functions of a Notary Public in such country; and every deed so proved or acknowledged in any such country shall be deemed to be sufficiently proved or acknowledged, provided that such probate or acknowledgment purports to be certified under the hand and seal of such Notary Public, and provided that where any deed purports to have been proved or acknowledged before any Notary Public in any foreign state or country there be annexed to such deed a certificate, under the hand and seal of the appropriate officer of such foreign state or country, to the effect that the person before whom such deed is so proved is a Notary Public duly commissioned and practising in such foreign state or country, or some portion thereof, and that full faith and credit can be given to his acts." (Emphasis supplied)*

[85] In this case, Counsel for the Claimants argue that the 1st Defendant must have a properly executed power of attorney in accordance with the Probate of Deeds Act, for it to be validly proven and recorded as required by the RDWLPA. This is a mandatory requirement, and the RDWLPA imposes a sanction for non-compliance. Additionally, the CPR explicitly stipulates that the power of attorney must meet the prescribed standards for proper recording. To disregard this obligation would effectively undermine the clear requirements set forth by the RDWLPA, the Probate of

Deeds Act, and the CPR. I agree with these submissions and believe it is a valid ground upon which to challenge the validity and/or adequacy of the Power of Attorney.

[86] The second challenge raised in respect of the Power of Attorney is whether the terms were capable of allowing the Defendant to take a Grant of Administration. With a view to resolving whether there is a serious triable issue in this regard, the Court considered that the authorities suggest that a Power of Attorney which is being used to obtain a Grant of Administration should contain express terms of such an authority.

[87] The text **Bowstead and Reynolds on Agency** 17th edition by F.M.B. Reynolds QC (2001) offered useful guidance as regards the construction of Powers of Attorneys. It was stated therein as follows:

> *"3-010* *Powers of attorney are strictly construed and are interpreted as giving only such authority as they confer expressly or by necessary implication. The following are the most important rules of construction:*
>
> *(1)* *The operative part of a deed is controlled by the recitals where there is ambiguity.*
>
> *(2)* *Where authority is given to do particular acts, followed by general words, the general words are restricted to what is necessary for the proper performance of the particular acts.*
>
> (3) General words do not confer general powers, but are limited to the purpose for which the authority is given, and are construed as enlarging the special powers only when necessary for that purpose."

[88] In **Lloyd Michael Pommells v EW Lewis Investments & Finance Ltd** [2013] JMCC Comm. 10, the Court cited with approval an Australian authority as saying the following at paragraph 35:

> *"[35]* *Regarding the Power of Attorney he said:*
>
> *"**It is a long established rule that general words in a power of attorney are to be strictly construed: Attwood v. Munning; Bryant v. La Banque du Peuple**. There is no doubt that under the Power of Attorney Hodgetts had authority to sell any shares belonging to Dr. or Mrs. Tobin (cl. 8). But a pledge is essentially different from a sale. The distinction has been emphasized in many cases, but perhaps nowhere more strongly than in City Bank v. Barrow where Lord Selborne said: -*

> *"It is manifest that when a man is dealing with other people's goods, the difference between an authority to sell, and an authority to mortgage or pledge, is one which may go to the root of all the motives and purposes of the transaction. The object of a person who has goods to sell is to turn them into money, but when those goods are deposited by way of security for money borrowed it is a transaction of a totally different character. If the owner of the goods does not get the money, his object and purpose are simply defeated; and if on the other hand, he does get the money, a different object and different purpose are substituted for the first, namely that of borrowing money and contracting the relation of debtor with a creditor, while retaining a redeemable title to the goods, instead of exchanging the title to the goods for a title, unaccompanied by any indebtedness, to their full equivalent in money. The Power of Attorney in this case contains an express power to sell, and no express power to pledge. The power of pledging is such a different power from that of selling that, in my opinion, in view of the strict rules applied to the construction of Powers of Attorney, it should not be held that the general words in the Power of Attorney conferred a power to pledge for Hodgetts' own purposes." (Emphasis supplied)*

[89] In this case, it is arguable and a triable issue whether the general powers stated in the Power of Attorney on which the 1st Defendant relies, on a true construction, are capable of conferring on the 1st Defendant the power to take a Grant of Administration in respect of the Estate of Charles Leopold Leiba. The Power of Attorney arguably purports to grant the 1st Defendant powers over the assets and financial affairs of the 2nd Defendant. The 1st Defendant did not have any interest in the administered Estate of Charles Leopold Leiba. Consequently, it is arguable that the 1st Defendant was not entitled to apply for a grant.

[90] In conclusion, after a thorough review of the arguments advanced and the applicable legal authorities, the Court finds that there exists a serious issue to be tried regarding the Claimants' challenge to the Grant of Administration. These grounds warrant comprehensive scrutiny at trial. Given the gravity of the concerns raised, the Court is satisfied that the Claim is neither frivolous nor vexatious, and it is a matter that necessitates further examination and determination by the Court.

Are Damages an Appropriate Remedy?

[91] In the case of **Tewani Limited v Kes Development Co Ltd and Another,** Brooks J (as he then was) indicated that:

> *"The significance of the subject matter being real property, raises a presumption that damages are not an adequate remedy, and no other enquiry is made in that regard. The reason behind that principle is that each parcel of land is 'unique' and [of] 'a peculiar and special value'."*

[92] Given that the estate of Charles Leopold Leiba encompasses both real and personal property, with the real property being of a unique character – such uniqueness creates a presumption that damages would be insufficient to compensate the Claimants. Neither party has rebutted this presumption nor has the Claimants contended that damages would be a suitable remedy in the present circumstances. In light of the foregoing analysis, the authority and the submissions of Counsel, the Court is satisfied that damages would not constitute an adequate remedy in lieu of the injunctive relief sought.

Was there Material Non-Disclosure?

[93] Counsel for the Defendants argued that Mrs. Leiba Gayle failed to make full and frank disclosure to the Court in her ex parte application for freezing injunction and as such the ex parte freezing injunction should be set aside. The points of material non-disclosure surrounded the failure of Mrs. Leiba Gayle to –

(a) Attach a copy of the Death Certificate or obituary for Chester Roy Leiba;

(b) Adduce any evidence that she has taken any meaningful steps to apply for a Grant of Administration in relation to Chester Roy Leiba's estate;

(c) Attach a single document proving that she is in the process of making an application for a Grant of Administration;

(d) Identify the jurisdiction in which she is pursuing a Grant of Administration in relation to Chester Roy Leiba's estate;

(e) Explain why she has waited four years since Chester Roy Leiba's death on the 28 April 2020, to take any steps to pursue a Grant of Administration in relation to Chester Roy Leiba's estate;

(f) Adduce any evidence that she is Chester Roy Leiba's only child; and

(g) Adduce any evidence that she has advertised for any other descendants or dependents of the late Chester Roy Leiba, including creditors

(h) Attach any of Chester Roy Leiba's income tax statements or returns or social security statement showing his income;

(i) Attach any of Chester Roy Leiba's medical bills or receipts for housing;

(j) Any evidence that proves that she, in fact, contributed to Chester Roy Leiba's living and medical expenses and

(k) Any evidence that she actually paid for Chester Roy Leiba's cremation. She has not attached an invoice for the cremation and email giving instructions about the cremation.

[94] Counsel for the Claimants in his response argued that what is alleged does not amount to material non-disclosure as they have candidly stated before this Court that the Claimant is taking steps to obtain the Death Certificate of Chester Roy Leiba which is not yet available. Counsel stated that a material non-disclosure could only relate to a document or information which exists at the time the application is made and which was not brought to the Court attention.

[95] Furthermore, there was no assertion made by the 2nd Claimant that she had made an application to the Court for a full Grant of Administration and she did not indicate that any such application or grant was made or existed overseas. On this basis, Counsel argued that the complaint is misconceived as material non-disclosure.

[96] In **Venus Investments Limited v Wayne Ann Holding Limited** [2015] JMCA App. 24, Morrison J.A as he then was, stated the following at paragraph 25:

> *"[25] There is therefore an unbroken line of authority in support of the proposition that, on a without notice application, the applicant is obliged to act in good faith by disclosing all material facts to the Court, including those prejudicial to its case, and that failure to do so may lead to an injunction being discharged. The duty of disclosure extends not only to material facts known to the applicant, but also to any additional facts which he would have known had he made proper inquiries. Material facts are those which it is material for the judge hearing the without notice to know and the issue of materiality is to be decided by the Court, and not by the assessment of the*

> *applicant or his legal advisers. Nevertheless, there is a discretion reserved to the Court to make a fresh order on terms, notwithstanding proof of material non- disclosure…"*

[97] The principles which can be distilled from the above reasoning is whether the material complaint of the Defendants in this matter, should have been known to the learned Judge at the time when the ex parte application for injunction was made.

[98] In the instant matter, it is important, firstly, to consider what was known to the judge and revealed through the Affidavit evidence presented during the ex parte application for injunction and then to juxtapose it against the material which is said to have been unknown at the time.

[99] In examining the Affidavit of Urgency of Cheryl Leiba Gayle which was filed on 30th day of September 2024, and in particular paragraphs 2 and 3, evidentiary material was placed before the learned Judge as follows:

> *"I am the only child of Chester Roy Leiba , deceased, who is the son of the late Charles Leopold Leiba also known as Charles Leiba and therefore the sole beneficiary of the Estate of Chester Roy Leiba which is a beneficiary of the estate of Charles Leiba…I am entitled to a grant of administration in the Estate of Chester Roy Leiba and am pursuing the same as referred to further below, and would then, as personal representative of the Estate of Chester Roy Leiba, be entitled to a grant of administration in the Estate of Charles Leiba…..My father, Chester Roy Leiba, died intestate on April 28, 2020 at the age of 73 years and at the time of my father's death he had no surviving spouse…."*

[100] In paragraph 6 she stated that she gave instructions and paid for her father's cremation.

[101] It is a fact that the matters complained of by Counsel in terms of non-disclosure were not attached to the Affidavit which was filed. However, the issue that this court considered is whether this amounts to material non-disclosure.

[102] The court considered the case of **Financial Services Commission v Stocks and Securities Limited et al** [2023] JMCC COMM. 19. At paragraph 86 of the judgment, the Honourable Mrs. Justice S. Jackson Haisley, considered the test to be applied in determining what amounts to a material non-disclosure for the purposes of such applications for ex parte interim relief. In relying on the Court Appeal decision of

Paraskevaides v Citco Trust Corporation and Ors. VG 2020 CA 6, she stated as follows:

> *"… [86] It is therefore important to fully appreciate the meaning of "material" in the context of non-disclosure. Material means having real importance or great consequences. The test of materiality would be a circumstance that would have had an effect on my mind in the context of the issues raised. I found the case of Paraskevaides v Citco Trust Corporation and Ors. VG 2020 CA 6 from the British Virgin Islands Court of Appeal to be instructive on the question of materiality. This case concerned the discharge of an interim injunction on the grounds of material non-disclosure. On appeal the Court of Appeal allowed the appeal and ordered that the injunction should be re-granted. I found the court's guidance at paragraph 35 on how to treat with the question of materiality to be quite useful:*
>
> > *[35] … Further, the materiality of evidence should not be confused with the volume of evidence and should instead be elided with relevance. The emphasis must be on the overall picture given to the court which as a result of presentation of the evidence and argument in a fair and even-handed manner in all material respects. In that connection, a party seeking an urgent temporary solution to a genuine and pressing problem may not need to overwhelm the court with evidence to show the need for such relief. There is still some scope for discretion as to what is needed to present the fair overall picture to the court.*

[103] Upon careful consideration of the above, I am not persuaded that the issues raised by Counsel for the Defendants in this application for an injunction are material to the central matters at hand. Specifically, the concerns regarding the death certificate of Chester Roy Leiba and the reasons for the delay in applying for the Grant of Administration in his estate do not bear significant relevance to the issues in dispute. These matters do not materially impact the question of whether the Grant of Administration should be revoked based on the grounds presented in this case.

Is it just and convenient to grant the injunction?

[104] The concept of "just and convenient" has proven challenging for the House of Lords and this has been evident in a line of cases between 1987 and 1993.

[105] In **South Carolina Insurance Company v. Assurantie Maatschappij** [1987] AC 24, the House of Lords scrutinized the judiciary's authority to issue injunctions under section 37(1) of the Supreme Court Act 1981 (UK). This provision bears a close

textual and conceptual resemblance to section 49(h) of the Judicature (Supreme Court) Act (Jamaica), as both statutes predicate the grant of injunctive relief on considerations of what is "just and convenient."

[106] The House of Lords in **South Carolina Insurance Company v. Assurantie Maatschappij**, by a majority, ruled that the power, although expressed in the widest of terms, has been circumscribed by judicial authority. The Court noted that with the exception of injunctions to restrain proceedings overseas, they are limited to two scenarios:

1. Where a party to an action can show that the other party has invaded, or threatens to invade, a legal or equitable right of the former, for the enforcement of which the latter is amenable to the jurisdiction of the Court; and

2. Where one party to an action has behaved or threatens to behave in a manner which is unconscionable.

[107] Interestingly, Lord Goff, although agreeing with the conclusion arrived at by the majority, expressed much disquiet with the above limitations placed on the discretion. He noted as follows at page 45 of the judgment:

> *"I am reluctant to accept the proposition that the power of the court to grant injunctions is restricted to certain exclusive categories. That power is unfettered by statute; and it is impossible for us now to foresee every circumstance in which it may be thought right to make the remedy available..."*

[108] In the matter of **Kirklees MBC v Wickes Building Supplies Ltd** [1993] A.C. 227, Lord Goff, with the agreement of all members of the House, stated as follows:

> *"The power to grant injunctions, which now arises under section 37 of the Supreme Court Act 1981, is a discretionary power, which should not as a matter of principle be fettered by rules."*

[109] Although the **American Cyanamid Case,** has been regarded as the leading authority, Kerr LJ cautioned that the overriding principle of universal application in applications of this nature is that such orders may be granted where it is just and convenient to do so. He notes as follows in **Cambridge Nutrition Ltd v BBC** [1990] 3 ALL ER 523, at p.534;

> *"It is important to bear in mind that the American Cyanamid case contains no principle of universal application. The only such principle is the statutory power of the Court to grant injunctions when it is just and convenient to do so. The American Cyanamid case is no more than a set of useful guidelines which apply in many cases. It must never be used as a rule of thumb, let alone a straight jacket...The American Cyanamid case provides an authoritative and most helpful approach to cases where the function of the court in relation to the grant or refusal of interim injunctions is to hold the balance as justly as possible in situations where the substantial issues between the parties can only resolved by a trial..."*

[110] It is evident, therefore, that while the authorities may direct the Court to consider specific conditions, the ultimate determination of whether injunctive relief should be granted hinges on whether it is just and convenient in the circumstances to do so.

[111] Subsequently, the Court finds that it is both just and convenient to extend the injunction until the determination of the claim in this case. In arriving at this conclusion, the Court has carefully considered Rule 68.58 of the CPR in its entirety and will reproduce that rule within the context of this ruling.

[112] Rule 68.58 reads as follows:

> *(1) This rule applies to applications for revocation of a grant.*
>
> *(2) If the claimant is an executor or administrator, the claimant must lodge the grant at the court when the claim form is filed.*
>
> *(3) If the grant is in the possession or under the control of any defendant, that defendant must lodge it at the court when filing his or her acknowledgment of service.*
>
> *(4) Any person who fails to comply with paragraph (2) or (3) may, on the application of any party to the proceedings, be ordered by the court to lodge the grant within a specified time.*
>
> *(5) Where an order is made under paragraph (4), the person against whom such an order is made may not take any step in the proceedings without the permission of the court until that person has complied with the order.*

[113] I have considered carefully what may be the underlying purpose of such a rule or practise. The court finds that it must be that whilst a revocation of a Grant of Administration is being pursued, it would be improper practise for the administrators to be able to utilize the impugned Grant of Administration to distribute the assets of

the estate. An injunction would therefore operate to preserve the status quo until a determination is made whether the grant itself should be revoked.

[114] The purpose of surrendering the grant in matters where a challenge is mounted is to strip the executor/administrator of his/her powers whilst the grant itself is being challenged. Therefore, the granting of an interim injunction is consistent with the true purpose of Rule 68.58 of the CPR which aims at retaining the status quo until disposal of a claim for revocation.

[115] Therefore, it is just or convenient to also grant injunctive relief which in essence prevents the administrator/executor from continuing to deal with assets and halts processes which have already started in seeking to transfer property until the determination of the matter, for which the physical grant is no longer necessary to complete such transactions.

[116] In the case at bar, the Defendants have advanced that in excess of 30% of the estate of Charles Leopold Leiba has already been distributed. By law, Chester Roy Leiba stands as a beneficiary of the Estate of Charles Leopold Leiba. By virtue of his status as a son of the Charles Leopold Leiba, Chester Roy Leiba is entitled to a 50% interest in that estate. His daughter, Mrs. Leiba Gayle, who stands as his Administrator Ad Colligenda Bona seeks to preserve the status quo until a determination is made concerning the Grant of Administration made to the 1st Defendant in this matter.

[117] In conclusion, after careful consideration of the relevant legal authorities and the facts before the Court, it is evident that granting the injunctive relief sought is both just and convenient in the present case. The purpose of such relief aligns with the preservation of the status quo, which is essential in ensuring that the impugned Grant of Administration does not facilitate the further distribution of Charles Leopold Leiba's estate assets while the matter of revocation remains unresolved.

[118] The Court finds that this measure is in keeping with the underlying intent of Rule 68.58 of the CPR, and as such, the injunction will remain in place until the final determination of the claim. The interests of justice, the preservation of Charles Leopold Leiba's estate's assets, and the proper administration of that estate all warrant the continuation of the injunction in this case.

Is an undertaking as to damages required?

[119] The case of **University Hospital Board Management v Dr. Sandra Williams-Phillips** [2014] JMSC Civ 47 spoke about the usual practices of an undertaking as to damages. Simmons J (as she then was) opined at paragraph [12] –

> *[12] The usual practice where the court is granting an interlocutory injunction is to require the claimant to give an undertaking as to damages. It is to be noted that this undertaking is given to the court and is intended to provide a method of compensating the other party if at some later date it appears that the injunction was wrongly granted. It has therefore been described as "the price which the person asking for an interlocutory injunction has to pay for its grant". The effect of the undertaking is that the party who obtains the injunction undertakes to pay any damages sustained by the other party as assessed by the court.*

[120] There are instances when such undertakings may not be required such as, inter alia, when the injunction is granted ex parte or when the injunction granted does not interfere with the rights of the Defendants. I am not of the view that the factual circumstances of this case discloses any reason to waive the requirement for the Claimants to provide an undertaking as to damages. Especially where it is obvious that the imposition of the injunction halts all administration with the Estate of Charles Leopold Leiba and undoubtedly will affect the 2nd Defendant's rights. In light of the foregoing, I am of the view that usual undertaking as to damages must be provided by the Claimants.

CONCLUSION

[121] Having found that there is a serious issue to be tried, that damages is not an appropriate remedy and that it is just and convenient to grant the injunction, the court therefore grants the injunction until the disposition of the substantive matter. As a matter of legal consequence, and given that the Defendant's arguments namely, that the Claimants lack standing to seek an injunction and that there was material non-disclosure, have been unsuccessful and remain unsubstantiated, it follows that the 1st Defendant's application for the discharge of the ex parte injunction is accordingly denied.

ORDERS

[122] In the final disposition of this matter, the following orders are made:

1. Orders number 3 and 4 sought by the Claimants in the Notice of Application for Court Orders originally filed on the 30th September 2024 and relisted on 18th November 2024 are granted as prayed. The Orders are to remain in place until the determination of the substantive matter.

2. Orders number 1 and 3 of the 1st Defendant's Notice of Application to Discharge ex parte Freezing Order filed herein on 13th November 2024 are refused.

3. The Claimant is to give the usual undertakings as to damages.

4. The first hearing of the Fixed Date Claim Form filed on the 30th September 2024 and filed relisted on 18th November 2024 is adjourned to the 19th June 2025 commencing at 10:00 a.m. for 1 hour.

5. Leave to appeal is granted.

6. The 1st Defendant is permitted to do that which is necessary in gathering information in order to comply with Order number 4 as prayed of the Notice of Application for Court Orders filed on the 30th of September 2024 and filed relisted on 18th November 2024.

7. Parties are permitted to file and exchange witness statements on or before 30th May 2025.

8. Costs to be costs in the Claim.

9. Claimants' Attorneys-at-Law is to prepare, file and serve the Formal Order.

Sgd. A. Martin-Swaby J

Puisne Judge (ag)