

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN PROBATE AND ADMINISTRATION

SUIT NO. P-850 OF 1991

IN THE MATTER OF THE ESTATE OF
ROBERT NESTA MARLEY late of 56
Hope Road in the parish of
Saint Andrew, Musician and
Entertainer, Deceased, Intestate.

BETWEEN	MUTUAL SECURITY MERCHANT BANK AND TRUST COMPANY LIMITED		PLAINTIFF
A N D	RITA MARLEY	1st	DEFENDANT
A N D	CEDELLA ANITA MARLEY	2nd	DEFENDANT
A N D	DAVID NESTA MARLEY	3rd	DEFENDANT
A N D	STEPHEN ROBERT NESTA MARLEY	4th	DEFENDANT
A N D	STEPHANIE SAHI MARLEY (AN INFANT)	5th	DEFENDANT
A N D	MAKEDA JAHNESTA MARLEY (AN INFANT)	6th	DEFENDANT
A N D	ROHAN ANTHONY MARLEY	7th	DEFENDANT
A N D	KYMANI RONALD MARLEY (AN INFANT)	8th	DEFENDANT
A N D	ROBERT NESTA MARLEY	9th	DEFENDANT
A N D	JULIAN RICARDO MARLEY (AN INFANT)	10th	DEFENDANT
A N D	DAMIAN ALEXIS ROBERT NESTA MARLEY (AN INFANT)	11th	DEFENDANT
A N D	KAREN SOPHIA MICHELLE MARLEY	12th	DEFENDANT

R.N.A. Henriques Q.C., Dr. Lloyd Barnett and David Batts instructed by Douglas Brandon of Livingston, Alexander and Levy for the plaintiff.

Michael Hylton and Miss Andrea Walters instructed by Myers, Fletcher and Gordon for the first defendant.

Miss Pauline Findlay instructed by Dunn, Cox and Orrett for the second, third, fourth, fifth, seventh, ninth and twelfth defendants.

Sylvester Morris for the eighth defendant.

Colin Henry and Miss Sonia Mitchell instructed by Colin Henry and Company for the tenth defendant.

B.E. Frankson and Arthur Kitchin instructed by Gaynair and Fraser for the sixth defendant.

Mrs. Priya Levers and Anthony Levy instructed by Miss Maxine Gordon of Levy, Hanna and Company for the eleventh defendant.

HEARD: NOVEMBER 25, 26, 27, and 28, 1991, DECEMBER 2, 3, 5, 9, 19 and 20, 1991.

WALKER J.

This is the oral judgment of the Court.

Robert Nesta Marley, affectionately called 'Bob', died on May 11, 1981. He died intestate. During his lifetime he was the song writer and performing artiste par excellence. He was from every standpoint a musical genius. Up until the time of his death he was undoubtedly the leading exponent of Jamaican music in the idiom known as Reggae. In this particular type of music he was a national and international superstar. But Bob Marley was more than all of this. He was a prolific procreator. By the time of his death at the youthful age of thirty-six years he had sired all of eleven children, that is as far as this court is aware. Of Bob Marley I am tempted to say as Megarry, J., as he then was, in his famous judgment said of the late, great Hollywood actor, Errol Flynn, that as a lover he attained Olympian standards. These eleven children along with his widow, Rita, are his beneficiaries and are, between all of them, beneficially entitled to his entire estate. The children, Stephanie, Makeda, Kymani, Julian and Damian, are infants in the eyes of the law and are hereafter referred to as 'the infant beneficiaries'. Rita Marley and the other six children, Cedella, David, Stephen, Rohan, Robert Nesta, Jr., and Karen, are hereafter referred to as 'the adult beneficiaries'.

The Bob Marley estate has been, and continues to be, an administrator's nightmare. It is vast with the assets scattered world-wide. It is complex and, as the figures show, lucrative. It is, in truth and in fact, a multi-million dollar estate and it has been beset by litigation. At the present time, as I am advised, there are no less than eleven lawsuits involving the estate pending

here in Jamaica and abroad. This has ravaged the funds of the estate. During the course of these proceedings the administrator has advised me that since 1986 the staggering amount of over J\$50 million has been paid out of estate funds for administration and other legal and professional fees and expenses. During the same period of time just over J\$9.5 million has been distributed among the beneficiaries. So, however one looks at it, the fact of the matter is that the beneficiaries have already been deprived of a sizeable portion of their inheritance. Some of them, through their legal representatives, have complained bitterly and have accused the administrator of being, at the least, ungenerous to them. Others of them have implied that the administrator has been guilty of mismanagement. But is the administrator really at fault? As I found it necessary to point out to Mr. Frankson, whether or not this is so is not an issue for resolution by me at this time. However, notwithstanding that fact, having heard the evidence I must say that I do feel sympathy for Mr. Byles, the executive director of the administrator, Mutual Security Merchant Bank and Trust Company Limited. Mr. Byles bears the brunt of the attack. His problems have been manifold. His task is Herculean and, it would seem, a thankless one. But I will say no more on this aspect of the matter except to observe that an administrator is duty bound to institute legal proceedings where it is in the best interests of beneficiaries to do so and, by the same token, an administrator must defend such proceedings which are brought unmeritoriously against the estate. But, as I understand it, the burden of the arguments of counsel appearing for the beneficiaries in these proceedings has been to impress upon me the fact that their clients are tired of this seemingly endless succession of lawsuits involving the Marley estate. They have had their fill of legal battles and want no more. They yearn for a cease-fire, which does not at all surprise me since they relate to a husband and father who was himself a messenger of peace.

And if I might digress for a moment - a brief moment - who can forget the famous Bob Marley Peace Concert at which, before the adoring eyes of a grateful nation then being rent asunder by political violence, Bob Marley, on stage at the National Stadium of Jamaica, single-handedly persuaded a Prime Minister and a leader of an Opposition to shake hands as a sign of peace?

But to return to the matter at hand, on the summons now before me the administrator asks for the court's directions with regard to the sale of some of the assets, primarily the music assets, of this estate. A previous attempt was made to sell these assets under a contract dated 27th April, 1988. That contract evidenced an agreement with Island Logic Inc., a New York based corporation which has since been succeeded by Island Logic Ltd., the joint offeror with the adult beneficiaries in one of the two fresh offers in respect of which the administrator now requests directions. It was argued by counsel appearing for the administrator in these proceedings that that 1988 contract was a conditional contract which terminated with the decision of the Privy Council in the case of Makeda Jahnesta Marley and Eleven Others v Mutual Security Merchant Bank and Trust Company Limited (see Privy Council Appeal No. 20 of 1989). Against that it is being maintained by Island Logic Ltd., and I have had the opportunity to see a letter written on behalf of that company to this effect, that the 1988 contract is a valid contract which was completed and remains in full force and effect. Whichever side is right on this, and based on the available evidence that I have, I incline to the view that the argument advanced on behalf of the administrator is the correct one, the present realities are that the Marley music assets, namely, the copyrights, the same copyrights which MCA Music Publishing is now offering to buy, are presently in the possession of Island Logic Ltd.; and Island Logic Ltd. contends, rightly or wrongly,

that it is the owner of these assets under the 1988 contract and refuses to re-convey them to the administrator. It is factual that these assets were conveyed to Island Logic Ltd. in December, 1989 on payment to the administrator of a purchase price of US\$8.2 million which the administrator still holds up to the present time. It is also a fact that this transaction was effected before the decision of the Privy Council became known and that today the administrator stands ready, and has so indicated to Island Logic Ltd., to return to the company upon re-conveyance of the Marley music assets the full purchase price of US\$8.2 million together with interest and a further sum of money by way of a management fee. To date Island Logic Ltd. continues to hold these assets and has by letter dated 5th September, 1991 to the administrator stated explicitly that it will not reconvey them. In the same letter Island Logic Ltd. has indicated in no uncertain terms its intention to resort to litigation should the administrator continue to repudiate the 1988 contract.

It is against this background that I come to consider the two offers which are now before me. One is that of MCA Music Publishing, this offer having been received in response to world-wide advertisement undertaken by the administrator pursuant to the decision of the Privy Council which, I am bound to say, was followed meticulously by the administrator in terms of the procedure prescribed therein. The other offer which came at the eleventh hour on November 22, 1991 is that of Island Logic Ltd. and is made jointly with the adult beneficiaries herein.

The administrator favours acceptance of the MCA Music Publishing offer and asks the court to approve this offer.

So I must examine and compare the two offers. In doing so I bear in mind that my prime consideration must be whether the terms of one or other of these offers are the best that are reasonably obtainable and will best serve the interests of all the beneficiaries concerned.

I look first at the MCA offer, and at the purchase price. Referring to Article 1.1(a) which deals with Compositions and Income Participations, the company offers to pay a price which is not to exceed \$12 million. And when I speak of money here I speak of United States Dollars. It also offers in Article 1.1(b) to purchase what is described in the draft contract as Recording Agreements for a price which is not to exceed US\$3 million. In Article 1.1(c) it offers to buy what is described as the Master Recordings, Distribution Rights and other Music Assets for a price of US\$200,000. So it is to be noted that only as regards the price of US\$200,000 can this be said to be an offer of a precise sum of money. In response to questions that I asked of counsel appearing for the administrator I was assured that these figures of \$12 million and \$3 million were not arrived at arbitrarily but after experts had valued the assets which the company was seeking to buy. I was told by counsel appearing for the administrator, and I accept that this is so, that this is the usual form for contracts of this nature. I imagine that in this case the prices are so set out particularly because MCA Publishing have not yet had access to the assets. They have not yet seen the assets, the reason being that the assets are in the possession of Island Logic Limited. They have made this offer without actually seeing the assets.

Against the MCA offer, Island Logic Ltd. and the adult beneficiaries have made an offer of US\$11.5 million. US\$1 million of that US\$11.5 million relates to the Cayman litigation and, since there is some doubt about that, leaving that US\$1 million aside, the offer of Island Logic Ltd. and the adult beneficiaries would be US\$10.5 million. That is a precise sum of money. Whether it be US\$10.5 million or US\$11.5 million, that is a precise sum of money. If that offer were to be accepted the seller would know for sure how much money would pass on this sale. Mr. Hylton, who appears for the first defendant, in espousing the cause of his client and the

other adult beneficiaries, presented to the court mathematical calculations which purported to show the amount of money that would be available for distribution among the beneficiaries in the event of one or other of the two offers being accepted. On their part, counsel appearing for the administrator did likewise. In actual fact original calculations submitted on behalf of the administrator were later revised so that I do have before me two analyses, that is two analyses presented by counsel appearing for the administrator which arrive at different conclusions in terms of the amount of money that would be available for distribution among the beneficiaries.

On looking at the calculations coming from both sources, it strikes me immediately as significant that the revised comparative analysis which was prepared by Mr. Wayne Coleman, a public accountant of twenty-five years' standing, at the request of the administrator, except for a controversial figure of US\$500,000 for audit adjustments recoverable, coincides exactly with the original calculations presented by Mr. Hylton. The revised analysis presented by Mr. Coleman shows a figure of US\$1,174,000 remaining for distribution to each of the five infant beneficiaries if the Island Logic offer were to be accepted. Mr. Hylton's original calculations showed a figure of US\$1,274,000 remaining for distribution, to each of these five beneficiaries if the offer of Island Logic were to be accepted. So the difference between both is US\$100,000 which when multiplied by 5 produces that figure of US\$500,000 that I have just referred to. As I say, there is a dispute as to that figure. Mr. Hylton claims that that figure would accrue to the estate and be available for distribution. Dr. Barnett, on the other side, disagrees and says that that figure would not be a figure which would accrue to the estate. So, whereas that figure was included in Mr. Hylton's calculations, it was omitted from Mr. Coleman's analysis. But, apart from that, they both agree as to what the likely position would be at the end of day if the offer of Island Logic were to be accepted. Of course,

these figures do not take into account the payment of costs. So this is a coincidence which has struck me forcefully. Mr. Coleman does make it clear in a letter which he wrote to the administrator and which is dated December 4, 1991 that "The information provided to us was used to compile the attached (and that is the revised analysis) for the presentation of useful information to the court and was accepted by us without the application of generally accepted auditing procedures." So Mr. Coleman makes that quite clear.

Now to look at the actual figures as they relate to both offers: There are certain figures which are accepted as correct. They are definitive and they are not disputed. I refer now to the figure of US\$4.9 million being the balance in hand at the Royal Bank of Canada. That can be taken as correct. The second figure is a figure of US\$1,470,000 as local funds available - local funds converted to United States currency. Nobody has disputed that. A figure of US\$1 million has been estimated in relation to recovery of arrears from Cayman Music, and that has been accepted on both sides as well. There is a figure of US\$500,000 for audit adjustments recoverable. The amount of that figure is not disputed. What is disputed is who benefits from it. Then, there is a fifth figure of US\$2.3 million as the estimated minimum value of the Cayman Catalogue. Nobody disputes that. When all these figures are added together, on the calculations submitted on behalf of the MCA offer we arrive at a total of US\$10,170,000. If Mr. Hylton's argument is correct this total would be the same in relation to the Island Logic offer, but I assume for the moment that Mr. Hylton is wrong and Dr. Barnett is right and I deduct the amount of US\$500,000 from the calculations of Mr. Hylton. In the circumstances the total figure up to this point in time in relation to the offer of Island Logic would be US\$9,670,000. Thereafter, on the offer of Island Logic there would be an amount of US\$200,000 for, as the administrator has said, excise duty, local legal administrative and unforeseen expenses. That figure

has not been disputed. It is a figure supplied by the administrator and nobody has disputed it. That would have to be deducted from the total I just mentioned of US\$9,670,000. Also to be deducted would be a figure of US\$3.6 million representing administrator's fees and other United States expenses as the administrator detailed in one of his affidavits. That figure of US\$3.6 million has not been disputed. So from the total - and I am dealing still with the Island Logic offer - from the total of US\$9,670,000 would have to be deducted a total of US\$3.8 million i.e. US\$3.6 million plus US\$200,000. Having made that deduction there is a balance of US\$5,870,000. Divided by 5 that produces the figure of US\$1,174,000 which, as I have said, coincides with Mr. Coleman's analysis, except for US\$500,000 for audit adjustments recoverable.

On the other side, to this total of US\$10,170,000 would have to be added the purchase price which MCA is offering to pay. It is a figure which will not exceed US\$15.2 million. So we know that there is a maximum figure. What we do not know is the figure that will eventually be paid. But let us assume, for the purposes of this examination, that MCA pays the maximum figure of US\$15.2 million. That would have to be added to this figure of US\$10,170,000. To that would have to be added a figure of US\$500,000 which is an estimate of pipeline earnings up to 31st December, 1991, and a further sum of US\$5.2 million would have to be added as royalties which would be recoverable from Island Logic Ltd.

I should make a correction at this time. I have been following the original calculations submitted in relation to the MCA offer but it was agreed that a sum of US\$2.3 million was included in the purchase price of US\$15.2 million and was, therefore, not properly added as a separate item. That was conceded, so that US\$10,170,000 would have to be lessened by US\$2,300,000 if we added the US\$15.2 million after that. The final figure to be added was, as I said, US\$5.2 million which it was estimated would have been the

extent of the royalties recoverable from Island Logic Ltd., if MCA's offer were accepted in preference. So, using these figures, and without the assistance of Mr. Henry's calculator I have come to a total of US\$28,770,000. Now, from that it was accepted that the same total of US\$200,000 would have to be deducted for excise duty - what was described by the administrator as excise duty, local legal administrative and unforeseen expenses. Also to be deducted would be that same amount of US\$3.6 million for administrator's fees and other United States expenses.

It was agreed that if the MCA offer were accepted the administrator would be obliged to repay to Island Logic Ltd., the sum of US\$8.2 million plus interest which was estimated at US\$1,093,333. In the original calculations submitted relative to the MCA offer, the administrator declared the interest that would have to be paid in the terms "Interest due to Island Logic, 5% on US\$8.2 million from 27th April, 1988 to 31st December, 1991, US\$1,093,333." So that seems to have been a figure that was carefully worked out by the administrator. Also to be deducted would have to be a sum of US\$1.6 million as a reservation in relation to the Wailers' claim. I accept that this US\$1.6 million would not be money that would be immediately lost to the estate. It would be contingent on the outcome of the Wailers' claim, but the fact of the matter is that in the face of the Wailers' claim the administrator would be duty bound to make such a reservation. So from a total, then, of US\$28,770,000, according to my calculations, would have to be deducted a total of US\$15,193,333, and I have arrived at that figure of US\$15,193,333 by adding the items, US\$200,000 to US\$3.6 million, to US\$1,093,333, to US\$8.2 million, to US\$1.6 million. There was also a management fee which it was agreed would be payable to Island Logic Ltd. and that was estimated to be US\$500,000.

I have used the original calculations presented to me on behalf of the administrator because Mr. Coleman's analysis proceeds on the basis, for instance, that US\$150,000 would be due to Island Logic for, as he states, "net interest". I have been told that that figure of US\$150,000 has been arrived at after setting off what it is felt was due to the estate from Island Logic. Island Logic was liable to pay money to the estate, the estate was liable to pay money to Island Logic and the one was set off against the other producing that figure of US\$150,000. But as to what figure was set off against what figure to arrive at this US\$150,000 I will never know, and, therefore, I do not think that I can rely on it. I prefer to use the original calculations submitted on behalf of the administrator. In Mr. Coleman's analysis he used, for audit adjustments recoverable, figures of US\$800,000 to US\$1.5 million. That is a far cry from the original sum of US\$500,000 which appeared in the original calculations of the administrator. Again, it is impossible for me to say how and by what process that increase was arrived at. From what Mr. Coleman has said I don't think he could explain either, no accepted auditing procedures having been applied. So I will not use these figures. When I have done the subtraction of US\$15,193,333 from US\$28,770,000 I get a remainder of US\$13,576,667. That sum of money would have to be divided in this case among eleven beneficiaries and, having done that, I arrive at a figure of US\$1,234,242 as the amount that would be available for distribution to each beneficiary. So these two comparative figures show figures of US\$1,234,242 if the MCA offer is accepted and US\$1,174,000 if the Island Logic offer is accepted. As between these two figures,

then, there is a difference of US\$60,242.

As part of the offer of Island Logic - and, you know, I have been referring to the offer of Island Logic but I mean the offer of Island Logic and the other beneficiaries, of course - there was an offer to purchase certain of the Marley real estate assets for an amount of J\$8.5 million, and associated equipment and the like for US\$311,500. As I understand it, these sums of money are quite separate and apart from the US\$11.5 million to which I have been referring, so that it would be open to the administrator to sell the music assets and not the real estate if it thought that any offer it received from Island Logic or from MCA was not a sufficient offer for the purchase of that real estate.

But I am concerned, now, to examine the advantages and disadvantages of these two offers as they relate to these sums of money, on the one side US\$11.5 million, on the other side US\$15.2 million. I accept Dr. Barnett's submission that one has to look at what the benefits will be to the beneficiaries both in the long term and the short term, and not only in the short term. I have considered all the submissions that have been made to me, and let me deal first with the Island Logic offer. If that offer is accepted there will be a certainty of purchase price. That purchase price would be either US\$10.5 million or US\$11.5 million. There is some doubt as to purchase of the reversionary rights which may be involved in the Cayman litigation. Mr. Hylton assured me that the intention of Island Logic and the adult beneficiaries is to match precisely the offer made by MCA in relation to any reversionary rights that may fall to the estate out of the Cayman litigation. But the terms of his letter dated November 28, 1991 addressed to the administrator appears to be in conflict with that intention. What Mr. Hylton's letter says is, and I quote: "In addition and as part of this offer Island Logic will purchase the rights being claimed by the estate in the pending litigation against Cayman

Music Inc. including the exclusive right to settle that litigation for US\$1 million. This sum would also be payable upon the final and conclusive court approval of the offer and at the expiration of all appeals." That is what his letter says. Submissions have been made to me to suggest that those reversionary rights may be worth to the estate much more than the sum of money now being offered by Island Logic Ltd. What Mr. Hylton says, and I repeat, is that the intention of Island Logic and the adult beneficiaries is to match in every material particular the offer of MCA in this regard, so that it seems to me that if the offer of Island Logic were to be accepted, this aspect of the matter would have to be clarified. But whether the purchase price being offered by Island Logic is US\$10.5 million or US\$11.5 million - and, as I say, that depends on how much they are buying - it is a certain offer and the estate will know how much money is coming to it. On the other hand, the MCA offer is of a maximum sum of US\$15.2 million. It may be less but it cannot be more. So there is to this extent uncertainty surrounding the MCA offer of this purchase price of US\$15.2 million. Another benefit which would accrue to the estate if the Island Logic offer were to be accepted would be that the estate would obtain relief from the Wailers' claim in relation to which, as I have already indicated, the administrator has deemed it fit to reserve US\$1.6 million of the estate. Other advantages would include the elimination of the likely claim of Island Logic Ltd., with all the costs attendant thereon, and the crystallization of the hope of recovery of money, US\$1 million, which Island Logic would pay. Furthermore, the purchase of the Cayman Catalogue would not be subject to the termination of litigation and the Marley estate would be in a position

to keep all the interest that has accrued on the sum of US\$8.2 million which was paid to the administrator. There would be an elimination of the reservation which the administrator has deemed it fit and appropriate to make in relation to the claim of Rita Marley. That reservation the administrator estimates at US\$6 million. And last but not least would be the advantage to the infant beneficiaries flowing from the waivers given by the adult beneficiaries. Now, these reservations that I have just spoken of, i.e. the reservations in respect of the Wailers' claim, the claim of Island Logic Ltd., the likely claim of Island Logic Ltd. and Mrs. Marley's claim, total US\$11.1 million. What this would mean is that the beneficiaries would, so long as it was necessary to maintain these reservations, be kept out of money totalling US\$11.1 million dollars, and these reservations would have to be made even if the administrator thought that the claims were without merit. The administrator would be bound, in protection of itself, to maintain these reservations, and not dispense with them until such time as the several matters were finalised. On at least one occasion previously the administrator has taken advice which has turned out to be incorrect in terms of the result of the case, and I refer to the Privy Council case. So the administrator would have to be careful and these reservations would have to be made in spite of the apparent weakness of the claims being made against the estate.

In terms of the disadvantages, of course, the obvious disadvantage in the Island Logic offer is the smaller purchase price. When we come to the MCA offer, if that offer were to be accepted the Marley estate would be, for sure, buying at least one more lawsuit because I have no doubt in my mind, having read the evidence in this case, that there would be a certain

lawsuit involving Island Logic Ltd. Either Island Logic would sue or it would counter-claim if sued. And what is so important is that at this very moment Island Logic Ltd., is in possession of the very assets that the administrator wishes to sell and nemo dat quod non habet. That is true. In order to retrieve these assets the administrator would be bound to sue, and that would be a twelfth lawsuit and another reservation would have to be made, this time in relation to the claim of Island Logic. This reservation the administrator has already estimated would be US\$3.5 million. The Wailers' claim would continue to exist. I have been asked to consider the merits of the Wailers' claim and arguments have been addressed to me to show that there is really no merit in that claim. These arguments are attractive, however, the fact of the matter is that the claim would have to be contested if the estate felt that there was no merit in it. That would involve costs and a reservation, at least, which would not be in the best interests of the beneficiaries. The Cayman litigation would remain, and one has to remember that the offer of MCA to purchase the Cayman Catalogue is subject to termination of the Cayman litigation. Again, time would play a part in the eventual position of the beneficiaries. And when I speak about time it seems to me that even if a suit were to be commenced today at the instance of Island Logic, having regard to the history of litigation in these courts and the time involved, it would take years, assuming that there were appeals one way or the other, to bring a final conclusion to such litigation. Furthermore, when one looks at the draft contract relating to the MCA offer, and my attention was drawn to it by counsel appearing for the beneficiaries, particularly Mr. Henry, the terms of that agreement impose obligations of the most serious nature on the seller. One starts in a position where, as I have indicated before, the seller is not now in possession of the assets that it wants to sell. That makes it very difficult.

My attention was drawn to Article 1.2 of the draft contract with MCA. It relates to the scheduled closing and gives either party an option to terminate the agreement if certain conditions are not fulfilled within two years. If the seller is not able to pass title in the assets - this is a section of the contract - within two years, this would give the buyer a right to terminate the agreement. Again, Article 4.19 of the agreement deals with litigation with which, as I have sought to point out, this estate has been beset for a very long time now. In fact the provisions of Article 4.19 refer not only to actual litigation or pending litigation but also to litigation which is orally threatened. It is so comprehensive. What would be the administrator's position vis-a-vis this aspect of the matter? Of course, I need hardly say that if the administrator of this estate entered into a contract with MCA and fell into breach, that would be another lawsuit, lawsuit No. 13, against this estate. At Article 6.1 of this agreement there is provision for the seller's indemnification, and for the buyer's indemnification at Article 6.2. So it seems to me that not being in possession of these assets at this time places the administrator in an extremely vulnerable position. Where acceptance of the MCA offer is concerned, it seems to me that the situation would be fraught with danger. When would these assets be recovered and at what cost? I can't say and I don't think anybody can say at this particular point in time.

I have been asked to consider, as well, the sentimental value of the estate. It is conceded by Mr. Hylton that that is a minor consideration. The Bob Marley music assets is a treasure-house of near priceless musical works that are likely to last forever. It must be of tremendous sentimental value to his immediate descendants. But in an exercise such as this the element of sentiment is not of prime, or even special, consideration. Be that as it may, I do agree with Mr. Hylton that it is a factor

which merits some consideration. Accordingly, taking the factor of sentiment into account, while at the same time giving due regard to the prime consideration of what is in the best interests of all the beneficiaries, I ask the question: All other things being in their favour, who better than the widow and children of Bob Marley to own the music of Bob Marley? It seems to me that the answer must be no one.

Where the joint offeror, Island Logic, is concerned, the moving spirit in that organization is Mr. Chris Blackwell who is, I am told, a long-time friend and musical associate of Bob Marley. Mr. Blackwell is the same gentleman, as counsel, Mr. Henry, reminded me, of whom Mr. Byles spoke in the most glowing terms at the time of the making of the 1988 contract. In the absence of any evidence to the contrary, I have no reason to suppose, and must presume, that, certainly in Mr. Byles' opinion, the good character and intentions of Mr. Blackwell yet remain unchanged.

Accordingly, in my judgment it is in the best interests of all the beneficiaries of this estate that I should direct the administrator to accept the offer made jointly by Island Logic Ltd., and the adult beneficiaries to purchase the music assets of the estate, and I do so. This approval applies as well to the purchase of such reversionary rights as are involved in the Cayman litigation, provided a mutually satisfactory purchase price can be agreed upon.

So it is left for me to make the order. Mr. Hylton, I had asked both yourself and Dr. Barnett to assist me in this regard. What I propose to do is to direct the administrator to accept the offer of Island Logic Ltd. and the adult beneficiaries, and I also wish to ensure that such waivers as are given are irrevocable. I wish to ensure that, as Mr. Henry submitted, the waiver of Mrs. Marley is not illusory but real. It may be that we can adopt the submission of Mr. Henry in that regard. What Mr. Henry submitted was that Mrs. Marley should be required to waive at least that

portion of her entitlement which bears the same relationship to her entire putative entitlement as the proceeds of sale bear to the value of the total estate. If that would suffice, then I would be prepared to order accordingly, but I think we need to thresh out the exact terms of the order that I am going to make. I intend to approve the offer of Island Logic Ltd. and the adult beneficiaries on the terms and conditions stipulated in the draft agreement exhibited to the affidavit of Michael Hylton dated 22nd November, 1991, and on the terms and conditions stipulated in the letter from Myers Fletcher and Gordon, Attorneys-at-Law, dated 28th November, 1991 and exhibited to the affidavit of Michael Hylton dated 28th November 1991. And then, of course, there is going to be the question of the costs of these proceedings.

On December 20, 1991.

ORDER OF COURT

It is hereby ordered as follows:

1. That the plaintiff do enter into an Agreement with Island Logic Ltd. and the 1st, 2nd, 3rd, 4th, 7th, 9th and 12th defendants herein basically in the terms of the draft Agreement attached hereto and incorporating such modifications to the said terms as were approved by the Court of Appeal of Jamaica in its order dated 9th March, 1989.
2. That this order be subject to:
 - (a) the said defendants executing within 21 days of final preparation the aforesaid Agreement and also Deeds of Surrender in terms of the drafts attached hereto.
 - (b) Island logic Ltd. and the said defendants executing a Deed of Indemnity in relation to the Wailers' claim in a form to be agreed between the parties.
 - (c) the balance of the purchase price being paid within 14 days of execution of the documents referred to in paragraph 2(a) above.

(d) the document referred to at paragraph 2 (b) above being executed within 10 days of being agreed and sent to the defendants' Attorneys-at-Law in care of Mr. Michael Hylton, Attorney-at-Law of the firm of Myers, Fletcher and Gordon.

3. That upon receipt of the sum payable pursuant to the Agreement referred to in paragraph 1 hereof, the plaintiff shall forthwith and irrevocably transfer the sum of US\$995,000.00 to the capital account of each of the 5th, 6th, 8th, 10th and 11th defendants, such funds to be retained in United States currency.
4. That the costs of all the parties to these proceedings be paid out of the funds of the estate, limited to two counsels for each party, such costs to be taxed on a Solicitor and Client basis.