

**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
Probate Division  
2021/PRO/Cpr/FP/00003  
BETWEEN**



**In the Estate of Demarco Lockhart late of No. 192 Golden Dew Loop, Wellington Heights in the City of Freeport in the Island of Grand Bahama one of the Islands of the Commonwealth of the Bahamas, deceased.**

**AND**

**IN THE MATTER OF THE PROBATE AND ADMINISTRATION OF ESTATES ACT, 2011**

**AND**

**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
Common Law & Equity Side  
2021/CLE/gen/Fp/00004  
BETWEEN**

**MS. KESHIA WOODS  
(In her capacity as Co-Administratrix)  
1<sup>st</sup> Plaintiff**

**AND**

**MS. LINDA KELLY  
(In her capacity as Co-Administratrix)  
2<sup>nd</sup> Plaintiff**

**AND**

**MR. THOMAS LOCKHART  
1<sup>st</sup> Defendant**

**AND**

**MS. DAMARCIA LOCKHART  
2<sup>nd</sup> Defendant**

**AND**

**MR. LEONARDO LOCKHART  
3<sup>rd</sup> Defendant**

**AND**

**MR. RENARDO LOCKHART**  
**4<sup>th</sup> Defendant**

**AND**

**MS. ELIZABETH CILLIMAE WILLIAMS**  
**5<sup>th</sup> Defendant**

**AND**

**MS. LASHANDA MCINTOSH**  
**6<sup>th</sup> Defendant**

**BEFORE:** The Honourable Justice Petra M. Hanna-Adderley

**APPEARANCES:** Mr. Paco Deal for the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs  
Miss Constance McDonald for the Defendants

**HEARING DATE:** August 25, 2021

### **RULING**

Application for an Interlocutory Mandatory Injunction in a Contentious Probate Matter

#### **Introduction**

1. The 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs are the Joint Guardians of Demaiyah Lockhart and Co-Administratrixes of the Estate of the late Demarco Lockhart by Order from this Court filed on April 12, 2021 in Action 2021/Pro/cpr/fp/00003. Demaiyah Lockhart ("**the said Minor**") is the daughter of the late DeMarco Lockhart ("**the Deceased**") who died intestate on August 27, 2020, a bachelor and survived by the said Minor.
2. The 1<sup>st</sup> Defendant is the father of the Deceased; the 2<sup>nd</sup> Defendant is the brother of the Deceased; the 3<sup>rd</sup> Defendant is the brother of the Deceased; the 4<sup>th</sup> Defendant is the Aunt of the Deceased; the 5<sup>th</sup> Defendant is the sister of the Deceased and the 6<sup>th</sup> Defendant is the girlfriend of the Deceased.
3. Subsequent to the death of the Deceased the 3<sup>rd</sup> Defendant, on the instructions of his father the 1<sup>st</sup> Defendant, took up residence in the Deceased's home situated at No. 192 Golden Dew Loop, Wellington Heights Subdivision, Freeport, Grand Bahama ("**the said Residence**") and has restricted the said Minor's access to or possession of the same.

4. The Plaintiffs filed a Summons on May 2, 2021 in Action 2021/CLE/gen/FP/00004 seeking an Interlocutory Injunction against the Defendants, which is supported by the Affidavit of the Plaintiffs filed May 7, 2021. The Defendants filed a Summons for Consolidation of Actions on April 9, 2021 seeking an Order consolidating Action 2021/Pro/cpr/fp/00003 with Action 2021/CLE/gen/FP/00004. There being no objection, the Order was granted. The Plaintiffs' application for the interlocutory injunction is opposed by the Defendants. On August 16, 2021 the 3<sup>rd</sup> Defendant filed an Affidavit in response. The Plaintiffs made oral Submissions at the hearing and the Defendants rely on written Skeleton Arguments presented by Miss McDonald at the hearing.

### **Statement of Facts**

5. The Order filed on April 9, 2021 provides as follows:

“

1. That Keshia Woods be and is hereby appointed Joint Guardian with Linda Kelly of **DEMAIYA LOCKHART** (“**the said minor**”) for the purpose of making application to this Honourable Court for Letters of Administration in the Estate of the late **DEMARCO LOCKHART** and who will oversee the distribution of the assets of the deceased of which the said minor is entitled.
2. That Keshia Woods and Linda Kelly be and are hereby appointed **Co-Administratixes** of the Estate of the late **DEMARCO LOCKHART** for the purpose of making application to this Honourable Court for Letters of Administration in the Estate of the late **DEMARCO LOCKHART** and who will oversee the distribution of the assets of the deceased of which the said minor is entitled.
3. That Keshia Woods and Linda Kelly be appointed Co-Administratixes of the Estate of the late **DEMARCO LOCKHART** pending the determination of the Grant of Letters of Administration with all such rights and powers of a general administrator and in particular:
  - (1) to execute such documents as are necessary to collect any and all monies due to the Estate of **DEMARCO LOCKHART** namely but not limited to:-
    - (i) monies in the bank;

- (ii) proceeds from the sale of retail property and or/chattels; AND
  - (iii) personal loans.
- (2) to effect the sale/or rental of the Estate property;
  - (3) to commence an action against any and all persons for but not limited to: -
    - (a) the misappropriation of funds of the Estate
    - (b) unlawfully divesting the Estate of its assets;
    - (c) trespassing; AND
    - (d) injunctions to preserve the assets of the Estate.

4. That the costs of this application be borne by the Estate of the late **DEMARCO LOCKHART.** "

6. The Plaintiffs by their Summons seek the following Orders:

"...that the Defendants be restrained, whether by themselves or by their or by their servants or agents or otherwise from entering, from removing from and or/interfering with the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiff's possession of :-

**ALL THAT** residence belonging to the Estate of DeMarco Lockhart (deceased) situated at No. 192 Golden Dew Loop, Wellington Heights, Freeport, Grand Bahama, The Bahamas, and in particular the 3<sup>rd</sup> Respondent be ordered to vacate the said residence immediately.

**ALL** monies belonging to the Estate of DeMarco Lockhart (deceased) be it but not limited to money in the bank, proceeds from the sale of real property and/or chattels and personal loans.

**ALL** Chattels belonging to the Estate of DeMarco Lockhart (deceased) including but not limited to the vehicle, a 2014 Chevrolet Impala License Plate No. GD7756, jewelry (including deceased's mother's wedding ring) and all personal documents.

**FURTHER** an order that the Defendants be made to return to the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs' all but not limited to the chattels mentioned above belonging to the Estate of DeMarco Lockhart (deceased) that is in and/or have been in their possession. "

**Evidence**

7. The Plaintiffs state, in part, that Keshia Woods is the biological mother and Linda Kelly the maternal grandmother of the said Minor. Birth certificate No. 96934 exhibited to their Affidavit in Support states that the 1<sup>st</sup> Plaintiff is the mother of the said Minor and that the

father of the said Minor is DeMarco Tamarco Lockhart the Deceased. In fact, the Deceased was the informant. The Plaintiffs refer to their appointment under the Order. That letters dated April 26, 2021 from the Plaintiffs' attorneys to all of the Defendants were served on the Defendants. The letters served a copy of the Order on the Defendants and demanded the return of the Deceased's vehicle (in the possession of the 1<sup>st</sup> Defendant), monies, jewelry, household items and personal documents located at and in the said Residence of the Deceased, failing which legal action would be taken. That no response was received to the letters from the Defendants. That on May 1, 2021 the 1<sup>st</sup> Plaintiff attended the said Residence of the Deceased with the Police to request that the 3<sup>rd</sup> Defendant vacate the said Residence of the Deceased. That the 3<sup>rd</sup> Defendant told the Police that he had been told by his father the 1<sup>st</sup> Defendant to remain at the said Residence and not to allow the said Minor access to the same. That despite being shown the Order he refused to leave the said Residence and the others refused to return the other items. That unless an injunction is granted there is a strong likelihood that the assets of the Estate will be compromised and dissipated and that the only beneficiary of the Estate is the said Minor.

8. That there is an issue to be tried as to whether the Defendants have any legal entitlement to possess the said Residence or the chattels. That the balance of convenience lies in favour of the Plaintiffs. That pursuant to the Inheritance Act 2002 when a person dies intestate and there is one child and no spouse, the child SHALL take the whole of the residuary estate.
9. Mr. Leonardo Lockhart states, in part, that the 1<sup>st</sup> Plaintiff has never presented him with Letters of Administration and has acted all along as though she was the person entitled to inherit from his brother. That he is concerned with the welfare of his niece, the said Minor, and that he offered to put her under him with his employers to assist with her school fees and medical care. That at first the 1<sup>st</sup> Plaintiff accepted the offer then she refused it saying that the Deceased would not have him do that for his child. That the said Minor was her responsibility. That his sister and father sat down to make arrangements for the funeral of the Deceased and they agreed to pay for the first term school fees, school uniforms and books for the said Minor. That after the funeral his father asked him to stay at the home to protect it, to stop anyone from breaking into it because the

Deceased had lived alone. That he refused her request to see inside the said Residence. That Police thereafter harassed him with papers from the Plaintiffs.

10. His evidence is that the 1<sup>st</sup> Plaintiff disconnected the electricity to the said Residence. After his attorney wrote to the Power Company on April 21, 2021 it cost him \$500.00 to get the power turned on again. The Power Company turned it back on again and indicated that it could not turn it back off again because there was no grant of Letters of Administration. That on the advice of his attorney since his brother did not leave a Will, he did not have to vacate the premises without Letters of Administration in his brother's estate. That when the 1<sup>st</sup> Plaintiff and the Police attended the said Residence with a letter to evict him, he told him that it was not a Court order. He allowed her and his niece to enter the said Residence to take what she needed. That she and the said Minor collected clothing, toys and items that she said were sentimental.
11. That funeral expenses are the first charge to any estate but the 1<sup>st</sup> Plaintiff is not interested in winding up the Estate of the Deceased and paying his just debts. That the Defendants are willing to work with the said Minor to obtain the Letters of Administration. That the 1<sup>st</sup> Plaintiff and the Deceased had been separated for 9 years. That he doubted that she is aware of anything to do with his estate. That having observed the greed of the 1<sup>st</sup> Plaintiff it will be necessary to ensure that by the time his niece reaches the age of majority she will have something to remember her father by.

### **Submissions**

12. Mr. Parko Deal, Counsel for the Plaintiffs, submitted that the application is made according to the powers invested in them by the Order filed on April 9, 2021, the temporary limited grant, appointing them legal representatives of the said Minor and Co-Administratrixes pending the determination of the application for Letters of Administration, giving them among other things powers of a general administrator. That the Plaintiffs seek an order to have Mr. Leonard Lockhart removed from the said Residence, the vehicle returned by Mr. Thomas Lockhart, and any monies, jewelry or chattels and documents in their possession, to be kept in good keeping by the Plaintiffs for the said Minor, the sole heir of the Deceased according to Section 4 of the Inheritance Act. The Applicants rely heavily on this Section. Mr. Deal also referred the Court to the Court of Appeal case of **Ivan Rolle v John Rodriguez and Jacob Rolle**. That all efforts being made are to preserve the assets of the Estate. The Plaintiffs ask that the Court consider the interest of the said

Minor. She has been excluded from the said Residence, where she spent time with the Deceased and in which she had her own room.

13. That the firm is in the process of gathering the relevant information required to submit the formal application for the Grant of Letters of Administration.
14. Miss Constance McDonald, Counsel for the Defendants, submitted that the concern of the Defendants is to preserve the assets of the Estate because the Deceased lived alone at the time of his death.
15. Miss McDonald submitted that the Plaintiffs have no legal standing to appear before the Court making demands. That to get an injunction one has to have a legal right to get one. That when a person dies intestate no one has any authority to act in the estate until Letters of Administration have been issued by the Court. The Plaintiffs have not undertaken to wind up the Deceased estate and to pay his just debts according to law. The Plaintiffs have not informed the Defendants of which jurisdiction they are asking the Court to operate under. Without an Affidavit of Heirship the Court has no idea if the said Minor is the only child of the Deceased. There is no statement that the deceased died intestate nor that the Plaintiffs have obtained Letters of Administration in the estate of the Deceased. Miss McDonald referred the Court to Sections 10 and 11 of the Administration of Estates Act Chapter 108 but this Act has been appealed in its entirety.
16. That the Plaintiffs are acting as if they are Administrators of the Estate when they are not. That the a Will is ambulatory and it speaks from death. That without the Grant of Letters of Administration in the Deceased estate the Plaintiffs have no right to maintain or start any action for or against the estate or against anyone. Miss McDonald referred the Court to **Ingall v Morgan** 1994 1 All ER p. 97 in which the Court of Appeal held that the Respondent had no cause of action vested in him before he obtained the grant of Letters of Administration. That the Grant had not been obtained at the date of the issue of the Writ of Summons and that the action failed and ought to be dismissed.
17. Miss McDonald further argued that Section 4 of the Inheritance Act only comes into effect after the grant of the Letters of Administration. That the Plaintiffs are putting the cart before the horse. That the Estate has not yet been wound up. Until they get the Letters of Administration they have no right to bring an action and the Summons should be dismissed with costs to the Defendants. However, the parties are not diametrically opposed. Their niece inherits. They have a right to take the steps they have because they

are blood relatives of the deceased. Their niece is a blood relative. They have not interfered with the property. All of the assets are there. They know what the Deceased owned at the time of his death. They want their niece to inherit. They want to ensure that what is for her is for her and not for anybody else. They would like to see a representative from both sides of the family apply for this Grant and believe that that is in the best interest of the said Minor. That there should be certain orders made in relation to the property. The property should be rented out to pay for the maintenance of the said Minor out of the rental income and that it should be turned over to the said Minor when she reaches a certain age. That until that happens the property should be under the direction of the Court. That people into who hands it should be entrusted hold it in trust to use the rental income to maintain the said Minor.

18. In his Reply Mr. Deal referred the Court to Section 9 of the Act. He agreed that the Plaintiffs had not obtained the final Grant of Letters of Administration which was why they had applied for and obtained the temporary Grant. He referred the Court again to the Inheritance Act and submits that the father of the Deceased would only inherit after any grandchildren of the Deceased. That the Plaintiffs are only acting under the powers granted to them under the Inheritance Act and the Order made by this Court and they ask for an order preserving the assets by putting them the hands of the Plaintiffs.

### **Issues**

19. The Applicants are seeking an Interlocutory Mandatory Injunction. The issues for determination by the Court are:
- (1) Which of the parties has an actionable interest in the Estate of the Deceased;
  - (2) Whether at trial it would appear that the injunction was rightly granted;
  - (3) Whether the balance of convenience lies in maintaining the status quo;
  - (4) Whether it was highly probable that the Plaintiffs would establish their rights at trial;
  - (5) Whether the risk of injustice if the injunction was refused sufficiently outweighed the risk of injustice if it was granted.

### **Analysis and Discussion**

#### **The Law**

20. Part II of the Status of Children Act provides as follows:

#### **"PART II EQUAL STATUS OF CHILDREN**

3. (1) Subject to the provisions of sections 6 and 16, for all the purposes of the law of The Bahamas the relationship between every person and his father and mother shall be determined irrespective of whether the father and mother are or have been married to each other, and all other relationships shall be determined accordingly.

(2) The rule of construction whereby in any instrument words of relationship signify only legitimate relationship in the absence of a contrary expression of intention is hereby abolished.

(3) Nothing in the section shall affect or limit in any way any rule of law relating to —

(a) the domicile of any person;

(b) the citizenship of any persons;

(c) the provisions of the Adoption of Children Act which determine the relationship to any other person of a person who has been adopted;

(d) the construction of the word "heir" or of any expression which is used to create an entailed interest in real or personal property.

4. The parent and child relationship as determined in accordance with section 3 shall for all purposes be followed in the determination of other kindred relationships flowing therefrom.

5. Unless a contrary intention appears, any reference in an enactment or instrument to a person or class of persons described in terms of relationships by blood or marriage to another person shall be construed to refer to or include a person who comes within the description by reason of the relationship of parent and child as determined in accordance with sections 3 and 4.

6. Subject to subsection (3) of section 3, this Act shall apply in respect of every person, whether born before or after the commencement of this Act, and whether born in The Bahamas or not, and whether or not his father or mother has ever been domiciled in The Bahamas."

21. Section 4 (1) (b) (ii) of The Inheritance Act, 2002 provides as follows:

"4. (1) The residuary estate of an intestate shall be distributed in the manner mentioned in this section, namely —

(a) if the intestate leaves a husband or wife and no children, the surviving husband or wife shall take the whole residuary estate;

(b) if the intestate —

(i) leaves a husband or wife and —

(A) one child, the surviving husband or wife shall take one half of the residuary estate and the remainder shall go to the child;

(B) children, the surviving husband or wife shall take one half of the residuary estate and the remainder shall be distributed equally among the children;

(ii) leaves children but no husband or wife, the residuary estate shall be distributed equally among the children and where there is only one child that child shall take the whole residuary estate; "

22. Order 29 Rule 1 and 2 (1) and (2) of the RSC provides as follows:

"1. (1) An application for the grant of an injunction may be made by any party to a cause or matter before or after the trial of the cause or matter, whether or not a claim for the injunction was included in that party's writ, originating summons, counterclaim or third party notice, as the case may be.

(2) Where the applicant is the plaintiff and the case is one of urgency such application may be made ex parte on affidavit but, except as aforesaid, such application must be made by motion or summons.

(3) The plaintiff may not make such an application before the issue of the writ or originating summons by which the cause or matter is to be begun except where the case is one of urgency, and in that case the injunction applied for may be granted on terms providing for the issue of the writ or summons and such other terms, if any, as the Court thinks fit.

2. (1) On the application of any party to a cause or matter the Court may make an order for the detention, custody or preservation of any property which is the subject-matter of the cause or matter, or as to which any question may arise therein, or for the inspection of any such property in the possession of a party to the cause or matter.

(2) For the purpose of enabling any order under paragraph (1) to be carried out the Court may by the order authorise any person to enter upon any land or building in the possession of any party to the cause or matter."

23. Section 9 of the Probate and Administration of Estates Rules 2011 provides as follows:

**"Order of priority for grant in case of intestacy.**

(1) The person or persons entitled to apply for a grant of administration in respect of the estate of a deceased person is to be determined in accordance with the following order of priority -

- (a) the surviving spouse of the deceased;
- (b) a child of the deceased and where no such child of the deceased is willing or able to act, grandchildren of the deceased;
- (c) the father or mother of the deceased;
- (d) a brother or sister of the deceased and where no such brother or sister is willing or able to act, children of any brother or sister of the deceased;
- (e) a grandparent of the deceased;
- (f) an uncle or aunt of the deceased and where no such uncle or aunt is willing or able to act, children of any uncle or aunt of the deceased."

It is upon this legal background that I carried out my analysis and came to certain conclusions.

#### **Discussion**

24. There is no dispute between the parties that the Deceased died intestate and is survived by his only child the said Minor. Pursuant to Section 4 of the Inheritance Act she is the sole Heir at law and is entitled to the whole estate. Persons in priority to take out grants of Letters of Administration of an intestate's estate are generally those entitled to benefit on intestacy. In the Bahamas statutory provisions stipulate the order of priority with respect to entitlement to grants of Letters of Administration as is seen in Section 9 (b) of the Probate and Administration of Estates Rules 2011 above.

#### **Issue: Which of the parties has an actionable interest in the Estate of the Deceased:**

25. The said Minor has at this stage in my view a beneficial interest in the estate. The Plaintiffs have been appointed her legal Guardians and the Co-Administratrixes for the purpose of making application for the grant of letters of administration. In action 2021/Pro/cpr/00003 the requisite Ex Parte Summons, Affidavit in Support, Notice to Appoint Co-Administratrix, Affidavit of Fitness and Affidavit of Consent were all duly filed by the Plaintiffs and considered by the Court before the making of the Order. The same attest to the fact that the Deceased died intestate, a bachelor and with one issue, the said Minor. That the Plaintiffs are the biological mother and maternal grandmother of the said Minor and that to the best of their knowledge, information and belief no other person other than the said Minor is entitled in priority to a share in his estate. Exhibited to the Affidavit on Support

is the death certificate of the Deceased and the birth certificate of the said Minor. The Deceased is recorded as the father of the said Minor on the birth certificate. Also exhibited to the Affidavit is a copy of the Conveyance to the said Residence from the Minister Responsible for Housing to the Deceased. As legal guardians of an individual who has a beneficial interest in the estate of the Deceased and an interest in preserving the assets of the estate for that individual, the Plaintiffs have in my view locus standi to approach the Court to seek relief.

26. On the other hand, none of the Defendants appear to have a beneficial or legal right or interest in the estate of the Deceased. The 1<sup>st</sup> and 3<sup>rd</sup> Defendants appear to have taken into their possession assets that do not belong to them. They do not appear to have the consent of the person entitled to these assets on intestacy to do so. The 3<sup>rd</sup> Defendant appears to be a trespasser in the said Residence. While I accept that the Grant of Letters of Administration has not yet been issued to the Plaintiffs, the only "right" to the assets by the Defendants advanced by Miss McDonald is that they are "blood relatives" to the Deceased and to the said Minor. Their blood relationship does not give them the legal right to take possession of the assets of the estate no matter their noble intentions.
27. Moreover, the Defendants do not dispute that the said Minor is the child of the Deceased. There is no evidence that the Deceased disputed his paternity while alive. The said Minor was permitted by the 3<sup>rd</sup> Defendant to enter the said Residence and remove certain of her belongings from her room so was obviously a visitor there. There is no evidence that any of the Defendants or anyone else for that matter were in occupation of the said Residence at the time of the death of the Deceased. So far there is no evidence that the Deceased was survived by any other children. There is no evidence that he left a Will.
28. By all accounts the said Minor is the Personal Representative, that is through her legal Guardians, and sole heir-at-law, with a beneficial interest in the estate, the person entitled to make application for Letters of Administration and the person to inherit the whole of the estate.

**Issue: Whether at trial it would appear that the injunction was rightly granted:**

29. It is evident that the nature of the injunction sought by the Plaintiffs is for a mandatory injunction. The Court on such an application must therefore consider the guiding principles as stated by Chadwick J in **Nottingham Building Society v Eurodynamics Systems** [1993] F.S.R. 468 at 474. The principles to be applied when deciding whether to grant

mandatory injunctions at the interlocutory stage (which practically mirror the issues to be determined by the Court at paragraph 19 above) are:

- (i) whether there was a high degree of assurance that at the trial it would appear that the injunction was rightly granted (higher than for prohibitory injunctions): for the reasons stated above I believe that it will be borne out at trial that the Defendants had no right legal or otherwise to take possession of any of the assets of the estate and that it is highly probable that the 3<sup>rd</sup> Defendant would be found to be a trespasser on and that the 1<sup>st</sup> Defendant to have wrongfully detained or taken into possession assets of the estate.

**Issue: Whether the balance of convenience lies in maintaining the status quo**

- (ii) whether an order which required a party to take some positive step at the interlocutory stage could carry a greater risk of injustice if it turned out to have been wrongly made than a prohibitory injunction which preserved the status quo: The Defendants clearly are not entitled to apply for Letters of Administration or to inherit under the estate. There is a risk that there are other children of the Deceased who would inherit equally with the said Minor but as the Plaintiffs will only be charged with and will only have the power to preserve the assets in trust for the said Minor and any other children who may surface pending the determination of the application for Letters of Administration, there can be no injustice caused should the Defendants be required to take some positive step as opposed to maintaining the status quo;

**Issue: Whether it was highly probable that the Plaintiffs would establish their rights at trial:**

- (iii) whether there was a high degree of assurance that the plaintiff would be able to establish his right at trial: for the reasons stated I believe that the Plaintiffs can establish locus standi at trial, a claim for trespass to the said Residence and wrongful detention/possession of the car and;

**Issue: Whether the risk of injustice if the injunction was refused sufficiently outweighed the risk of injustice if it was granted:**

- (iv) whether the risk of injustice if the injunction was refused sufficiently outweighed the risk of injustice if it was granted: while there is no evidence that the Defendants have damaged or converted any of the assets to their use in any way, it would be unjust to prefer them, who have no beneficial, legal interests or moral rights to the assets of the estate over the Plaintiffs who do, and allow the Defendants to remain in possession of the assets.

## **Conclusions**

30. The Court always tries to find workable solutions to situations such as this. Miss McDonald has suggested that the 1<sup>st</sup> and 3<sup>rd</sup> Defendants could undertake to preserve the assets until the grant is issued and has gone so far to suggest that the 1<sup>st</sup> Defendant be joined as a Co-Administrator. The parties are obviously already "at war". The 3<sup>rd</sup> Defendant has described the Ms Woods as "greedy", that she does not have the said Minor's interest at heart. The 1<sup>st</sup> Plaintiff has already acted in what I consider to be a high-handed manner by taking possession of the car and installing the 3<sup>rd</sup> Defendant in the said Residence. The Court cannot and ought not to impose him on the Plaintiffs as a Co-Administrator. They already do not "get along". If he and the other Defendants truly have the interest of the said Minor at heart they should volunteer any information that would assist the Plaintiffs in collecting, "getting in" all of the assets in the estate. There is no evidence before the Court to suggest that the Plaintiffs are and would be incapable of managing this estate once the Grant is in hand. By law they must do so in the best interests of the said Minor until she reaches the age of majority. They will be accountable to her in the event of any mismanagement. And so, the Court has few practical solutions left in these circumstances.
31. The Court could permit the 3<sup>rd</sup> Defendant to remain in occupation of the home to preserve and protect it for the said Minor and to permit the 1<sup>st</sup> Defendant to retain the car in his possession to do the same. But to my mind this would be condoning the actions of individuals who have no legal or beneficial interest or right in the assets of the estate to take control of them, regardless of what they say their true motives are. This I am not minded to do. The Court could take the view that the status quo at the time of the death of the Deceased ought to be maintained and that none of the parties should be permitted to actually possess any of the assets and that the Plaintiffs be charged with securing these assets until the determination of the application for Letters of Administration. Securing the home with a security system could be a very costly exercise. Most modest homes in

Grand Bahama do not have security systems installed. And even those that do are better protected with someone in actual occupation of the home together with a security system in place. Installing a caretaker would be costly. The costs of having a security company check/patrol the home periodically, night and day, would be astronomical. I accept the Defendants' submission that the home would be vulnerable to theft if left unoccupied. But for the above reasons to properly secure the house while not in occupation would be cost prohibitive. I have already outlined above the said Minor's position in law as I see it and the Plaintiffs' position in law in respect of the said Minor. The most practical and reasonable decision in the circumstances is to permit the Plaintiffs to take possession of the car and for the Plaintiffs and the said Minor to temporarily occupy the said Residence to safeguard and preserve the same on behalf of the said Minor and any other heirs as may become known, until the determination of the application for Letters of Administration. As the Personal Representatives they have the responsibility to collect, "get in" and safeguard the assets of the Estate even before the Grant is issued, and in this case, the Plaintiffs act for the said Minor. The assets may have to be sold to pay the just debts and testamentary expenses of the estate or utilized to maintain the said Minor once the Grant is in hand and so it is imperative that they are preserved by those entitled to do so.

32. Finally, the Plaintiffs have not filed the Writ of Summons as yet. They are required to do so in the next 24 hours as it ought to have been filed before now. Further, the formal application for the grant should be submitted post haste. That too should have been submitted by this time and be well in process.

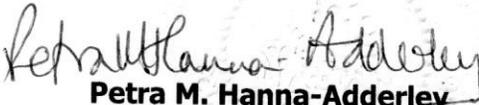
**Disposition**

33. Having read the pleadings, having heard Counsel, having considered the law, and in all the circumstances of the case and for the reasons stated above I make the following Orders that:

- (1) The 3<sup>rd</sup> Defendant shall deliver up possession of the 2014 Chevrolet Malibu car L/P No. GD7756 on September 30, 2021 to the Plaintiffs at the said Residence of the Deceased situated at Lot No. 192 Golden Dew Loop, Wellington Heights, Freeport, Grand Bahamas, The Bahamas, where the same shall, save for being started from time to time, remain parked until the determination of the application for Letters of Administration;

- (2) The 3<sup>rd</sup> Defendant shall deliver up vacant possession of the said Residence on or before October 31, 2021 to the Plaintiffs who shall occupy and keep safe the said residence until such time as the determination of the application for Letters of Administration and the same shall not in the meantime be sold or leased or let in any way. The Plaintiffs shall carry out an inspection of the said Residence on September 30, 2021 at 10:00 a.m. The 3<sup>rd</sup> Defendant undertakes and the Court accepts his undertaking to keep the said Residence in good order until he vacates the same.
- (3) The 1<sup>st</sup> and 3<sup>rd</sup> Defendants whether by themselves or by their agents or servants, be restrained until after the trial of this action or until further order from doing the following acts or any of them that is to say:-
- (i) removing any of the documents, personal effects and chattel's of the Deceased situated in the said Residence and any such items already removed shall be returned to the Plaintiffs forthwith;
  - (ii) interfering or meddling with any of the assets of the Estate of the Deceased.
- (4) Any of the Defendants who are in possession of any documents which are the property of the Deceased shall turn them over to the Plaintiffs forthwith.
- (5) The Plaintiffs shall undertake to abide by any Order that this Court may make as to damages or loss in case the Court shall hereafter be of the opinion that the Defendants shall have sustained any by reason of this Order which the Plaintiffs ought to pay.
34. With respect to costs, I am satisfied that all of the parties seek to act in the best interest of the said Minor. I therefore order the parties to bear their respective costs.

This 29<sup>th</sup> day of September, A. D. 2021

  
**Petra M. Hanna-Adderley**  
Justice

