COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Family Division
2014/FAM/div/FP/00131

BETWEEN

JACQUELINE VERNETTE COLLIE (nee SHERMAN)
Petitioner

AND

ELLISON ISAAC COLLIE
Respondent

BEFORE: The Honourable Justice Petra M. Hanna-Adderley

APPEARANCES: Mr. Edwin Knowles for the Petitioner

Miss Constance McDonald KC for the Respondent

HEARING DATE: On the Papers

RULING ON RESPONDENT'S PRELIMINARY OBJECTION

Hanna-Adderley, J

Introduction

[1.] This ruling determines the preliminary objections raised by the Respondent to the Petitioner's Notice of Application filed 12 August 2025. The application concerns the implementation and enforcement of the Court's Decision delivered 14 December 2020 and the consequential Order on Decision filed 27 July 2023 (together referred to as **"the 2020 Order"**). On 5 December 2025 Counsel were given directions to file their arguments in writing and the Court determined that it would hear the objections on the papers.

Procedural Background

[2.] By Notice of Application the Petitioner seeks a number of Orders and Declarations. The Respondent raises 2 objections. Firstly, the Respondent challenges the independence of the accounting valuation relied on by the Petitioner, alleging an undisclosed business relationship between the Petitioner's attorney and an accounting firm leasing premises from the Petitioner's attorney. Secondly, the Respondent contends that the 2020 Order was final; that this Court is functus officio; and that enforcement cannot properly be sought by the present Notice of Application.

[3.] The Respondent filed Submissions on 18 December 2025 and the Petitioner by way of response filed a Skeleton Argument for the Petitioner on 22 December 2025, and Supplemental Skeleton Argument for the Petitioner also filed 22 December 2025. The Petitioner relies on the Affidavit of the Accountant Dr. John S. Bain filed 22 December 2025 in support of her response to the preliminary objections.

[4.] On 22 December 2025 an application for a Writ of Execution/Fieri Facias was filed, supported by the Affidavit of P. Rodnae Monestine also filed 22 December 2025. I refer to these documents as relates to the procedural objection raised by the Respondent.

Issues

[5.] As I see it the following issues are for determination:

(a) whether the conflict/non-disclosure objection establishes a proper basis to set aside or disregard the valuation material at this stage;

(b) the proper construction and extent of the 2020 Order;

(c) whether the Court is functus officio in relation to the relief now sought;

(d) whether the Petitioner has employed a procedure capable of yielding the enforcement relief sought; and

(e) the appropriate disposition of the Notice of Application.

Background

[6.] The 2020 Order followed the determination of the parties' ancillary relief claims. It declared and ordered, among other things, that:

(a) the Respondent was entitled to 50% of the specified family savings and certain reimbursements;

(b) the interests in Elco Holdings Limited, Abaco Hillside Hotel Limited, Colsher Corporation Limited, and the former matrimonial home and identified dwelling houses were matrimonial assets to be valued by Court-approved professionals;
(c) the Respondent was to pay the Petitioner 50% of the assessed value of the respective assets, subject in the case of Abaco Hillside Hotel Limited to the additional sum of $38,000; and
(d) failing such payment, the identified shares and matrimonial assets were to be sold and the proceeds divided equally between the parties.

[7.] The 2020 Order did not itself state a final aggregate sum payable by either party. Nor did it appoint a date or period within which the Respondent was to make any payment under paragraphs 2 to 5. Setting a reasonable period within which to make payment was decidedly difficult sans the appraisals. It reserved the issue of costs. The contemporaneous Decision also recorded that the Court would hear Counsel on the formula to be used in arriving at the figures because valuations had not then been furnished.

[8.] On 2 May 2022, the Court appointed Mr. Elbert Thompson of H.G. Christie Real Estate as appraiser and Galanis & Co., Advisors and Chartered Accountants, as accountant. The order further provided that communications and instructions to those professionals were to be made by the Court.

[9.] The Petitioner now relies on H.G. Christie appraisals dated July 2024 and a valuation report dated 16 February 2025 prepared by Dr. John S. Bain of JSB Global Solutions. The Petitioner's material assesses $3,105,526.50 as the sum payable to her, being 50% of a stated net value of $6,211,053. The Petitioner made demand for that sum and, after attempts to obtain a Writ of Fieri Facias, filed the present Notice of Application.

[10.] The Notice of Application seeks orders requiring payment of 50% of the matrimonial assets or, alternatively, sale; declarations that the appraisals and valuation were conducted pursuant to the 2 May 2022 order; payment into the Petitioner's bank account; authority for the Petitioner and, if necessary, the Registrar to effect a sale or execute sale and conveyancing documents; and ancillary relief.

[11.] The Petitioner's attempted Writ was returned by the Registry with a direction to review rule 58 of the Matrimonial Causes Rules. The Monestine affidavit fairly identifies the immediate difficulty: the 2020 Order refers to percentage entitlements but neither fixes a dollar sum nor stipulates the time for payment, which the Court felt it could not do in the absence of appraisals.

Submissions

Preliminary Objections

[12.] Miss Constance McDonald KC, Counsel for the Respondent, submits, in part, that the Respondent was asked to agree upon an Accountant. That as far as the Respondent was aware there was no nexus between the Accountant and the Petitioner's Attorney. That the Petitioner's Attorney never made any disclosure to the Court or to the Respondent of any such nexus. Miss McDonald KC referred the Court to Chitty on **Contract General Principles** Twenty Third Edition at paragraph 269 which states:

> ***"...although total non-disclosure does not amount to a misrepresentation, a partial non-disclosure may do so... for example, a statement may be made which is true at that time but which subsequently ceases to be true to the knowledge of the representor before the contract is entered into. In such circumstances a failure to inform the representee of the change in circumstances will itself amount to a misrepresentation."***

That when the parties were deciding on an accountant the Petitioner's Attorney was not in a landlord/tenant relationship, they were in that relationship before a letter of engagement was signed and as a result the Petitioner's Attorney ought to have disclosed this fact to the Court.

[13.] Miss McDonald KC also referred the Court to the text "The Legal Profession in the English Speaking Caribbean" by Karen Nunez-Tesheira at page 189 (2) which states:

> ***"As an officer of the court, an Attorney is under a duty to be a helper in the administration of justice."***

On page 191 subparagraph 11 on "**Conflict of Interest**" the author goes on to say:

"..where he acts in any manner in which his professional duties and his personal interests conflict or is likely to conflict."

[14.] Miss McDonald KC submits that had the Respondent been informed that they were in a landlord/tenant relationship the Respondent would never have agreed to their appointment. That Justice must not only be done, it must appear to have been done. That the Petitioner's Attorney failed in his duty to both the Court and the Respondent when he failed to disclose his relationship. As a result, any evaluation by the Accountant should be set aside and the Respondent refunded the amount he paid for the report.

[15.] Miss McDonald KC referred the Court to **Livesey v Jenkins** 1985 FLR 813 where the House of Lords thought that the failure by the wife to reveal that she was engaged to remarry was of sufficient importance that the order should be set aside. Lord Brandon of Oakbrook read the Decision at 12:

> ***"...it follows necessarily from this that each party concerned in claims for financial provision and property adjustment (or other forms of ancillary relief not material in the present case) owes a duty to the court to make full and frank disclosure of all material facts to the other party and to the court. This principle of full and frank disclosure in proceedings of this kind has long been recognized and enforced as a matter of practice. The legal basis of that principle, and the justification for it, are to be found in the statutory provisions to which I have referred."***

[16.] Miss McDonald KC submits that while this case is talking about full and frank disclosure by one of the parties to the other it is Respondent's submission that it equally applies to the Attorneys involved as agents for their clients. Miss McDonald KC also referred the Court to the text "**Family Law**" 3rd Edition by Jonathan Herring at page 249-B which states with regard to non-disclosure:

> ***"The Court in deciding whether to set aside a Consent Order on the basis of non-disclosure will consider whether the non- disclosure was fundamental enough to merit setting the Order aside."***

He continues on page 250:

"....This test stretches balance between on the one hand ensuring fairness between the parties and discouraging non disclosure."

[17.] With respect to whether the Court is functus officio, Miss McDonald submitted that there can be no argument that the Decision of 14 December 2020 was a Final Decision. She referred the Court to the case of **Leanette Ferguson v Delaporte Point Limited** SC CIV App No. 134 of 2022 where the Court reviewed the Functus Officio doctrine and held as follows:

> ***"It appears from paragraph 58 of her judgment the learner judge was of the view that appellant's intervention into the sales process being conducted by the receiver gave the court the power to reopen the case which had been before her. This view, with respect, is misconceived. The order dated 24th August 2017, removing the appellant from the proceedings and entering judgment on admission by king enterprise limited, brought the proceedings to an end.***
>
> ***The learned judge fell into error when she acceded to the respondent's application to have the appellant rejoined in the action which was, in fact completed.***
>
> ***Whenever the issue of jurisdiction arises, the court is required to satisfy itself that it does in fact have jurisdiction to continue the proceedings. Parties to an action cannot, by their agreement, confer jurisdiction on a court."***

And further on page 18 paragraph 41 the Court of Appeal states:

> ***"In summary, the functus officio doctrine is a finality rule which is directed at decision-makers (be they a court, arbitrator or administrative tribunal or commission or other statutory body). The rule operates to circumscribe the jurisdiction of the decision-maker by delineating from the jurisdiction of the decision-maker is to be regarded as exhausted and at an end."***

[18.] Miss McDonald KC submits that there is no provision for continuance in the Matrimonial Causes Act. In her opinion this Court's function in this matter is functus officio, as a result the Petitioner's application should be dismissed with costs to the Respondent.

[19.] Mr. Edwin Knowles, Counsel for the Petitioner submits, in part, that in her Submissions Miss McDonald argues that the Petitioner's attorney entered a partnership with the accounting firm that produced the valuation report of the matrimonial assets. He submits that no such agreement exists between the Petitioner's attorney and any other firm or with any other company. He defined pursuant to the Partnership Act of the Bahamas what a partnership is and argued further that the Respondent failed to establish the existence of any partnership. That in his view the Submission at the 11th hour was once again to delay this matter and to abuse the process of the court. That the company that currently shares the same address as the Petitioner's attorney is Acme Advisors Limited, a private company, not HLB Bahamas as alleged by the Respondent and that there is no partnership between this company and the Petitioner's attorney. Furthermore, Acme Advises Limited is not the firm that prepared the valuation report. Once again, Mr. Knowles submits, it is the clear intention of the Respondent's attorney to delay this matter and to ambush the Petitioner with no evidence before the court. That this is an abuse of the court process and should not be tolerated. Further, JSB Global Solutions prepared the report on the 16th of February 2025 for the court, whose offices are in Nassau and which has no connection with the attorneys of the Petitioner.

[20.] Mr. Knowles further argued that the applicable test is not whether a connection exists but whether a fair minded and informed observer having considered all relevant facts, would conclude that there was a real possibility of bias. That this is the settled common law test for expert evidence in Commonwealth jurisdictions. Furthermore, the timeline is fatal to the Respondent's objection. The divorce proceedings commenced in 2014, the late Mr. Philip Galanis was appointed by the Court in 2022, HLB Bahamas rented office space from Sessions House Chambers in 2023. Mr. Galanis passed away in 2024 and John S. Bain completed the valuation report in 2025. The expert appointment predated the office rental by one year. The evaluation methodology and scope were already Court directed. The alleged connection arose after the expert role was crystallized. No retrospective impairment of objectivity can logically arise.

[21.] Mr. Knowles further argued that the landlord and tenant relationship does not without more give rise to apparent bias. Further the valuation report is clearly objective and essentially compiles figures obtained from HG Christie appraisals, that is, a valuation of $6,210.756.

[22.] That it appears that the Respondent misunderstood the nature of the Petitioner's application. The application was brought before the Court to attempt to complete this matter once and for all, some 5 years after the Ruling.

[23.] That the Respondent lacks locust standi to advance an objection on conflict of interest and or non-disclosure.

[24.] That the Court pursuant to Part 26 one of the Civil Procedure Rules 2022 (As amended) has general power to rectify matters. That an error a procedure or failure to comply with the rule, practice or direction or court order does not invalidate any step taken in the proceedings, unless the court so orders, and the court may make an order to put matters right. That the court may make such order on or without an application by a party.

[25.] The Petitioner also requests costs in this application.

[26.] In supplemental submissions Mr. Knowles also referred to the overriding objectives of the Civil Procedural Rules and to Part 25 which deals with Case Management. He complained with respect to the Respondent's failure to effect proper service of his Submissions, which he argues amounts to contempt and which should result in the Submissions being struck out.

[27.] Mr. Knowles referred to a number of case authority including:

1. **In Solomon v Solomon** [1897] A.C. 22 at 30.
2. **William Lamar Chester v Derby Shores Ltd** etal Action 2023/CLE/gen/00670.
3. **Bernhard Schulte GmbH & Co KG and others v Nile Holdings Limited** [2004] All ER (D) 136 (May).
4. **Reeves v Platinum Trading Management Ltd** (2008) WLR page 195 at paragraph 39.

Ruling on First Preliminary Objection.

The Conflict and Non-Disclosure Objection

[28.] I hereby dismiss this objection as a preliminary objection to the continuation of the application. The Respondent has not filed **evidence** establishing that Dr. Bain, who prepared the report relied upon, had a financial, professional, or advisory relationship with the Petitioner's attorney capable of affecting the exercise of his professional judgment.

[29.] The material presently before the Court is that the original accountant was appointed in May 2022; an office lease between Sessions House Chambers and an entity trading as HLB Bahamas began later, in or about 2023; Mr. Galanis died in 2024; and Dr. Bain completed the valuation work in February 2025 in his own professional capacity through JSB Global Solutions. Dr. Bain expressly deposes that he has no fee-sharing arrangement, referral arrangement, joint retainer, exchange of confidential information, or influence by Sessions House Chambers in respect of this assignment.

[30.] A commercial tenancy, without more, does not demonstrate partiality or a real possibility that the Court-appointed expert's judgment was affected. The Respondent's submissions identify a concern, but a concern is not proof. No methodology error, factual error, undisclosed financial interest of Dr. Bain, or evidence of influence on his opinions has been identified.

[31.] This conclusion does not amount to a final acceptance of every valuation figure. The weight, admissibility, and ultimate use of the valuation evidence remain matters for determination in an appropriately constituted implementation process, in which the Respondent may make any properly pleaded and evidenced substantive challenge. The present objection, however, supplies no basis to invalidate the report or to halt the proceedings.

Ruling on Second Preliminary Objection
The Finality of the 2020 Order

[32.] The Respondent is correct that the Court may not use an enforcement application to **revisit the merits of the ancillary-relief adjudication, to redistribute the matrimonial estate, or to make a fresh order inconsistent with the disposition already made.** In that respect, the order is final and the doctrine of functus officio applies.

[33.] The Court of Appeal's decision in **Leonette Ferguson v Delaporte Point Limited** (supra) explains that a decision-maker's jurisdiction is exhausted once it has completed the function entrusted to it. The rule protects finality and prevents a court from reopening a completed action merely by clothing a fresh substantive determination as consequential relief.

[34.] That principle does not mean that a court is incapable of enforcing its own perfected order, construing its operative language, supervising steps expressly contemplated by it, or making procedural directions necessary to put an unperformed order into effect. The critical distinction is between **implementation of an existing adjudication and a new adjudication on the merits.**

[35.] The 2020 Order expressly contemplated a process yet to occur: Court approved appraisals and valuation, an election or opportunity to pay the Petitioner's 50% share of assessed value, and, failing payment, sale of the identified shares and assets with an equal division of the proceeds. The Court then made the 2 May 2022 appointment Order to facilitate that process.

[36.] Accordingly, the Court is not functus for the limited purpose of determining what the existing order requires for its **implementation** and ensuring that the **enforcement mechanisms expressly contained in it** are capable of being pursued. But the Court is functus as to the substantive division fixed by the 2020 Order. The Court may not now, under the guise of "adding" a figure to the order, select between disputed valuation evidence without hearing the parties' arguments on the same, determine unadjudicated liabilities and set-offs, add interest, make new proprietary orders, or rewrite the parties' rights.

The Proper Enforcement Procedure

[37.] At the end of the day, the Petitioner seeks implementation and, where entitled, enforcement of the 2020 Order. The 2020 Order was not appealed and the Petitioner and I would hope the Respondent want an end to this family litigation which commenced in 2014. But the Respondent also has, essentially, a valid procedural objection which must be dealt with.

[38.] The Petitioner relies on Rule 58 of the Matrimonial Causes Rules. So far as material, rule 58(1) provides for the issue as of course of a Writ of Fieri Facias, sequestration, or elegit upon an affidavit of service and non-payment where there has been default in payment of a sum of money at the time appointed by an order. Rule 58(2) requires an order directing a person to do an act to state the time within which the act is to be done and requires personal service or service on the attorney of a copy endorsed with the prescribed notice.

[39.] Those preconditions are not formalities which the Court may overlook where the requested writ would levy execution for a substantial money judgment. The 2020 Order does not identify an aggregate sum due to the Petitioner, does not set a time for payment, and does not contain a quantified determination of the net amount after the intended set-offs. A Writ for $3,105,526.50 and interest therefore cannot issue as of course under Rule 58 on the present record.

[40.] The Notice of Application seeks, among other matters, an order that the Respondent pay a newly stated monetary sum into the Petitioner's account and an order authorising sale documentation to be signed by the Registrar. These are not merely ministerial consequences of a fixed money judgment. They require the Court to determine whether the figures and reports relied upon satisfy the terms of the 2020 Order, whether any set-offs are to be made and in what amount, what assets are presently within the scope of the Order, whether the contractual and corporate rights of relevant companies and persons are affected, and what time should be fixed for performance.

[41.] The Court cannot properly make those determinations on the footing that they are clerical amendments to a final order. Nor can it issue a Writ of Fieri Facias in advance of a liquidated money obligation due at an appointed time. The procedural objection by the Respondent therefore succeeds to that extent.

[42.] I do not accept, however, that the consequence must be dismissal of the proceedings. The Petitioner has placed before the Court an extant Order that expressly provides a sale consequence if the Respondent does not pay. The application puts the Respondent on notice that **implementation and enforcement are sought**. The Court may direct the parties to use the procedure appropriate for implementation of the existing conditional order and may regularize the present application to the extent permitted by the applicable rules and consistent with fairness.

[43.] The Petitioner must therefore elect and clearly formulate the route relied upon:

(a) if the Petitioner seeks execution for a money judgment, she must first obtain an order, consistently with the 2020 Order and **without reopening its merits**, which finally determines the sum payable and fixes a time for payment; thereafter, she must satisfy rule 58 before any Writ is issued; or

(b) if the Petitioner relies on the "failing which" sale provision, she must seek focused implementation directions identifying the particular shares/assets to be sold, the persons whose authority or interests may be affected, the preconditions said to have occurred, the proposed sale mechanism, and the relief required to give effect to the existing order. Any order compelling an act must specify the time for compliance and be served in accordance with rule 58(2).

[44.] Nothing in this Ruling decides the correct valuation, the amount of any entitlement, whether the asserted preconditions to sale have occurred, the proper treatment of the family-savings reimbursement and hotel-loan set-offs, the availability of interest, or the legality and propriety of any proposed execution against assets held by companies. Those questions must be resolved, if necessary, on proper notice, evidence, and submissions.

Disposition

[45.] For the foregoing reasons:

(a) the Respondent's conflict/non-disclosure objection is dismissed, without prejudice to any properly particularized evidential challenge to the weight or use of the valuation report at a substantive implementation hearing;

(b) the Respondent's functus officio objection is dismissed in part. The Court retains jurisdiction to interpret, supervise, and give procedural effect to the implementation and enforcement of the 2020 Order, but **may not reopen or vary the substantive ancillary relief determination;**

(c) the Respondent's procedural objection is upheld in part. A Writ of Fieri Facias **cannot issue as of course on the present order** because it does not state a liquidated sum payable by the Respondent at an appointed time; and

(d) the Notice of Application is not dismissed. It shall be regularized as directed below.

Orders

[46.] **IT IS ORDERED THAT**:

1. The Respondent's preliminary objection alleging conflict of interest or non-disclosure on the part of the Petitioner's attorney and Dr. John S. Bain is dismissed, without prejudice to a properly particularized challenge to the valuation evidence **at the implementation hearing**.

2. The Court declares that it is functus officio in respect of the merits and substantive redistribution of the ancillary relief claims determined on 14 December 2020, but retains jurisdiction to construe, implement, and enforce the 2020 Order according to its terms.

3. The Petitioner shall not issue or procure the issue of a Writ of Fieri Facias upon the present 2020 Order for the claimed sum of $3,105,526.50, or any other sum, unless and until an order fixing a sum due and the time for payment has been made and the requirements of Rule 58 of the Matrimonial Causes Rules have been satisfied.

4. Within 28 days, the Petitioner shall file and serve an amended or supplemental application which:

(a) states whether she seeks a determination of a sum due before execution or implementation of the sale provisions in paragraphs 2 to 5 of the 2020 Order;

(b) identifies the exact order or direction sought, each asset and person affected, the evidence relied upon, and the legal basis for the relief;

(c) addresses all set-offs and liabilities expressly contemplated by the 2020 Order; and

(d) where an order to perform an act is sought, proposes a definite time for compliance and an appropriate form of service.

5. Within 28 days after service of the Petitioner's amended or supplemental application, the Respondent may file and serve evidence and written submissions confined to the implementation issues identified in paragraph 4 above, including any specific challenge to a valuation or appraisal.

6. The matter is adjourned for case management on a date to be fixed by the Court, with a view to giving directions for the expeditious resolution of the implementation application.

7. Costs of the hearing on the Preliminary Objections are reserved until the final determination the implementation application.

Dated this 18th day of August, A.D. 2026

Petra M. Hanna-Adderley

Petra M. Hanna-Adderley
Judge