[2017] **JMSC Civ. 189**

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

[DIVISION]

CLAIM NO. 2016 HCV 01199

BETWEEN	**PAMELA REIDY**	**CLAIMANT**
AND	**JONI YOUNG-TORRES [ADMINISTRATOR ESTATE KARL YOUNG]**	**DEFENDANT**

IN CHAMBERS

Nigel Jones instructed by Nigel Jones & Co. for the Claimant/Applicant

Mrs Alexis Robinson &Ms Rachel McLarty instructed by Myers Fletcher & Gordon for the Defendant/Respondent

HEARD: July 31, 2017, September 14, 2017 and October 27, 2017

Interim Injunction –essence of claim is to be declared spouse, evidence of being single not provided*; factual dispute as to whether deceased and applicant were 'living together' up to his death as if in law they were man and wife; although not physically 'living together'; whether serious issue to be tried; whether damages adequate remedy; preservation of status quo*

CORAM: GEORGE, J.

Introduction

[1] The Claimant/Applicant in this matter, Ms. Pamela Reidy, is seeking an injunction to restrain the Defendant/Respondent, Joni Young-Torres, the Administrator of

the Estate of Karl Young, whether by herself or otherwise from selling, transferring or disposing of any of the properties that falls under the estate of Karl Young, the deceased.

[2] The Claimant/Applicant contends that she is the common law spouse of the deceased and that they lived as husband and wife up to his death. This she maintains is true, despite the fact that evidence has been advanced that shows that she has been living in the United States of America for at least 8 years prior to his death. The explanation proffered for her extended stay in the United States of America is that she was seriously ill and that the deceased insisted that she remained overseas for treatment, as he was of the view that better healthcare opportunities existed in the United States of America.

[3] Amongst her contention is the fact that the Defendant/Respondent intends to sell the properties under the estate. This she avers has made her fearful that if she awaits the hearing of the substantial matter of this claim, and it is declared that she is the deceased's spouse, it may be too late for her to receive the percentage share that she would be entitled as a beneficiary under the deceased's estate, as the assets under the estate would have been dissipated to her detriment and likely loss of remedy.

Background

[4] The Claimant/Applicant's quest to be declared the spouse of the deceased dates back to March 23, 2016. On this date an Ex parte Notice of Application for Court Orders and Supporting Affidavits were filed by the Claimant/Applicant, as well as one Ms. Paula Ahuja, the Claimant/Applicant's sister.

[5] On April 18, 2016, a Notice of Change of Attorney was filed by the Claimant/Applicant's present Attorneys, and on April 20, 2016, a Fixed Date Claim Form was filed on the Applicant's behalf, again, seeking a declaration that the Claimant/Applicant is the common law spouse of the deceased. The Fixed

Date Claim Form was accompanied by several affidavits supporting the Claimant/Applicant's claim.

[6] On May 11, 2017, an Ex parte Notice of Application for Injunction was filed – the subject of the Application at bar. - This was followed by an Amended Ex parte Notice of Application for Injunction on May 18, 2017. Of note is the fact that this Application was once again amended on October 27, 2017, and the words "Ex parte" were removed. In this Application, the Claimant/Applicant outlined that there are serious issues to be tried and that she has a real prospect of succeeding with the Claim filed against the Defendant/Respondent. She further highlighted that damages would not be an adequate remedy in the event that the injunction is not granted and she is successful in her substantive claim.

Issue

[7] By virtue of the above, it is pellucid that the principal issue to be distilled and determined is –

1. Whether or not the Claimant/Applicant has met the requisite threshold for the granting of an injunction.

Analysis

CONSIDERATIONS FOR THE GRANT OF AN INTERIM INJUNCTION

[8] The seminal case of **American Cyanamid Co. v. Ethicon Ltd** [1975] 1 All E.R. 504, and the decision of the Judicial Committee of the Privy Council in **NCB v. Olint** [2009] J.C.P.C. 16 have established principles to guide the Court as to the factors for consideration in determining whether to grant an interim injunction. These are considerations which have been judicially utilized time and time again in various cases both here and in other jurisdictions, and have proven to be of great value in the attempt to balance the interests of the parties and to provide a just outcome to applications of this nature.

[9] These authorities have identified that the starting point for an application of this nature is, to consider whether there is a serious issue to be tried? This question necessarily involves an assessment of whether any issue to be tried is frivolous or vexatious. It is only if this is answered in the affirmative that the court should take the next step to consider where, the general balance of convenience lies between the parties. This consideration involves the contemplation of whether damages are an adequate remedy for the Claimant, and if so, whether the Defendant is in a position to pay those damages.

[10] In the event that damages would suffice as an adequate remedy, the injunction will not normally be granted unless for instance, reason is shown that there is some factor that may displace the availability of damages, should the claimant succeed. This includes the Defendant not being in a position to pay them.

[11] Should it be discovered that damages would not provide an adequate remedy for the Claimant, then the question for the court becomes whether, if the injunction was granted, the Defendant would be adequately compensated by the Claimants' cross-undertaking in damages.

[12] The balance of convenience test also requires the court if it is unsure as to the adequacy of damages for both parties, to consider other factors. Where other factors appear to be evenly balanced, it is said to 'be a counsel of prudence' to take such measures as are designed to preserve the status quo. There may also be other special factors to be taken into account, depending on the particular facts and circumstances of the case.

Whether serious issue to be tried

[13] In considering whether there is a serious issue to be tried, it is inevitable that this includes a consideration of whether the claimant has any prospect of success, because if he does not, then it would be difficult to resist the conclusion that the claim is either frivolous or vexatious. In considering the prospect of the Claimant's claim, it is clear that the evidence and submissions put forward by the

Claimant and Defendant in relation to the parties living as husband and wife prior to her departure from the island, are almost unnecessary, as there is overwhelming evidence that in fact, the parties were in a relationship which fits in the classical definition of 'common law' spouse' in this context, except for the fact that the applicant has not provided proof that she was single at the time. As such I find it unnecessary to be detained by the historical evidence, prior to the applicant's departure from the island, as this would have been at least 8 years before the death of Mr. Karl Young, the deceased.

[14] Lord Diplock in the Privy Council decision of **ENG Mee YONG and Others v Letuchasan, 1979 UKPC 13 (4th April 1979),** made it clear that:

> *"The guiding principle in granting an interlocutory injunction is the balance of convenience. There is no requirement that before an interlocutory injunction is granted the plaintiff should satisfy the court that there is a 'probability,' a 'prima facie case' or 'a strong prima facie case' that if the action goes to trial, he will succeed; but before any question of a balance of convenience can arise, the party seeking the injunction must satisfy the court that his claim is neither frivolous or vexatious; in other words that the evidence before the court discloses there is a serious question to be tried, American Cynamid v Ethicon Ltd. (1975) AC396."*

[15] This principle has been somewhat refined or qualified by later cases such as **OlInt,** where the Court uses expressions such as the Claimant 'must show a prospect of success' and in some cases, a real prospect of success. (See: paragraph 23 of **Olint**). This of course should not be strange concepts, as in considering a serious issue to be tried, this must necessarily involve an assessment of any prospect of success.

[16] **The Intestates Estates and Property Charges Act**, being relied on by the applicant requires that she be single and living/cohabiting with the deceased, as if she were in law his wife, for at least 5 years before his death in order to be regarded as 'spouse' for the purposes of the Act **(See: Section 2 (d) (i)).** It is this 5 year period which is essential to the applicant's request to be declared as 'spouse' and goes to the substance of the Further amended fixed date claim, which seeks this declaration as well as other orders/declarations under **The**

Property (Rights of Spouses) Act, as well as the setting aside of the Grant of Administration; all of these being matters for determination

[17] As said earlier, this question is interlinked with whether the claimant has a reasonable prospect of succeeding at trial. There are three sub-questions to be answered. These are as follows:**(a)** whether the applicant was the spouse of the deceased up to the time of his death and whether the parties could legally be considered to be in a spousal relationship, within the definition of **section 2 (d) (i) of the Intestates Estates and Charges Act,** for at least 5 years immediately preceding the death of Mr. Karl Young. **(b)** whether the Further amended Fixed date claim form is procedurally defective as it is not in accordance with the rules as to the setting aside of a Grant of Administration and does not challenge, as stated by the respondent, "the grant in and of itself but only challenges it if the sole issue in this case is determined in her favour" **(c)**whether the Applicant is entitled to any of the Estate, under the Property (Rights of Spouses) Act.

[18] The affidavit of Louise Moo-Young, filed on behalf of the administrator stands sharply in contrast to that of the Applicant as to the relationship between the Applicant and the deceased up to the time of his death. It is ultimately the determination of this issue, which will set the stage for the administrator and the Applicant and which will guide the parties as to their legal rights and obligations in the context of these disputes.

[19] It is the view of the Defendant/Respondent that the Claimant/Applicant does not have a real prospect of success at trial. Their first premise for this contention is that the Applicant/Claimant has not established through her pleadings that she was single, during the time she asserts that she was cohabiting with the deceased Karl Young as his spouse. There is a fine line to be carefully drawn and skilfully manoeuvred between an assessment of a 'prospect of succeeding' and the conduct of a mini-trial, bearing in mind that in exercising my discretion, this is not a fact finding exercise and or a determination of facts.

The Interstates and Property Charges Act by section 2 (1)

(d) defines spouse as:

a single woman who has lived and cohabited with a single man as if she were in law his wife for a period of not less than 5 years immediately preceding his death;

and by virtue of paragraph (e)

a "single woman" and "single man" used with reference to the definition of "spouse" include a widow or widower, as the case may be, or a divorcee.

[20] In view of this statutory definition, a person claiming to be declared as spouse is required to establish that 'he or she is 'single' within the meaning of the Act. It is for the applicant to establish that she qualifies as a 'spouse' within the meaning of the Act and she must do so on a balance of probabilities. **Jeanette Jacks v Estate Bertram Christopher Donaldson Claim no. 2007 HCV 01890; judgment delivered 22, December, 2008 by Daye J** is cited by the respondent in support of this point. McDonald **Bishop, J**. (as she then was) succinctly puts it, when looking at similar provisions in section **2 (1)** in **the Property (Rights of Spouses) Act,** as ***"The question as to whether she is a spouse is a matter of law as well as of fact. The burden of proof is on the claimant to satisfy the court on a balance of probability both as a matter of law and as a matter of fact, that she is the defendant's spouse"*** **Millicent Bowes v Keith Alexander Taylor 2006 HCV 05107** at paragraph 31.

[21] It must be borne in mind that McDonald Bishop, J.A. was at the time dealing with a final judgement and Her Ladyship had all the evidence that the parties were relying on. There was no room for any corrective or remedial action. This makes that situation distinguishable from the one now before the Court.

[22] It is the position of the Respondent that the Applicant's pleadings have failed to disclose that she was single at the time she claimed she was the spouse of the deceased, for at least 5 years prior to his death. As such they contend that the Applicant's case is doomed to fail. There is no dispute that Karl Young became

divorced from as far as back as at least 1992. According to the Applicant the issue of whether or not the applicant was single can be inferred from the pleadings. They rely on the fact that the Applicant speaks of being the spouse of the deceased, which they say necessarily infers that she was at the time a single woman and that herself and the deceased were cohabiting as “man and wife.”

[23] On the other hand, it is the contention of the Respondent that no such inference could reasonably be drawn particularly in a context where the parties had cohabited and the Applicant had considered herself ‘spouse’ prior to the divorce of the deceased. The Applicant in her affidavit speaks of being the spouse of the Deceased from the time of cohabitation, which was prior to the deceased becoming divorced.

[24] I believe that there is insufficient evidence from which to draw any reasonable inference. The Applicant speaks of being the spouse of the Deceased in relation to the fact of cohabitation but not in the context of either of them being single. Here reference to the deceased being divorced was more about the fact that he then treated her and held her out as his wife and not in the context of being single for the purposes of the Act. Of course this evidence can be used as proof of him being single at the time of cohabitation, following his divorce. However, there is nothing in the evidence before the Court which expressly or indirectly, speaks to the Applicant being ‘single’ as required by the Act. She does, however, speak of being the spouse of the deceased. At paragraph 2 of her affidavit filed March 23, 2016, she states “That I was the common law spouse of Karl Young who died on the 10th June 2010 in the United States of America”.

[25] It is my view that in the context of the declaration being sought, ‘single’ means an unmarried person and by **Section 2 (e) of the Intestates Estates and Charges Act,** include those who were previously married but had become divorced or a widower or widow and so were no longer married. It is possible to cohabit with the deceased as husband and wife without being ‘single’, but this is not the same

'as if she were in law his wife' as required by section 2 (d) of the Act. This legal definition requires the prerequisite component of being 'single'.

[26] I bear in mind **Rule 29.9(1) of the Civil Procedure Rules** which allows for amplification of a witness' witness statement, should the trial Judge so permits. The section reads:

A witness giving oral evidence may with the permission of the court-

> **(a) Amplify the evidence set out in his or her witness statement if that statement has disclosed the substance of the evidence which the witness is asked to amplify.**

It is also worthy of note that by **Rule 29.4 (6) of the Civil Procedure Rules,** a party may apply for permission to file supplemental witness statements.

[27] This is an interlocutory application and at any time before the determination of the matter, the parties are able to make applications for various orders which may be required for the full presentation of their case. Of course, there is an expectation that parties will comply with the rules – that timetables are met and that the statement of case at the time of trial fully reflects the position of each party. However, the court has discretion to give orders and directions, to facilitate full ventilation of the issues in accordance with the overriding objective of dealing with cases justly. In dealing with cases justly, a primary consideration must be the determination of matters based on their merits rather than mere 'technicalities'. This is of course subject to the issues and material before the Court at the time of application or final adjudication.

[28] I am aware that in dealing with interlocutory applications, I am to consider the state of the evidence as it appears before me at the time of the application. However, I believe that this statement of principle relates to evidence required for the interim application itself. In this application the issue of whether the applicant was 'single' is a matter for trial. The file indicates that Counsel has been in this

matter since April 18, 2016. It is then sensible to assume that the lack of definitive pronouncement as to being ‘single’ is more an omission, (as indicated by Counsel in his oral submissions), rather than a lack of ‘standing’. Such an omission may be put right if an order is sought to that effect. It seemed to have been an omission which caught counsel for the Claimant/Applicant by surprise at the Hearing of this application. The substance of the evidence currently before the Court is that they were living together as man and wife. If in fact there was an omission and she was in fact single during this time, it is likely that a Court will be amenable to corrective action. In fact, no directions have yet been made at a case management conference, where there will be ample opportunity for appropriate orders and neither is there an application for summary judgment.

[29] It is therefore clear that this issue cannot be determined at this interlocutory stage. I believe that the decision as to whether the applicant satisfies the test to be declared as “spouse” is necessarily a matter for the trial judge, before whom all the material evidence will be presented and any shortcomings addressed in the final determination. – **.**

[30] There is also the significant and vexed question as to whether the applicant and deceased were living together as man and wife, for the 5 years immediately preceding his death – The applicant contends that they were still cohabiting/living together as man and wife, right up to his death. There is evidence that she left the island as far back as 2002/2003 (paragraph 15 of her affidavit filed April 21, 2016). According to the evidence of the respondent, this was around 2001**.** In any event, this would have been more than five years before the death of the deceased. A significant question for the Court at trial will be whether the circumstances, that on the evidence, existed between the applicant and the deceased following her departure from Jamaica, particularly the 5 years, immediately preceding his death, amounts to what can be considered in law as living together ‘as if she were in law his wife’. This, of course, is an objective and a subjective test, answered only from the circumstances accepted by the Court and the application of the relevant law.

[31] The Respondent/ Defendant contend that there is no serious issue to be tried as the Applicant needs to show a prospect of success. This it is said, she is unable to do, not only because she has so far failed to provide evidence of being 'single' but also as she has not shown evidence of living with the deceased, as if she was in law his wife, for at least the 5 years immediately preceding his death.

[32] It is the evidence of the applicant, that following her departure from Jamaica, herself, and the defendant continued a relationship as 'man and wife.' She asserts that her absence abroad was initially due to studying and then to serious illnesses and not as a result of a cessation of the relationship with the deceased. She supports her position by asserting that the deceased continued to support her even after her departure and that he wanted her to stay in the United States for medical care and to be near their son. She initially went to the United States in about 2002 to 2003 to do a painting course and to, at the behest of the deceased be near their son who was living in the United States. She became ill but they continued to live together as 'man and wife', although she was not physically present where the deceased had been residing and had not, it appears, returned to Jamaica, any at all, prior to his death. She has support in the form of affidavit evidence from Paula Ahuja, who indicates that "for a long time, my sister could not walk. She would go to doctors after doctors and they were not able to diagnose her. This was an issue for years. She could not travel. She could not visit me, or her mother, or her son, or Karl."

[33] The Defendant/Respondent contends that "physically living together" is an important factor in determining, whether they lived together as man and wife. They cite in support **Nicholson v Warren BZ 2005 SC 29 at [21].** The Applicant relies on **Millicent Bowes v Keith Alexander Taylor Claim No.2006 HCV 05107 and the dictum of McDonald Bishop J at paragraph 49, that:**

> *"in examining the question before me against the background of authorities I have had the opportunity to review I too will agree that no single factor can be conclusive of the question whether a man and woman were living together as if they were in law husband and wife. I have come to the conclusion too that there is not (and there might never*

> *be) a closed and exhaustive list of criteria that may be used to determine the question. It requires, to my mind, a thorough examination of the circumstances of the parties' interaction with each other as well their interaction with others while bearing in mind that there will always be variations in the personalities, conduct, motivations and expectations of human beings.*

[34] The assessment as to whether the Claimant/Applicant has any prospect of success is important because if there is none, that will be the end of the matter, and I need not go any further to consider the other questions involved in the test for an interlocutory injunction. The grant of an injunction can never be warranted where there is no reasonable prospect of the Applicant succeeding at trial.

[35] Although, I do note that there is no evidence of the Claimant/Applicant returning to Jamaica or that the parties saw each other between at least 2003 to the death of Mr Young in 2010, it is still an issue for the Judge at trial. The court has to take into account a number of factors in coming to its determination at trial, these include, such things as 'living together' in the same household, which was not the case with the Claimant/Applicant and the deceased as they were physically apart in the 5 years prior to his death. However, as Tryer J, in **Kimber v Kimber [2000] 1 FLR 384,** remarked: ***"the reasoning behind the change needs to be analysed: in other words, the 'why'*** and as pointed out by McDonald Bishop, J at paragraph 37 of **Bowes**, ***"It therefore becomes a matter strictly for judicial interpretation and determination as to when persons are cohabiting as if they are in law husband and wife."*** *And* as Tryer, J further pointed out in **Kimber**–

> *"It is foolhardy to attempt to reduce to a judicial soundbite a comprehensive list of criteria and the authorities are replete with warnings of the dangers of doing so."*

[36] At paragraph 49 of the **Bowes** judgment McDonald Bishop, J.A. found the authorities instructive and was able to conclude that -

> *"no single factor can be conclusive of the question whether a man and woman were living together 'as if in law they were husband and wife. I have come to the conclusion too that there is not (and there might never be) a closed and exhaustive list of criteria that may be question. It*

> *requires to my mind, a thorough examination of the circumstances of the parties interacting with each other as well as their interaction with others while bearing in mind that there will always be variation in personalities, conduct motivations and expectations of human beings. The court indeed will have to make a value judgment taking into account all the special features thrown up by a particular case to see whether the lives of the parties have been so intertwined and their general relationship such that they may be properly regarded as living together as if they were in law, husband and wife. It has to be inferred from all the circumstances."*

[37] The authorities therefore clearly indicate that whether the parties lived together as if in law they were husband and wife, is a matter of fact and degree, to be gleaned from the circumstances and the applicable law. It is therefore clear that this issue is for trial and that there is in fact a serious issue to be tried. The reasoning here would also apply in relation to the similar issue of whether the Applicant is the 'spouse' of the deceased for the purposes of the Property (Rights of Spouses) Act (PROSA).

[38] The Respondent further buttressed her position that there is no serious issue to be tried by contending that the applicant is statute barred under PROSA, as section 3 of the Act indicates that its provisions do not apply after the death of either spouse. However, section 6 (2) of the Act provides for an exception in the case where the property is the family home and not held by them as joint tenants. Additionally, although the Applicant may be statute barred in relation to other aspects of PROSA, the statute allows for flexibility and judicial discretion in enlarging time.

[39] Similarly, the Respondent's additional contention that there is no serious issue to be tried due to procedural irregularities in the way the setting aside of the Grant of Administration is being litigated by the Applicant, is, if so, open to the intervention of judicial discretion. The procedure for such an order is set out in Part 68 of the Civil Procedure Rules. Again, I make note of the fact that case management directions have not yet been made. I also note that Rule 26.9(1) of the Civil Procedure Rules, permit the Court, in instances where there is such irregularity and no consequence specified, to cause it to be rectified.

[40] Furthermore, by Rule 26.9(2) ***"an error of procedure or failure to comply with a rule, practice direction or court order does not invalidate any step taken in the proceedings, unless the court so orders"***. By Rule 26.9(3), ***'the court can make an order to put matters right".*** I am insufficiently seized with the matter to make any such orders, as my review of the Applicant's statement of case has been limited by the remit of an application for an interlocutory injunction and the need to refrain from an in-depth consideration of the matter. However, I am sure that this will be further ventilated at any case-management conference.

[41] I have not embarked on a mini trial at this stage but highlighted the markedly different positions of the parties to make the point that there are a number of serious issues to be tried. There is clear dispute between the parties, the resolution of which is determined by the view of the facts taken by the trial Judge and the application of the law to those facts. As Lord Diplock in **American Cynamid** – [page 510 d – e] declared:

> *"It is no part of the Court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claim of either party may ultimately depend... not to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial."*

The Balance of Convenience

Adequacy of Damages

[42] The second question to be answered is whether damages would be an adequate remedy. In seeking to answer this question, I am required to do so firstly in relation to the Applicant who is seeking the injunction. The injunction being sought is one essentially to prevent the Administrator from selling or otherwise disposing of the assets of Karl Young's estate pending the determination of this matter. It is the Applicant's contention that she would not be adequately compensated by an award in damages.

[43] The Applicant claims inter-alia, a 'sentimental attachment' to the properties of Karl Young due to her involvement and association with them over the years. As such she contends that they should not be sold.

[44] The applicant's assertion that a sentimental attachment is one of the factors why damages would not be an adequate remedy is interesting, considering, as the Respondent has said, there is little or no evidence of any involvement with these properties from when the Applicant went abroad to the death of Mr. Young. According to the Respondent, "merely designing the property at Coconut Grove or Irie FM as alleged, without more, is not enough to crystallize into 'a sentimental attachment'" (para.44, of submissions). I fully endorse this view and agree that it is generally true that "***land is a thing to which value is attached as a bow to an arrow or a sword to a sheath"***. (**Audrey Allwood v Administrator General of Jamaica and Mega Marketing Ltd [2014] JMSC Civ.29**).

[45] The Applicant has through the affidavit of Ms. Chung, given an undertaking as to damages, should the injunction be granted when it ought not to have been granted. The evidence of fulfilling such an undertaking, should the need arise, is also that the Applicant receives regular payments from the Government of the United States. From all accounts, on the evidence, these appear to be welfare payments and are paid as a result of insufficient means/income. Hence a part of her evidence indicates that due to regular deposits from the deceased to her account, she was initially refused these payments. How do welfare payments, in this case, indicate an ability to pay damages should the need arise? I am extremely surprise that this was commended to me as evidence of means.

[46] The Defendant/Respondent asserts that in fact damages is an adequate remedy as ultimately the Claimant/Applicant's claim is to a beneficial entitlement which translates to a percentage of the proceeds of sale. They contend that this can be easily calculated by virtue of the Intestates and Charges Act which, if she is successful in her claim to be declared spouse, will entitle her to a 50% of the net

proceeds of Karl Young's estate. This, the Respondent argues, is capable of being paid by the estate. They further contend that although Ms. Reidy has indicated that she would be able to satisfy the necessary cross-undertaking as to damages, as averred above, her application for social security shows otherwise. It is their submission that there is no evidence before the Court that the Applicant will benefit from Chad Young's estate or even the value of that estate.

[47] The Claimant/applicant asserts that she would be able to satisfy any undertaking as to damages. It was submitted by Counsel on her behalf that her ability to satisfy any undertaking as to damages can be inferred as she is the beneficiary under the will of her deceased son, Chad Young. I note that a Will of Chad Young was filed and exhibited as "PR-1" to the 4th Affidavit of Liane Chung on behalf of the Claimant/Applicant, in an effort to support her contention that she is able to fulfil any undertaking. This was filed on the 7th June 2017. Regrettably, there is a page missing but this was not noted until the writing of this judgment, otherwise Counsel would have been invited to refile the complete document. I believe that this was due to an error on the part of the Claimant and that the evidence in support may have been inadvertently left out. I am not able to rely on the contents of the Will. However, I note that the Will indicates that Chad Young is of Irie FM and that the Respondent has not denied or challenged the assertion that the Claimant is a beneficiary under the Will. I accept the evidence of the applicant that she is indeed a beneficiary under Chad Young's Estate. I also find that should the injunction be granted and it is subsequently found to be wrongly given as the Respondent succeeds in the action, any damages that might be awarded against the Claimant is likely to be limited, taking into account that the interest of the Respondent in this matter is to ultimately settle the Estate for the benefit of the beneficiaries. This is unlike the position if the Claimant succeeds, as then some, if not all of the Estate, would have been settled and her remedy would lie in damages, which might prove to be substantial.

[48] Of course, whilst damages on the face of it appear to be an adequate remedy for both parties (land being a thing of monetary value), this is not so in the case at bar, and this becomes clearer upon a general consideration of the balance of convenience. Damages is not an adequate remedy where the harm complained of, (here being a loss of beneficial interest in the deceased's estate), is likely to be irreparable, if the injunction is not granted. The balance of convenience requires the consideration of these factors. I am required to examine what on the particular facts of the case the consequences of granting or withholding of the injunction is likely to be. I have to consider whether to refuse or to grant the injunction is more or less likely to cause the least prejudice and in doing so, I bear in mind that "The mere fact that a property right (or indeed a diminution in such a right) can be valued in monetary terms does not of itself mean that damages for an infringement of that property right can necessarily be said to be an adequate remedy". ***Metro International SA v Independent News and Media*** *[2006] 1 LRM 414*

[49] The authorities make it clear, that as is consistent with Rule 1.2 of the civil Procedure Rules, I am obliged to take the course which is likely to produce the most just result and hence the least permanent damage/ irremediable prejudice. **Olint v NCB and R v Secretary of State for Transport, ex parte Factor and Ame Ltd (No. 2) [1991] AC 603**

[50] Should the injunction be refused and the applicant succeeds on any of the cause of actions contained in her claim, all of the remedies for all claims could be satisfied by damages. Her main remedy would be 50% of the estate under the Intestates and Property Charges Act. This 50% is of the net value of the estate, not the property itself. In other word her real interest lies in the proceeds; the net monetary value of the property.

[51] The Defendant/Respondent is unlikely to be in a position to pay any damages should the injunction be denied and the claimant succeeds. The Claimant's loss of beneficial or any proprietary interest in the deceased's estate is unlikely to be

remedied. The Defendant/Respondent is the administrator of the Estate. Should she be permitted to administer the estate, pending trial, (I take judicial notice that such dates are being set for the years 2020/2021), the estate is likely to dissipate by virtue of its distribution/sale. The beneficiaries would be left at liberty to further sell or otherwise dispose of any property received and or any funds derived there-from. Properties would now be likely to be in the names of beneficiaries or persons deriving bona fide title from them. It is unlikely that in those circumstances the Applicant will be able to receive/retrieve 50% of the estate or the proceeds from the sale of any of its properties.

[52] In such a situation, the Applicant's position would be severely compromised and "irremediably prejudiced" should she succeed at trial as the chances are that it would be almost impossible to retrieve any proceeds already distributed. It is the evidence of the respondent that they would be able to pay damages from the Estate. However, upon distribution by selling or otherwise disposing of the properties under the Estate, there will be no 'Estate' from which to pay any damages to the Claimant, should she succeed. For the same reasons, neither will the Respondent be able to fulfil any undertaking as to damages.

[53] The Respondent would if the injunction is granted, be required to refrain from selling or otherwise disposing of the assets of the Estate, until determination of the matter. Clearly here, there is no "irremediable prejudice" and the effect on the Respondent would be delay in selling, disposing or otherwise dealing with the estate. The inconvenience for the defendant/Respondent appears to be one mainly of delay. The delay between now and trial and therefore delay in distributing the Estate to the beneficiaries. Of course delay, is prejudicial too. These are all special factors to be taken into account, dependent on the particular facts and circumstances of this case. I must weigh one need against another and determine where the balance of convenience lies.

[54] These special factors require a consideration of whether the balance of convenience requires preserving the status quo. Mangatal, J. as she then was, in

the case of, **Ralph Williams, Marc Williams, Kuyaba Negril Limited v The Commissioner of Lands and Times Square West Holdings Limited**, **[2012] JMSC Civ. 118,** aptly summarised Lord Diplock's guidance on consideration of the status quo as follows:

> *"In American Cynamid, Lord Diplock at page 408 stated that where other factors appear to be evenly poised, it is a counsel of prudence to take measures calculated to maintain the status quo. The reason why it is a counsel of prudence is because preservation of the status quo will normally, (but not always) cause less disruption, and all else being equal, less injustice. Said Lord Diplock of the rationale, "If the Defendant is enjoined from doing something that he has not done before, the only effect of the interlocutory injunction in the event of his succeeding at the trial is to postpone the date at which he is able to embark upon a course of action which he has not previously found it necessary to undertake; whereas to interrupt him in the conduct of an established enterprise would cause much greater inconvenience to him since he would have to start again to establish it in the event of his succeeding at the trial."*

[55] The Learned Judge continued at paragraph 45, "***The status quo has been described as generally being the state of affairs existing during the period immediately preceding the issue of the claim seeking a permanent injunction - Garden Cottage Foods Limited v. Milk Marketing Board [1984] 1 A.C. 130.***

[56] The status quo in the case before me is indeed the state of affairs existing immediately before the filing of this claim. That position is that the Administrator, bar the exception of one property, which is in the process of being sold, has not otherwise dissipated, sold, transferred or otherwise disposed of any of the assets of the Estate. It is worth bearing in mind that the evidence before the court is that the value of the estate is in excess of 900 million dollars. In the circumstances, and for the reasons already given, the balance of convenience lies in favour of preserving the status quo. This would cause less disruption and less injustice and accord with rule 1.2 of the Civil Procedure Rules. In order to achieve this, the interim injunction is granted, restraining the hand of the administrator, until determination of this matter.

ORDERS:

1. The Administrator of the Estate of Karl Young, Joni Young-Torres is further restrained until the determination of the substantive matter herein, whether by herself, her servants or agents, or any of them or otherwise howsoever from proceeding with the sale of, disposing of, transferring, or in any way parting with the possession of all the properties and assets under the estate of Karl Young.

2. The property situated at Turtle Towers, Ocho Rios St. Ann and referred to at paragraph 6 of the Affidavit of Joni Kamille Young Torres filed on May 24, 2017and which is already the subject of a sale is exempted.

3. The Claimant/Applicant gives the usual undertaking as to damages.

4. Costs to be cost in the claim