

**COMMONWEALTH OF THE BAHAMAS**

**IN THE SUPREME COURT**

**Common Law & Equity Division**

**2024/CLE/GEN/00461**

**BETWEEN**

**BETTY NORMA SMITH FORBES**

Claimant/Respondent

**AND**

**BARRINGTON CLEVELAND SMITH**

Defendant/Applicant

---

**Before: The Honourable Mr. Justice Franklyn K M Williams MB KC**

**Appearances:** Mr. Bradley Cooper for the Applicant

**Hearing Date:** 24<sup>th</sup> March 2026

**RULING**

**Williams J**

**INTRODUCTION**

[1.] On 24 March 2026 I heard the application of the Defendant/Applicant for an interlocutory injunction and for leave to issue a third party notice. The Defendant/Applicant is the brother of the Claimant Executor in whose favour Winder CJ found the 14 September 2007 Will of their mother Alicia Maria

Stockdale a.k.a Alicia Maria Valerio – Stockdale to be valid. The validity of that will was vehemently contested by the Defendant/Applicant and two of their siblings.

***Factual and Procedural Background***

[2.] On the 17 March 2026, the Claimant filed a Standard Claim Form seeking an injunction and a number declarations relative to:

“ALL THAT piece parcel or lot of land situate in “Bel Air Estates” a Subdivision situated on the Southern Side of Carmichael Road approximately 7900 feet West of Blue Hill Road in the Southern District of the Island of New Providence in the Commonwealth of The Bahamas being lot Number 2 on the plan of such Estate which said piece parcel or lot of land has such position boundaries marks shapes and dimensions as are shown on the plan of such Estate which is thereto attached and being delineated on the portion of the said plan which is coloured in pink.”

[3.] In particular the Claimant seeks:

1. An Order that the defendant vacate the said structure and premises
2. An injunction to restrain the Defendant whether himself his servants or agents or otherwise howsoever from entering, crossing dealing with or remaining in the said structure and premises on the said Property.
3. A Declaration that the Defendant is not entitled to enter or cross or use or remain in occupation of the said structure and premises.
4. Damages and/or alternatively mesne profits and or alternatively rents

for use and occupation.

5. Such further or other relief as to the Court seems just.
6. Legal practitioner's fixed costs on the issue.
7. Together with interest from date of judgement at the statutory rate
8. Interest pursuant to the Civil Procedure (Award of Interest) Act, 1992  
Thereon.
9. Costs

[4.] The Defendant/Applicant on 19 November 2024 entered a defence and counter claim in the action. The Defendant applicant claims ownership of the buildings on the property, having provided the funds therefor and that his deceased mother held the same on trust for him, and that the Claimant as Executor holds the property as trustee only. He relies on a purported codicil to the 2007 Will dated 9 August 2015 of which he claims was prepared by Desmond Bannister, and of which existence was known to the Claimant and which was not presented at the time the Claimant sought to prove that will. He also relies on certain admissions claimed to have been made by the claimant during the course of the contentious probate proceedings. Those alleged admissions were to the effect that the claimant was a trustee for several properties inclusive of buildings constructed thereon held by the testator on trust for the applicant/defendant.

[5.] The text of the codicil reads:

"9<sup>th</sup> August 2015

Mr. Desmond Bannister, Attorney

Nassau, Bahamas

I, Alicia Maria Valerio Stockdale, being of sound mind do hereby request that my will be read and probated immediately after my death.

My son, Leon Howard Smith, is in possession of the original deeds for my residence located on Mermaid Boulevard at Belair Estate on Carmichael Road, Nassau Bahamas

I request that the aforementioned residence/property be registered in my

daughter's name, Mrs. Betty Norma Smith Forbes.

The duplex building on the said property is to be registered to my son,  
Barrington Cleveland Smith.

...

This is my last request that is part of my will.

..."

The signature appended thereto is purported to be that of Alicia Maria Valerio Stockdale.

[6.] It goes without saying that if proven valid, the effect of the purported codicil would be to materially affect the execution of the will.

[7.] In furtherance of his defence and counterclaim, the Defendant/Applicant filed Notice of Application seeking an order under Rule 17.1 (1) of the CPR 2022 and under the inherent jurisdiction of the Court restraining the Claimant, her servants or agents from "...selling the said property as the Defendant has a vested interest in the property."

[8.] Further, the Defendant/Applicant filed Notice of Application seeking leave to issue third party notices for Mr. Thomas Desmond Bannister, Tiffany Pratt and Nadia Pratt under Rule 19(3) of the CPR 20022. Attorney Bannister is alleged to have prepared the codicil, the Tiffany and Nadia Pratt alleged to have witnessed the signature of Ms. Stockdale.

[9.] Both applications are supported by the affidavit of the defendant/applicant filed on 17 March 2026.

## Legal Principles

### *The injunction*

[10.] S.21 of the Supreme Court Act provides that the Court may grant an interlocutory of final injunction "*in all cases in which it appears just and convenient to do so.*" The claim for the injunction was made per Rule 17.1 (b) of the CPR 2022 which provides that "*The Court may grant interim remedies including an interim injunction.*"

[10.] **American Cyanamid v Ethicon** sets down a four part test: (i) whether there is a serious issue to be tried ; (ii) whether damages are an adequate remedy; (iii) where does the balance of convenience lie; and (iv) whether there are special factors to be considered.

[11.] Hancock J in the recent case of *O. Brien and another v TTT Moneycorp* [2019] EWHC 1491 (Comm.) summarized the general principles regarding the grant of interlocutory relief:

*“ (1) ...the High Court may by order grant an injunction in all cases in which it appears ‘just and convenient’, to do so, and any such order may be made either unconditionally or on such terms as the Court thinks just.*

*Interim injunctions are therefore discretionary but the discretion must be exercised judicially in light of the overriding objective in CPR 1.1*

*(2) Applying the well known approach deriving from American Cyanamid [1975] AC 396, (HL), the onus is on the applicant to establish : first, that there is a serious question to be tried; second, that damages would not be an adequate remedy for the applicant if the injunction were refused; and third, that the balance of convenience favours the grant of the interim injunction. ...*

*(3) On application for an interim injunction, the Court should not attempt to resolve ‘critical disputed questions of fact or difficult points of law’ on which the claims of either party may ultimately depend , particularly where the point of law ‘turns on fine questions of fact which are in dispute or are presently obscure’: Sukhoruchkin v Van Bekestein [2014] EWCA 399 at [32] (Sir Terence Etherton C)*

*(4) In the exercise of its discretion to grant an injunction and consistently with the overriding objective, the Court will not grant an injunction where it would be futile or serve no purpose: Mosley v News Group Newspapers [2008] EWHC 687 (QB)*

*(5) A mandatory injunction is less likely to be granted on an interim basis. This is because, where other factors appear to be balanced, the Court 'should take whatever course seems likely to cause the last irreparable prejudice to one party or the other': National Commercial Bank of Jamaica Ltd v Olint Corp Ltd. (Practice Note) [2009] 1 WLR 1405 (PC). A mandatory injunction requiring a party to take some positive step at an interlocutory stage will usually carry a greater risk of injustice if it turns out to have been wrongly made. It is therefore legitimate in such cases to require a 'high degree of assurance' that the interim relief would ultimately be granted at trial: Shepherd Homes Ltd v Sandham [1971] Ch. 340 at 351 (Megarry J).*

*(6) Furthermore, where the grant of interim relief will have the practical effect of giving the applicant the final relief that it is seeking in the case, the Court will be more reluctant to grant such relief: Films Rover Ltd v Cannon Film Sales Ltd [1987] 1 WLR 670 at 680.*

*(7) Where an interim injunction is granted, the usual practice is to make this subject to a condition requiring the applicant to offer a cross undertaking to pay damages for any losses sustained by reasons of the injunction in the event it transpires that it ought not to have been granted."*

[12.] The Defendant/Applicant complains of and avers in his defence and counterclaim that the several behests made to him in his mother's will have not been executed. Those behests are:

"4. I GIVE DEVISE AND BEQUEATH my freehold property and the building thereon situate on Bel Air Estates, Carmichael Road

in the Western district of the Island of New Providence aforesaid to my daughter **BETTY NORMA SMITH FORBES**. I direct my daughter, **BETTY NORMA SMITH FORBES** to give my son, **BARRINGTON CLEVELAND SMITH** \$50,00 in consideration of his interest in the said property.”

“10. I **GIVE AND BEQUEATH** all of the other contents of my house including furniture, appliances and the like not otherwise disposed of in this my will to my son **BARRINGTON CLEVELAND SMITH** for his absolute use and benefit.”

[13.] In reply to the Defendant/Applicant’s defence and counterclaim, the Claimant/Executor filed a defence, asserting, inter alia, that the defendant/applicant “ *is not entitled to receive the said legacy, as there are outstanding orders for costs, in her favour made jointly and severally against him...which remain unsatisfied.*”

[14.] The rule in *Cherry v Boulton* (1839) 4 My. & C. 442 (Ch.Div.) states that if a beneficiary of an estate is also indebted to that estate, they shall not receive their bequest without first making good their indebtedness to the estate. The application of this rule is to do equity between beneficiaries of an estate; he who seeks equity must do equity. The modern application of this principle was considered by Justice J in *Johnston Estate (Re)* 2017 BCSC 272 :

*“The applicant relies on what is commonly referred to as the rule in Cherry v Boulton which provides that where a legatee of a share of the residue is a debtor of the estate, he or she is not entitled to receive his or her legacy without bringing his or her debt into account.”*

and by Justice P in *Re the Estate of Violet Kolic, also known as Ljubica Kolic, Doed*, 2022 BCSC 1527, a decision of the Supreme Court of British Columbia. In that

case, a daughter of the deceased testator, previously operating as the executor of her mother's estate, had taken substantial funds therefrom. Having been ousted as executor, that daughter was sued by two of her three siblings for the recovery of those funds. Judgement having been granted in favour of the siblings, she was found to be indebted to the estate. The judgement comprised principal amount plus interest, punitive damages and costs. It was further determined that she would not receive behests specific to her until she were to satisfy the judgement made against her.

[15.] Here, the applicant, the defendant and unsuccessful party to an action to prove the will, is indebted to the estate by virtue of the several costs orders made against him. Notwithstanding, I make no finding on whether the claimant may refuse to execute the behests specific to the applicant. The issue of the amount(s) of those costs orders, and of any set off are matters for trial.

[16.] The applicant claims, inter alia, that

1. A codicil to the will of Alicia Stockdale exists, lawfully sworn to.
2. The codicil affirms his claim of interest and ownership of specific assets of the estate of Alicia Stockdale
3. There are several persons, namely attorney Desmond Bannister who is alleged to have prepared said codicil, and Tiffany and Nadia Pratt, allegedly witnesses thereto, who can attest to its legitimacy.

***Serious issue to be tried***

[17.] The evidence of the applicant given by affidavit is untested by cross examination and is therefore incomplete. Resolution of conflicts of evidence given on affidavit, and any questions of law are matters for trial. I find that the applicant's claim is not frivolous or vexatious, and that there is a serious issue to be tried. There is, in my view, a real prospect of success at trial.

***Damages an adequate remedy***

[18.] On this issue of "adequate remedy" Diplock LJ opined:

"...the governing principle is that the court should first 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 as a result of the defendant's 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 would be [an] adequate remedy and the defendant would be in a financial position to pay them, no interim injunction should normally be granted, however strong the plaintiff's claim to be at that stage."

[19.] Here, at issue is the ownership of income producing land and the extent of the applicant's interest in that land. The claimant Betty Ann Smith Forbes claims ownership by virtue of behest contained in the September 14 2007 will; the applicant claims ownership of building(s) by virtue of behest contained in the 9<sup>th</sup> August 2015 codicil.

[20.] I note that the value of land, in particular income producing land appreciates over time. It would be difficult to calculate monetarily what was lost if the injunction is shown to have been wrongly granted. The claimant, inter alia, seeks "damages and/or alternatively rents for use and occupation." The applicant claims he has "lost income from the two shops on the premises due to the Claimant's failure to transfer the properties over to him and as a result thereof the Defendant (the applicant) was unable to put his properties on rent in excess of nine (9) years thereby causing the Defendant loss and damage." The claimant does not condescend to provide particulars of alleged damage suffered or rents lost; the applicant has particularized what he says is his monetary loss in his defence and counterclaim. In the circumstances, I find that damages would not be an adequate remedy. I decline to order an undertaking in damages or a cross undertaking.

***Where does the balance of convenience lay?***

[21.] Diplock LJ in American Cyanamid opined:

“...the object of the interlocutory injunction is to protect the Plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial;but the Plaintiff’s need for such protection must be weighed against the corresponding need of the Defendant to be protected against injury resulted from having been prevented from exercising his own legal rights for which he could not be adequately compensated under the Plaintiff’s undertaking in damages if the uncertainty were resolved in the Defendant’s favour at the trial. The court must weigh one need against another and determine where the balance of convenience lies.

[22.] The defendant does not deny that she knew of the existence of the codicil or and failed to prove or disprove it. The claimant avers that the applicant is in occupation of a portion of the contested property and seeks to have him vacate the same. In my view, having considered the risk of any injustice and irreparable harm, the balance of convenience favours the applicant, and the grant of the injunction.

### ***Disposition***

[23.] For the reasons given, the injunction is granted; the claimant is restrained and prohibited from selling, conveying, gifting, mortgaging or otherwise disposing of or otherwise encumbering or dealing with the property and the buildings thereon either by herself or servants or agents, until determination of the question of ownership and or interest of the applicant at trial. The applicant is given leave to issue third party notice to those persons named.

*Franklyn Williams*

Franklyn K M Williams MB KC

Justice

11 May 2025