

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2016-04361

BETWEEN

**IN THE MATTER OF THE WILLS AND PROBATE ACT CHAPTER 9:03 OF THE
LAWS OF TRINIDAD AND TOBAGO**

**IN THE MATTER OF THE ESTATE OF EVERARD NICHOLAS BYER
OTHERWISE CALLED EVERARD BYER**

And

MICHAEL JOHNSON

**(In his capacity as Executor of the Estate of EVERARD NICHOLAS BYER,
Deceased)**

1st Named-Claimant

ANDREA ROSARIO SOSA PEGUERO

2nd Named-Claimant

And

SELWYN BYER

Defendant

Before The Honourable Mr. Justice Robin N. Mohammed

Appearances:

Mr. Richard M. Thomas instructed by Ms. Angelique Olowe for the Claimants

Mr. Felix Celestine for the Defendant

JUDGMENT

I. INTRODUCTION:

[1] By Application filed on the 5th December, 2016, Mr Michael Johnson, the First Claimant, in his capacity as Executor and Legal Personal Representative of the deceased's (Everard Byer) Estate along with Ms Andrea Peguero, the Second Claimant, in her capacity as Beneficiary of the deceased's Estate, (together the "Claimants") applied for injunctive relief against Mr Selwyn Byer, the Defendant, requiring him to vacate the property situate at No. 5 St Lucien Road, Diego Martin (the "Property") and to restrain from, inter alia, entering and/or taking possession of the Property. In support of their Application, both Claimants filed affidavits on even date.

[2] Ms Peguero deposed that, while she was still a national of the Dominican Republic, she had, at the time of filing her affidavit, been living at the Property for the previous 4 years and 7 months. She stated that shortly after arriving in Trinidad in May, 2011, she met the deceased at a restaurant and they developed a relationship partly due to the fact that he spoke her native tongue, Spanish.

It was sometime in June, 2011 that the deceased invited her to live with him at the Property. During this period of cohabitation, the relationship between the two grew and they would often go to dinner together at various restaurants. At one of these dinner 'dates', the deceased indicated to her that, in an effort to secure some permanence for her in Trinidad, he would arrange for her to marry a Trinidadian by the name of Anthony Cummings. Such marriage was effected on the 21st January, 2014. However, Ms Peguero never lived with the said Mr Cummings.

The deceased, who in Ms Peguero's opinion was a very private person and had no family and few friends, allegedly introduced her to Anabelle Rampersad who was his trustworthy and true friend. Anabelle and Ms Peguero also became close.

In 2016, the deceased began to complain to Ms Peguero about back pains and eventually, on the 25th March, 2016, he requested that the said Anabelle and Ms Peguero take him to the St James Medical Hospital. He was later transferred to the Port of Spain General Hospital.

On the 30th March, 2016, while in his hospital bed, the deceased requested that Ms Peguero and Anabelle join him. Upon arrival, the deceased informed them that he had been told by the doctor that he had stage three cancer and, on Ms Peguero's evidence, he instructed her to retrieve an envelope from his office, which contained his last Will. This purported Will was the sole document relied on by the Claimants to prove their entitlement to the deceased's estate.

It is Ms Peguero's evidence that the deceased gave her specific instructions to take the Will to the First Claimant, Mr Michael Johnson, who was also his auto-mechanic. The following day, being the 31st March, 2016, the deceased died.

Shortly after the deceased's death, Mr Selwyn Byer, who stated that he was the deceased's brother, came to the Property demanding that Ms Peguero deliver vacant possession to him on the basis that he alone was entitled to the Property. Upon being informed of the deceased's Will, the Defendant took a copy and left.

On a date not specified in her affidavit but sometime soon after the deceased's death, Ms Peguero and Anabelle proceeded to visit the said Michael Johnson, who showed them an original copy of the Will and read it out loud. It was then that Ms Peguero learned that she had been appointed the sole beneficiary of the deceased's interest in the Property. She was also the sole beneficiary of his two vehicles, which comprised a Mercedes Benz registration number PDH 8209 and a Nissan Wingroad registration number PBS 5368.

On the 16th July, 2016, the said Mr Selwyn Byer made another visit to the Property accompanied by P.C. Mohan on the pretence of possessing a search warrant for the deceased's firearm. The Defendant was then joined by his attorney, Mr. Felix Celestine, and another attorney, Mr Egon Embrack. On Ms Peguero's version of the facts, these men produced a letter purportedly evidencing the Defendant's ownership of the Property and proceeded to search the Property. The Defendant then took possession of the keys to the Property along with the two said motor vehicles.

Feeling aggrieved by these events, Ms Peguero approached her attorney, Mr Richard Thomas, who issued a letter dated the 20th July 2016 to Mr Felix Celestine requesting that he and his client restrain from trespassing and/or harassing Ms Peguero. Upon

consulting Mr. Johnson concerning the Will, Ms Peguero retained her attorney, Mr Richard Thomas, to apply to the Court for a Grant of Probate for the deceased's Will sometime in early August, 2016¹. Mr Thomas conducted a search application to determine whether there was any application for Letters of Administration or Grant of Probate relating to the estate of the deceased. The results as at the 7th November, 2016 endorsed by the Probate Registry staff on the search application stated, "*No application filed no Will deposited*".

Selwyn Byer then returned to the Property on the 1st December, 2016 with his attorney accompanied by several policemen and a bailiff producing Court documents that required Ms Peguero and all occupants of the Property to vacate. Anabelle, in response, called the West End Police who, upon arrival, read the Court documents and instructed Ms Peguero to open the gate. Due to Ms Peguero's refusal, a locksmith was then required to open a smaller gate and the cadre entered the Property. Ms Peguero and Anabelle had their possessions removed and the Defendant took possession of the Property as well as the deceased's vehicles.

As a result of these actions, Ms Peguero deposed that she is now homeless and is forced to sleep at a friend's house. It is her case that pursuant to the deceased's Will, she is solely beneficially entitled to the Property and as such, the Defendant ought to be restrained from his actions by way of the Application for injunctive relief filed herein.

[3] Mr Johnson's affidavit in support of the Application largely corroborated Ms Peguero's evidence. He confirmed that he was the deceased's auto-mechanic and that the deceased had appointed him the executor in the Will. No real explanation was given as to how he developed such a close relationship with his customer. Nevertheless, Mr Johnson purportedly duly witnessed the execution of the Will along with another unknown witness, Mr Jovan Johnson on the 28th September, 2015. It was at that point that the deceased told him that the sole beneficiary of his Will was to be Ms Peguero. The original Will was then given to Mr Johnson for safekeeping.

¹ Para 33

Mr Johnson also deposed that prior to and after his witnessing of the Will, he would occasionally visit the Property and at all times he would see Ms Peguero in occupation with the deceased. Upon learning of the deceased's death, Mr Johnson retained Mr Thomas as his attorney to apply for a Grant of Probate of the Will sometime in August, 2016².

On his evidence, it was not until the 1st December, 2016 that Ms Peguero informed him that the Defendant had ejected her from the Property based on his possession of a Grant of Letters of Administration. Mr Thomas then conducted a search application at the High Court, which indicated that no such application had been filed.

In any event, he deposed that even if such Grant of Letters of Administration had been issued, the Defendant's actions still amounted to "*intermeddling with the estate of the deceased for which he is not entitled*" as evidenced by the deceased's last Will. Further, should the injunction not be granted, Mr Johnson feared that the Defendant would dissipate the estate to which he, as executor, had an obligation to protect.

[4] A Fixed Date Claim Form was also filed on even date by the Claimants seeking possession of the Property along with declarations as to the validity of the deceased's Will and inter alia, revocation of the Grant of Letters of Administration issued in favour of the Defendant, Selwyn Byer.

[5] On the 7th December, 2016, this Court heard the Application for Injunctive relief and was persuaded to grant same. Accordingly, the Court ordered:

- (i) That the Defendant vacate the Property until the Court determines the validity of the deceased's Will;
- (ii) That an injunction is granted restraining the Defendant from taking any further ejection action against the Second Claimant from the Property until the Court determines the validity of the deceased's Will;

² Para 6

- (iii) That an injunction is granted restraining the Defendant from entering and/or remaining on the Property until the Court determines the validity of the deceased's Will;
- (iv) That an injunction is granted restraining the Defendant from interfering with the Second Claimant's reasonable enjoyment of the Property until the Court determines the validity of the deceased's Will;
- (v) That the Defendant return all items extracted and/or impounded from the Property since taking up occupation including:
 - a) Mercedes Benz PDH 8209; and
 - b) Nissan Wingroad PBS 5368
- (vi) That an injunction is granted restraining the Defendant from harassing or intimidating the Second Claimant whether at the Property or any other place until the Court determines the validity of the deceased's Will;
- (vii) That the Grant of Letters of Administration issued on the 11th November, 2016 of the deceased's estate be lodged into Court with the Registrar of the Supreme Court, Probate Registry until further order;
- (viii) That the Defendant cease any further dealing with the estate of the deceased until further order;
- (ix) That the Defendant hand over to the Claimants' attorney, Ms Angelique Olowe, by the 9th December, 2016 all keys to the Property since taking possession;
- (x) That the Claimants are prohibited from dissipating, altering or in way affecting the assets and/or property forming part of the deceased's estate until determination of this Application or until further order.

Directions were also given for the filing of the Defendant's response affidavit on or before the 16th January, 2017 and for a reply affidavit to be filed by the Claimants by the 8th February, 2017.

[6] Pursuant to this Order, on the 19th January, 2017, the Defendant filed two affidavits in response: one of himself and the other from Ms Lydia Moore, who attested to knowing the deceased for over thirty-five years.

[7] The Defendant deposed that he could neither admit nor deny the circumstances around how Mr Johnson became the alleged executor of the deceased's Will or how he (Mr Johnson) first became aware of Ms Peguero. However, he deposed that he was informed by the said Lydia Moore that the deceased met Ms Peguero outside Sweet Lime Restaurant on Ariapita Avenue together with the said Anabelle Rampersad, who at that time was not known to the deceased. Therefore, Anabelle and Ms Peguero were friends before they met the deceased. Further, Lydia informed him that Ms Peguero needed an apartment to rent and that it was on this basis that the deceased offered Ms Peguero one of the downstairs rooms in his guest house that comprised the Property.

Contrary to the evidence that the deceased had no friends or family, Selwyn stated that including himself, the deceased shared another sibling, their elder sister, Jocelyn Byer, who was also born to the same father, Samuel Byer. Further, the deceased also had several cousins, one of whom was very close to him, Carolyn Byer. Further, the deceased had employed Ms Peguero as an interpreter receptionist to assist with Spanish speaking guests at the Property and the deceased would occupy the top floor while Ms Peguero would occupy the ground floor.

Upon learning of the deceased's death on the 31st March, 2016, Selwyn visited the Property but was not let inside and after several attempts to locate his brother's body, he discovered that it was taken to a funeral home in San Fernando.

On the 12th April, 2016, Selwyn was told of a prayer meeting held at the Property for the deceased, which he attended. He deposed that this was the first time he was allowed into the Property since his brother's death. It was at this prayer meeting that he was first introduced to Ms Peguero and Anabelle as being the elder brother of the deceased. It is his evidence that upon hearing this, Ms Peguero walked away from him. Further, both Ms Peguero and Anabelle had been told of the deceased's elder siblings to which the pair did not seem pleased.

While at this prayer meeting, Anabelle informed Selwyn that his brother had married Ms Peguero, which was confirmed by Ms Peguero and that the deceased had left Anabelle in charge of everything.

The Defendant noted several inconsistencies and/or peculiarities about the deceased's funeral such as: (i) the fact that the flyer for the funeral service, which was held on the 14th April, 2016, listed Selwyn as a relative and not as the deceased's brother; (ii) the fact that Ms Peguero was listed as the wife of the deceased on the death announcement papers but as common law wife on the flyer; and (iii) the fact that strangely, no mention was made of the deceased's mother, Alma Scarborough on the Church Programme.

Selwyn then visited the Property on the 24th April, 2016 to meet with Ms Peguero and Anabelle concerning the Property but again no one answered or allowed him entry. As a result, he contacted his attorney, Mr Felix Celestine. After discussing with his sister, he decided to take proceedings toward the deceased's Estate by instructing Mr Celestine to apply for Letters of Administration on behalf of his sister and himself as the applicants.

[8] It was at first deposed that it was not until the 16th July, 2016, upon the subsequent visit to the Property, that Ms Peguero gave him a copy of a document purporting to be the last Will of the deceased³. Later on in his affidavit, however, Mr Byer deposed that it was actually his agent, Selwyn Mark, who provided the copy of the deceased's last Will⁴. At that time, the Will did not have a signature on it. Mr Byer deposed that the said agent did not think that the Will was an authentic document because there was no explanation for his brother's odd decision to transfer his Estate to a virtual stranger especially as no one knew of any relationship between the deceased and Ms Peguero. At the time of entry, the Property was also occupied by Anabelle Rampersad and a woman from Columbia from whom the police officer took and reviewed their passports. The agent proceeded to take an inventory of the Property and the cadre left.

³ Para 3 j

⁴ Para 4 r

These activities led Selwyn to apply for Letters of Administration on the 6th September, 2016, which was granted on the 11th November, 2016 thereby appointing him the Legal Personal Representative of the deceased's Estate.

With this power in hand, Selwyn proceeded to the West End Police Station accompanied by his said agent, Selwyn Mark, on the 1st December, 2016 and presented the Grant of Letters of Administration to the officer in charge. The Defendant then proceeded along with a company of police officers to the Property. After Ms Peguero, Anabelle and all other occupants were required to vacate the Property, the Defendant then took vacant possession of same and proceeded to inspect the Property. He deposed that he found it to be in a deplorable condition and that there were "*documents scattered all over the place*" and further, that the downstairs area was "*stink and generally in a deplorable condition.*"

It was not until the 6th December, 2016, when Selwyn saw a copy of the Will in the filed documents of these proceedings that, for the first time, he noticed a signature thereon. He, of course, challenges the authenticity of this signature. In any event, he deposes that the Claimants have not disclosed the steps taken to probate the Will nor have they provided evidence of this alleged common-law relationship between Ms Peguero and the deceased.

[9] The said Lydia Moore provided some history about her friendship with the deceased. She stated that he had inherited the Property from his mother and that in 2009 the single storey house was demolished and converted into a two storey structure which was thereafter finally completed with a third floor around the end of 2012 and/or into early 2013. During this period, she deposed that Ms Peguero was nowhere around at that time. In fact, the first time she became aware of Ms Peguero's presence was in June/July 2013 when the deceased informed her that he needed to get an apartment to rent for the said Ms Peguero. Lydia informed him of an apartment in San Diego Park, Diego Martin. Sometime thereafter, Ms Peguero was offered accommodation in one of the downstairs rooms of the Property.

Ms Moore then described the circumstances around how the deceased met the said Ms Peguero. She further deposed that when he met both her and her friend Anabelle at Sweet Lime Restaurant, Anabelle was plying her coconut trade outside the restaurant on Ariapita Avenue. She confirmed and corroborated the evidence of Selwyn Byer in this regard.

Ms Moore deposed that during the month of March, 2016 she made several unsuccessful attempts to contact the deceased and that it was not until the 1st April, 2016 that she received a call from his cell phone from someone purporting to be his wife. This person informed her that the deceased had died. This news shocked Ms Moore as she had no knowledge that the deceased was sick or that he had a wife. Indeed, many of his work colleagues, whom she contacted to inform them of his death, were similarly surprised at the news.

Prior to his death, she deposed that she spoke frequently with the deceased. However, since the middle of March, 2016, communication ceased.

It was her opinion that the deceased's behaviour was unfamiliar. Usually, whenever he got sick, the deceased would inform family, friends and herself and that they would all visit him and pray with him. She deposed that the deceased was a very religious man and a devout catholic.

In 2012, Ms Moore stated that the deceased asked her if she would accept a gift from him. Upon responding in the affirmative, she was invited to attorney, Mr Peter Taylor's office who prepared a Deed of Gift to Ms Moore of the Property. The deceased executed this Deed and the original was kept by Mr Taylor. A copy was attached to Ms Moore's affidavit.

She categorically denies the authenticity of the deceased's Will and deposed that the contents thereof are incredulous and not consistent with the deceased's behaviour exhibited during their 35 year friendship.

[10] On the 8th February, 2017, the Claimants' filed an Application seeking an extension of time to file and serve their Statement of Case on even date. A copy of the Claimants' Statement of Case was attached.

II. SUBMISSIONS:

[11] The parties then met before the Court on the 22nd February 2017. At this hearing, Mr Thomas for the Claimants, submitted that the Claimants did not reply to the Defendant's affidavits in response because, in their opinion, their evidence did not "*touch and concern the crux of the matter save for the paragraph where he challenged the validity of the Will*". Mr Thomas submitted that the Defendant was required to go further and prove the invalidity of the Will. Based on this lack of evidence, the Court had no reason to discharge the injunction but rather, he submitted, that it should proceed to deal with the Statement of Case and Defence.

Secondly, he submitted that Ms Moore's affidavit deposed that the deceased gifted her the Property yet she has not claimed any reliefs in the affidavit and therefore, it is currently unknown whether she has made any formal application as an interested party, which is a requirement under the Rules in a contentious Probate matter. Further, if indeed the Property was gifted to Ms Moore then it totally excludes the Defendant from entitlement to same.

This argument was curious to the Court for several reasons. For one, it is the Claimants who have brought this claim and therefore, the blame must also lie with them for failing to include the said Lydia Moore as an interested party. In any event, pleadings in this matter are not yet closed as no Defence has yet been filed. Accordingly, the Defendant has not had the opportunity to make any counterclaim. Moreover, **Part 31 of the CPR**, which deals with affidavits, does not make any requirement that an affidavit include any reliefs. It therefore perplexes this Court as to how Ms Moore could be expected to claim her reliefs in her affidavit evidence.

Secondly, while it is correct to say that the Deed of Gift, if valid, would exclude the Defendant from entitlement to the Property, such a result would have arisen from the Claimants' erroneous decision to bring this claim against the Defendant only. Having

had sight of the affidavit evidence in response, the Claimants now have notice to include Ms Lydia Moore as an interested party to these proceedings. In any event, **Part 19** of the CPR gives the Court the power to add any interested party with or without an application. Therefore, on any consideration, no blame can be attributed to the Defendant on this issue.

It was also argued that the Deed of Gift runs into difficulty with the **Registration of Deeds Act, Chap 19:06** in so far as the Deed did not meet the necessary requirements. However, this issue could only be dealt with if Ms Moore makes the proper application to make herself an interested party and claim her rights and/or title to the Property. Without such application, Mr. Thomas submitted that there is insufficient evidence before the Court to discharge this injunction.

[12] Mr Celestine, for the Defendant, responded that at the time of the Claimants' *ex parte* Application, the Defendant was the proper Legal Personal Representative of the deceased pursuant to the Grant issued out of this High Court, which is not challenged by the Claimants. In the face of such a Grant, it was, in his words, troubling to see that the Claimants would depose at paragraph 10 that the Defendant was involved in fraud when producing the Grant. It can only be assumed that Mr Celestine was referring to paragraph 10 of Michael Johnson's affidavit. However, on a perusal of same, there is indeed no allegations of fraud made therein.

In any event, he contended that there is a duty upon the Claimants in an application of this nature to give full and frank disclosure of the facts relied on in the application. In this regard, he submitted that because the Claimants' application is predicated to a large extent on the purported Will, the Claimants were required to disclose all facts and evidence to prove its validity. Accordingly, Mr. Celestine submitted that there was a material contradiction among the evidence given at: (i) paragraph 2 of Mr Johnson's affidavit, which stated that Mr Johnson executed the Will; (ii) paragraphs 22 and 23 of Ms Peguero's affidavit, where she deposed that the deceased told Ms Peguero to go to his office and retrieve the Will and take same to Michael Johnson; (iii) and paragraph 28, which stated that after the deceased passed, Ms Peguero visited Mr Johnson as

instructed by the deceased but that it was Mr Johnson who showed and read out loud to her the Will that he already had in his possession.

Mr Celestine submitted that there was a clear inconsistency concerning the Will. In Mr. Celestine's estimation, the Will went from the possession of Johnson to being in the deceased's office. This, he submitted, meant that there were two separate Wills, which was not stated in the Claimants' evidence and further, it begs the question of whether there is indeed any Will at all.

Mr Celestine asked the Court to take note of the fact that Ms Moore's affidavit had far more particulars concerning the deceased's lifestyle than that of Ms Peguero, who oddly enough was the one claiming to be his wife. In his estimation, the superficial nature of Ms Peguero's affidavit diminished her credibility as being the deceased's common law wife. In fact, Mr. Celestine viewed that Ms Peguero's evidence concerning the context of her relationship with the deceased did not satisfy the basic threshold to show that a common law relationship existed between them.

Mr. Celestine then attempted to point out another contradiction in the Claimants' evidence, that was, in this Court's opinion, very persuasive. He submitted that Ms Peguero deposed that she lived at the Property for 4 years and 7 months immediately preceding her Application for injunctive relief, which was made in December, 2016. This meant that she had been living in the Property from June, 2012. He therefore submitted that when considered along with her evidence that (i) she came to Trinidad in May, 2011; (ii) she took up residence in Savannah Villas Aranguetz; and (iii) she left there about a month after, being June, 2011 to go live on the Property, Ms Peguero has contradicted herself about the date at which she first took accommodation at the Property.

It is clear from the Court's calculations that 4 years and 7 months prior to the Application herein, which was filed on December, 2016, is actually June, 2012 as counsel submitted and not June, 2011 as Ms Peguero deposed.

Mr Celestine then zeroed in on paragraph 7, where Ms Peguero spoke of the arranged marriage. This was, in his estimation, clear evidence that this marriage was done to circumvent the law, which, he contended, was disturbing to say the least. Further,

counsel cited the case of **Kerron Moe v Gary Harper**⁵, where Justice Rajkumar stated that the Court should not lend its aid to an illegal transaction. It was therefore his submission this Court should not aid the illegal marriage by continuing this injunction.

However, I think it appropriate to summarily distinguish and dismiss this authority at this juncture as it is not worthy of further consideration in this matter.

The following is an excerpt of the background facts of the Judgment in **Moe v Harper** *supra* as stated by Justice Rajkumar:

“The claimant is the son of the defendant. He sues his father in respect of an alleged agreement relating to a motor vehicle. He contends that it was an agreement for its sale to him by payment of instalments over time. His father contends that it was a family arrangement under which his son was permitted the use of the vehicle in return for payments to assist in defraying its financing and insurance costs... The claimant applied to strike out the defendant’s defence on the ground of illegality. He contended that the agreement was a rental agreement, and therefore illegal under The Motor Vehicles and Road Traffic Act 48:50 (the Act). The defendant in turn applied to strike out the Claim and Statement of case on the ground that the agreement was in fact illegal, in that the claimant used the vehicle for hire as an unauthorized taxi.”

In coming to his conclusion, Justice Rajkumar stated that *“the claimant cannot have it both ways – i.e. claiming that the defence must be struck out as being based on an illegal contract, but at the same time seeking relief under the contract as so characterized.”*⁶

He found that the statement of case itself disclosed that the agreement was actually illegal for another reason - namely that the Claimant himself used the vehicle for an illegal purpose, as a taxi. This was also in breach of the insurance it carried, which expressly stipulates that the vehicle was not covered for use for hire or reward.

⁵ CV 2012-03569

⁶ See para 4 *ibid*

As a result, it was held that “*the contract, being one for an admitted illegal purpose, was not one that could or should be enforced by the High Court.*”⁷

In **Moe v Harper** the contract that was found to be illegal was the source of the litigation between the parties. In this case, the arranged marriage between Ms Peguero and Mr Cummings is not relevant to the injunction. What is relevant is the validity of the Will. Therefore, had it been alleged that the Will was an illegal document, then the case of **Moe v Harper** would apply.

Accordingly, this submission is baseless as the authority in support is inapplicable.

Mr Celestine then proceeded to compare the signature of the deceased on the Hindu Marriage certificate of Ms Peguero and Mr Cummings attached to Ms Peguero’s affidavit with the deceased’s signature on the Will and submitted that it is palpable that the two signatures are not the same. On this submission the Court states that (i) it does not agree that there exists a palpable distinction between the two signatures on its face and (ii) if indeed there was, such a finding cannot be made until the Court has had the benefit of expert evidence at trial.

It was also submitted that Ms Peguero’s evidence at paragraphs 9 & 10 of her affidavit, that the deceased’s only friend was Anabelle is patently misleading and amounts to a non-disclosure and/or failure to be frank in the disclosure of facts. Further, counsel found it odd that Ms Peguero made no mention of Mr Johnson visiting the deceased or being a friend to the deceased.

At the end of the oral submissions, this Court reserved the decision on whether to continue the injunction to a date to be announced.

[13] The Claimants then filed another application on the 3rd March, 2017 to lodge an affidavit of testamentary scripts, which purported to attach and describe the deceased’s Will as required by the CPR in probate matters.

⁷ See para 5 *ibid*

III. ISSUE:

[14] **Whether the Injunction granted by Court Order dated the 7th December, 2016 should be continued?**

IV. LAW & ANALYSIS:

[15] The approach to be adopted by the Court in hearing an application for the grant or discharge of an interim injunction was given by Lord Diplock in the House of Lords decision in American Cyanamid Co v Ethicon⁸:

*The court no doubt must be satisfied that the claim is not frivolous or vexatious, in other words, **that there is a serious question to be tried**. 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 claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at trial...**So unless the material available to the court at the hearing of the application for an interlocutory injunction fails to disclose that the plaintiff has any real prospect of succeeding in his claim for a permanent injunction at the trial, the court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought.***"

*"As to that, the governing principle is that the court should first consider whether, if the plaintiff were to succeed at the trial in establishing 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 the trial. If damages in the measure recoverable at the common law would be adequate remedy and the defendant would be in a financial position to pay them, no***

⁸ [1975] AC 396, 407-8

interlocutory application should be granted, however strong the plaintiff's claim appeared to be at that stage"

[16] It is therefore apparent that there are three questions to ask when an application for an interlocutory injunction is made: (i) whether there is a serious issue to be tried (ii) if the answer to that question is yes, then would damages be an adequate remedy for the party injured by the Court's grant or failure to grant the injunction and (iii) if there is doubt as to whether damages would be adequate, where does the balance of convenience lie?

[17] Further, in **Kensington Income Tax Commissioners, ex parte Princes Edward de Poligrac**⁹, the Court has a discretion to discharge an interim injunction granted at an ex parte hearing for failure on the part of the applicant to give full and frank disclosure:

"...and it has been for many years the rule of the court, and one which is of the greatest importance to maintain, that when an applicant comes to the court to obtain relief on an ex parte statement he should make full and frank disclosure of all the material facts- facts not law...the applicant must state fully and fairly the facts, and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the court will set aside any action which it has taken on the faith of the imperfect statement."

Therefore, in addition to the three questions, this Court must also ascertain if there has been any **non-disclosure of any material facts** in the Claimants' affidavit evidence submitted in support of the Application for injunctive relief.

Serious Issue to be tried:

[18] The Claimants' entitlement to the Property arises solely from the deceased's last Will dated the 28th September, 2015 and attached as "**A.S.P.3**" to Ms Peguero's affidavit in support. The Will clearly states, inter alia, that the deceased (i) appoints Michael Johnson as his executor (ii) bequeaths all of his interest in the Property to Ms Peguero

⁹ 1917 1 KB 486, 514

for her absolute benefit (iii) bequeaths all his interest in his two aforementioned vehicles situate at the Property to Ms Peguero. Further, there is a signature at the bottom of the Will that purports to be that of the deceased.

[19] While there appears to be a slight contradiction in the Claimants' evidence as to who instructed their attorney, the said Mr Thomas, to apply for a Grant of Probate of the Will¹⁰, what is undisputed is that the Claimant has not yet adduced evidence that the Will has in fact, been probated.

[20] **Part 72.4 of the Civil Proceedings Rules 1998** ("CPR") deals with the requirement to lodge one's Grant of Probate in proceedings seeking revocation of another's purported Grant of Probate or Letters of Administration. It states:

(i) *"Where, at the commencement of proceedings for the revocation of a grant of probate of the will or letters of administration of the estate of a deceased person, the probate or letters of administration, as the case may be, have not been lodged in court, then—*

a) ***If the proceedings are commenced by a person to whom the grant was made, he must lodge the probate or letters of administration at the court within 7 days after the issue of the claim; or***

b) *If any defendant to the claim has the probate or letters of administration in his possession or under his control, he must lodge it or them at the court within 14 days after the service of the claim form upon him.*

[21] In the Claimants' Fixed Date Claim, one of the reliefs sought is:

"Revocation of the Grant of Letters of Administration (if issued) issued in favour of the Defendant in the estate of Everard Nicholas Byer through the purported Letters of Administration."

¹⁰ See para 33 of Ms Peguero's affidavit and para 6 of Mr Johnson's affidavit in support

[22] Therefore, the Claimants' claim is caught by **Part 72.4 of the CPR**. Pursuant to **Part 72.4 (1) (a)**, the Claimants, who commenced this claim for revocation of the Defendant's Grant of Letters of Administration and who also, themselves, claim that they have applied for Grant of Probate of the Will in their favour, must lodge the Grant of Probate of the Will within 7 days after the issue of the claim. Considering that the Fixed Date Claim was issued on the 5th December, 2016, it means that the deadline for complying with this Rule has long past. However **Part 72.4 (2)** states that there is effectively no sanction for such non-compliance unless and until the Defendant applies for a Court order that the Claimants lodge the Probate of the Will with the Court. Considering that this was not done, the failure of the Claimants to produce a Grant of Probate of the Will is not fatal to their claim.

[23] In contrast, the Defendant through the affidavit of Lydia Moore, produced a Deed of Gift made on the 8th February, 2012, whereby the deceased purportedly gifted the Property to Ms Moore. This Deed of Gift also bears a signature that is stated as being that of the deceased. Mr Thomas submitted that this Deed of Gift does not comply with the provisions of the **Registration of Deeds Act Chap 19:06** but failed to specify how. On a perusal of the relevant sections of the said Act, the Court notes the following:

Section 3 of the Act requires that the Deed be attested to by a witness who was not party to the Deed:

“Every Deed executed in Trinidad and Tobago or elsewhere, in the presence of and attested by one witness at least not being a party thereto, shall be held and taken in law to be a specialty, and shall otherwise as a Deed be valid and effectual for all purposes; and nothing in this section shall give an unregistered Deed any effect or operation which by law is dependent on registration.”

Section 6 requires the person executing the Deed to sign it:

“As to the personal acts required for the execution of a Deed in Trinidad and Tobago, it is hereby declared that it is and always has been necessary

and sufficient that the person executing do sign and as his act and Deed deliver the Deed.”

Section 11 requires that the witness prove the execution by either annexing an affidavit or making a declaration at the foot or margin of the Deed:

“In all cases in which a Deed is executed by any person within Trinidad and Tobago, the affidavit or solemn declaration of the witness proving such execution may be made before a Judge of the Supreme Court, or Notary Public, or a Commissioner of Affidavits, or before any Justice by whom as a qualified functionary the signing and delivery of the Deed is attested. The affidavit or declaration may be in the Form A in the Schedule, and may be endorsed upon, or written at the foot or in the margin of, the Deed, or may be separate and refer to the Deed as an exhibit.”

[24] Pursuant to **sections 3 & 11**, the Deed of Gift states that it was prepared by Peter Taylor, attorney-at-law and bears his signature at the top. At the foot of the Deed is the oath sworn by Candice Taylor as a witness along with her signature. This oath is identical to the **Form A** oath contained in the **Schedule to the Act** made pursuant to **section 11 & 13** save that the copy of the Deed of Gift attached as L.M.4 does not state that the oath/declaration *was made before a Commissioner of Affidavits/Justice of the Peace/Judge or Notary public*. However, **section 11** does not seem to make this requirement mandatory as the word ‘*may*’ is used. Further, it is possible that the omitted part may not be apparent on the Deed due to the quality of the copy attached. The Court is therefore not yet convinced that this omission is material or fatal to the validity of the Deed of Gift. Further, while the Claimants pleaded that the Deed of Gift is unregistered, this fact does not by itself make the Deed invalid. **Section 4** of the Act states as much:

“Any Deed, although it is not required by law to be registered, may at the option of any party to the Deed be registered under this Act.”

In any event, pursuant to **section 6**, the deceased signed the Deed next to the notation that says “*signed and delivered by the within named Everard Nicholas Byer...*”

[25] In deciding whether there is a serious issue to be decided, the Court must also consider the following principles derived from the learning in **American Cyanamid** *supra*:

(i) There are no fixed rules as to when an interlocutory injunction should not be granted and/or continued;

(ii) The evidence available to the Court at the hearing of the application for an interlocutory application is incomplete. It is given on affidavit and has not been tested by cross-examination;

(iii) It is no part of the Court’s function at this stage to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed and mature considerations. These are matters to be dealt with at the trial.

[26] At this point, the Court cannot pronounce on the veracity of any of the evidence in either parties’ affidavits. Before it, there are two documents, the contents of which are in direct opposition and cannot mutually co-exist. The Court is unable at this point to determine which signature is authentic. Such are matters that can only be ascertained at trial and with the assistance of a hand writing expert.

[27] Mr. Celestine’s best attempt under this issue was his emphasis on Ms Peguero’s contradicting evidence about the existence of two Wills, one being in the possession of Mr Johnson and the other was retrieved from the deceased’s office by Ms Peguero.

[28] On a review of the relevant paragraphs, the Court does not agree that a material contradiction exists as submitted by Mr Celestine. It is clearly stated that there are two copies of the Will; the original Will, which was kept by Mr. Johnson since the 28th September, 2015 and a copy of the Will, which Ms Peguero retrieved from the deceased’s office under instruction and which she had given to the Defendant as stated at paragraph 26 of her affidavit. Therefore, when Ms Peguero and Anabelle visited Mr. Johnson, it

was the original Will that he read to them. The only part of this story that needs answering is why would the deceased instruct Ms Peguero to take a copy of the Will to Mr. Johnson if he knew that Mr. Johnson already had the original of the Will? However, any clarification on this evidence can only be attained at trial.

[29] All other contradictions between the Claimants' and the Defendant's evidence are questions of fact and it is no the function of the Court to resolve these contentions at this stage of proceedings. The material question is therefore, whether, assuming the allegations to be true, the Claimants would be entitled to the reliefs sought in the Fixed Date Claim¹¹. The plain answer must be in the affirmative.

The Court therefore finds that there is a serious issue to be tried.

Damages as an adequate remedy:

[30] Neither the Claimants nor the Defendant has dealt with this issue in their affidavit evidence or submissions.

[31] This Court notes, however, that Mr. Johnson deposed that if an injunction is not granted, the Defendant will "dissipate the estate". One might argue that any dissipation of the estate by the Defendant, should the injunction be discharged and the Defendant is allowed to occupy the Property could be quantified and as such, an alternative remedy of damages would be sufficient to compensate the Claimants for any loss from such dissipation.

[32] What is noteworthy, however, are the new reliefs claimed in the Statement of Case attached to the Claimants' Notice of Application filed on the 8th February, 2017. Unlike the Fixed Date Claim where there was no claim for damages, the Statement of Case included claims for (i) repayment of the cost to repair the CCTV monitoring system and (ii) repayment of the cost to repair PBS 5368. While not expressly worded, these reliefs are in fact claims for compensation by way of damages.

¹¹ Seaconsar Far East Ltd Appellants v Bank Markazi Jomhouri Islami Iran [1994] 1 AC 438, 451-452

[33] At page 408 of American Cyanamid, guidance was given on the process the Court should adopt in determining whether damages are an adequate remedy:

*“As to that, the governing principle is that the court should first consider whether, if the plaintiff were to succeed at the 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 the trial. **If damages in the measure recoverable at common law would be adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the plaintiff's claim appeared to be at that stage. If, on the other hand, damages would not provide an adequate remedy for the plaintiff in the event of his succeeding at the trial, the court should then consider whether, on the contrary hypothesis that the defendant were to succeed at the trial in establishing his right to do that which was sought to be enjoined, he would be adequately compensated under the plaintiff's undertaking as to damages for the loss he would have sustained by being prevented from doing so between the time of the application and the time of the trial. If damages in the measure recoverable under such an undertaking would be an adequate remedy and the plaintiff would be in a financial position to pay them, there would be no reason upon this ground to refuse an interlocutory injunction.***

[34] The Court is therefore not convinced that the Claimants have proven that damages would not adequately compensate them for any loss by way of dissipation of the Property should the Defendant be allowed occupation until final determination of this matter as evidenced by their new claims for damages in their Statement of Case.

[35] Alternatively, the Court also asks: should the Defendant be successful at trial in establishing his and/or Ms Lydia Moore's entitlement to the Property, would he be adequately compensated by the Claimants' undertaking as to damages for any loss he

would sustain by their continued occupation of the Property should the injunction be continued?

In this light, the evidence at paragraph 4 (x) of the Defendant's affidavit is noteworthy. Here, photographic evidence was provided showing the deplorable condition that the Property has fallen to under Ms Peguero's occupation. While not expressly stated by the Defendant, such evidence suggests that, should the injunction be continued, Ms Peguero is liable to cause further damage to the property due to its lack of upkeep. Such diminution in value is something to which damages could be an adequate remedy. However, the Court is not at all convinced that Ms Peguero would be in a financial position to give and pay an undertaking in damages. Ms Peguero did not state her occupation in her affidavit evidence, however, the Defendant deposed that he was informed by Lydia Moore that Ms Peguero was employed by the deceased as an *interpreter receptionist* to assist with his Spanish speaking guests.¹² This suggests a low wage income and illustrates an incapacity to give such an undertaking.

[36] In this light, the Court is faced with a situation where there is some doubt as to whether damages would be an adequate form of compensation for either party should the other be allowed possession of the Property until final determination of this matter. In such circumstances, common law suggests that the Court must look to see where the balance of convenience lies¹³:

“It is where there is doubt as to the adequacy of the respective remedies in damages available to either party or to both, that the question of balance of convenience arises.”

Balance of Convenience:

[37] Learning has suggested that it is unwise to attempt to list the factors that fall for consideration under this issue. However, Lord Diplock noted in **American Cyanamid** *supra* that:

¹² para 4 (g)

¹³ American Cyanamid *supra* page 408 at F

“If the defendant is enjoined temporarily 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.”

[38] Further, in a more recent exposition of the relevant principles to be applied in granting interim injunctive relief, Lord Hoffman stated in the Privy Council decision of **National Commercial Bank Jamaica Ltd v Olint Corporation Ltd**¹⁴ that:

*In practice, however, it is often hard to tell whether either damages or the cross-undertaking will be an adequate remedy and the court has to engage in trying to predict whether the granting or withholding an injunction is more or less likely to cause irremediable prejudice (and to what extent) if it turns out that the injunction should not have been granted or withheld, as the case may be. **The basic principle is that the court should take whichever course seems likely to cause the least irremediable prejudice to one party or the other...***

*“...Among the matters which the court may take into account are the prejudice which the plaintiff may suffer if no injunction is granted or the defendant may suffer if it is; the likelihood of such prejudice actually occurring; the extent to which it may be compensated by an award of damages or enforcement of the cross-undertaking; the likelihood of either party being able to satisfy such an award; **and the likelihood that the injunction will turn out to have been wrongly granted or withheld, that is to say, the court’s opinion of the relative strength of the parties’ cases.**”*

¹⁴ [2009] 1 WLR 1405 (at paragraphs 16-18)

[39] The fact is that the Defendant has deposed that he is a businessman of No 16 Romeo Street, St. James and therefore, has his own residence at which he currently lives. He therefore does not require the Property for his survival or livelihood. In any event, it is the said Ms Lydia Moore who has a purported claim to the Property by way of a Deed of Gift but similarly, she appears to be a woman of her own means considering that she deposed to her being a company director of No. 9 Cotton Hill, St Clair.

[40] The opposite, however, is true for Ms Peguero. She is not a resident or citizen of Trinidad and only arrived here in 2011. There is no evidence that she has any alternative residence and has expressly stated that, upon the Defendant's possession of the Property she was "now homeless" and had to sleep at a friend's.¹⁵ Such evidence remained unchallenged. Therefore, pursuant to the example given by Lord Diplock above, by continuing the injunction, the Defendant would merely be prevented from occupying Property that he never occupied before, which diminishes the level of inconvenience that he would suffer. To the contrary, to discharge the injunction would interrupt Ms Peguero from her longstanding occupation of the Property, which happens to also comprise her sole residence in this country.

[41] However, the analysis does not end there. Learning also suggests that the Court must also consider the strength of each party's case to determine the likelihood that the injunction would turn out to be wrongly granted or withheld. In making such a determination, the dicta of De la Bastide CJ in the Court of Appeal decision of **Jetpak Services Ltd v BWIA International Airways Ltd**¹⁶ is illustrative:

"If the question is, 'Wherein lies the greater risk of injustice in granting or in refusing the injunction?', then it becomes apparent that it is not possible to treat...the strength of the plaintiff's case as irrelevant...

...Some assessment of the merits more than merely that there was a serious issue to be tried, was required and the plaintiff must show a likelihood of success at the trial...He explained that the greater risk of injustice which

¹⁵ para 41

¹⁶ (1998) 55 WIR 362

was likely to be created by the grant of such an injunction meant that such an injunction would not be granted unless the court felt ‘a high degree of assurance’ that the plaintiff would be able to establish his right at a trial. He concluded therefore that essentially the same test should be applied in the case of both mandatory and prohibitory interlocutory injunctions, that is which carried the higher risk of injustice: granting or refusing it? If the matter is approached in this way, it is pellucidly clear that it is necessary to make some assessment of the appellant’s chances of succeeding at the trial.”

[42] Both parties’ evidence contains inconsistencies and/or contradictions. On one hand, the Defendant’s claim, by virtue of the Deed of Gift in favour of Lydia Moore, is challenged and the Court is not equipped to make a finding of whether the said Deed does not comply with the **Registration of Deeds Act, Chap 19:06**. To the contrary, the Claimants rely on a Will that, though signed, has not yet been probated notwithstanding that an application for Probate has allegedly been made. Without probate, however, the Will shall have no effect and the Claimants’ entitlement to the Property would be severely threatened.¹⁷

[43] Aside from the defects in the parties’ documentary evidence, the Claimants’ affidavit evidence does not fully convince this Court that they can win at trial. For one, there is simply no explanation provided for why the deceased, who evidently has living family members, would choose his auto mechanic as the executor of his Will. Secondly, there are some contradictions between Ms Peguero’s affidavit in support and the Statement of Case filed with the Notice of Application of the 8th February, 2017:

The facts pleaded at paragraphs 5 - 7 of the Statement of Case, tell a different story than Ms Peguero’s evidence given at paragraphs 1 – 4 of her affidavit. In the pleaded case, it is stated that Ms Peguero came to Trinidad in the month of May, 2012, and not May, 2011 as deposed. Further, not long after arrival in May, 2012, Ms Peguero met the deceased and “*shortly after*” the two became “*romantically involved*”. Then in June,

¹⁷ Section 21 of the Wills and Probate Act, Chap 9:03

2012, the deceased invites her to live with him at the Property and thereupon “*began a common law relationship*”.

However, Ms Peguero deposed that after meeting the deceased in May, 2011, they began seeing each other regularly and that the deceased invited her to live at the Property in June, 2011. No mention was made of the two becoming “*romantically involved*” prior to her invitation to the Property. Further, no mention is made of any “*common law relationship*” commencing upon occupancy of the Property. Rather, it was after moving in together that the ‘relationship grew’ and they frequently went out together at various restaurants.

Thirdly, there is the issue of the two Wills. It is clear that Mr Johnson possessed a copy of the original Will at all times. It is also clear from both her affidavit and the pleading that Ms Peguero was told to go to the deceased’s office to retrieve an envelope containing the deceased’s Will and take same to Mr Johnson.

However, in the affidavit evidence it was deposed that after the deceased’s death, the Defendant visited the Property and took a copy of the Will. It is stated afterward that the day after the deceased died, Ms Peguero and Anabelle visited Mr Johnson as instructed by the deceased and that Mr Johnson showed them the original Will and read it over to them¹⁸. It was therefore clear from her evidence that the copy retrieved from the deceased’s office had been given to the Defendant prior to them visiting Mr Johnson.

On the pleading, however, the first event that occurred after the deceased’s death was the visit to Mr Johnson as instructed by the deceased. This occurred the day after the deceased’s death. Therefore at the time of the visit, Ms Peguero had not yet gotten rid of the copy of the Will. In fact, at paragraph 28, it was pleaded that some days after the meeting at Mr Thomas’s office the Defendant came to the Property and took a copy of the Will. It therefore followed that on the pleaded case, the copy of the Will was in Ms Peguero’s possession when they visited Mr Johnson. It further meant that Ms Peguero

¹⁸ Paras 24 - 28

did not follow the deceased's instruction because no mention was made of taking the Will to Mr Johnson.

This contradiction is something that will be probed under cross-examination and sheds some doubt about the Claimant's case and the circumstances surrounding the existence of the Will.

It also begs the question of why there was more than one copy of the Will especially considering that in the Notice of Application filed on the 3rd May, 2017, Mr Johnson filed an **affidavit of testamentary script** in which he deposed that he had “...no knowledge of any document being or purporting to be or having the form or effect of...**a copy of any Will... of the said deceased...save an except the true last Will of the deceased now produced and shown to me...**”

[44] Notwithstanding this analysis, the Court is reminded of the principle that, when determining the entitlement to property between two parties where one is in actual possession, the onus lies with the purported owner to show a good root of title to push the occupier out. As stated in **Bullen and Leake**¹⁹:

“It was a rule of the common law that anyone who was out of possession must recover the land by the strength of his own title, and not by reason of any defect in the title of the person in possession. Even when it was clear that the person in possession had no right to be there, still the claimant in ejectment could not turn him out unless he could show in himself a title which was – prima facie, at all events – good against all the world”.

[45] This principle has been consistently applied with approval in this jurisdiction. See **Rudolph Sydney v Nicole Hyacinth Joseph Marshal and Stephen Marshal**²⁰. In **Murray v Biggart**²¹, Smith J (as he then was) stated that-

¹⁹ Bullen and Leake, Precedents of Pleadings 12th edition, page 67

²⁰ CV2011-01729 per Boodoosingh J

²¹ H.C.A. No. T101 of 1998 at para 7

“Unless a Defendant is in possession of land with the consent of a Plaintiff (e.g. a tenant), a Plaintiff who seeks possession of land from a Defendant must prove his title to the land strictly. He must set out all the links in his title, showing a good root of title and establishing that he is the owner of the land. In a claim for possession, a Plaintiff succeeds on the strength of his own title and not on the weakness of the Defendant’s title.”

[46] In this case, Ms Peguero is the current occupier of the Property and thus, for the Defendant to succeed in recovering same at trial, he cannot simply rely on any defect in the Will, but rather must prove Ms Moore’s title to the Property strictly. Thus, the focus at trial will not be the invalidity of the Will but rather, the validity of the Deed of Gift.

[47] Therefore, given that the greater onus lies with the Defendant to recover the Property, coupled with the greater inconvenience that would occur to Ms Peguero should the injunction be discharged, this Court is of the opinion that the balance of convenience lies in continuing the injunction.

Material Non-Disclosure:

[48] As stated in **Kensington**²² *supra*, if it can be shown that the Claimants failed to disclose any material fact and that such non-disclosure led the Court to grant the injunction, there would be grounds for this Court to set aside the injunction.

[49] There is, however, nothing before the Court that says definitively that any such non-disclosure occurred. Rather, what is presented is diametrically opposed stories, which, as stated above, the truth of which can only be discerned from a trial. For instance, on the Defendant’s version the Claimant failed to disclose and/or mislead the Court into thinking that Anabelle was the deceased’s friend and that he introduced Ms Peguero to her. To the contrary, Ms Moore stated that the deceased met Ms Peguero and Anabelle together for the first time at Sweet Lime Restaurant. This fact can only be determined after cross-examination.

²² [1917] 1 KB 486, 514

[50] However, it is also the case that Ms Peguero deposed that the deceased told her that he had no family or friends except for Anabelle²³. Such a fact was proved to be untrue considering that the Defendant is his brother. However, the Defendant would have to go further at this juncture to either prove or create serious doubt that the deceased did not in fact make such a representation to her. Considering that the deceased is dead, it seems almost impossible for the Defendant to prove that she misled the Court in that evidence and/or she is guilty of any non-disclosure.

[51] Accordingly, the Court does not find that there has been any material non-disclosures by the Claimants in their affidavit evidence to warrant a discharge of the injunction.

V. DISPOSITION

[52] **Having considered the Claimants' Application filed on the 5th December, 2016, its attendant affidavits in support and the Defendant's affidavits in response along with the parties' oral submissions heard on the 22nd February, 2017, the Court makes the following Order:**

- 1. That the Order dated the 7th December, 2016 granting injunctive relief to the Claimants be and is hereby continued until the final determination of this Claim.**
- 2. That the Claimants' Application for an extension of time to file and serve their Statement of Case be and is hereby granted. Accordingly, the Statement of Case is deemed filed on the 8th February, 2017.**
- 3. That the Defendant file and serve his Defence on or before the 20th November, 2017.**

²³ Para 10

4. That the Defendant shall pay to the Claimants costs of the Application for injunctive relief filed on the 5th December, 2016 to be assessed pursuant to CPR Part 67.11, in default of agreement.
5. In the event that there is no agreement on the quantum of costs by the 30th November, 2017, then the Claimants to file and serve a Statement of Costs for assessment on or before the 14th December, 2017.
6. The Defendant to file and serve Objections on or before 15th January, 2018.
7. The matter is adjourned to the 24th January, 2018 at 11:00 am in courtroom POS 03 for a case management conference.

Dated this 19th day of October, 2017

Robin N. Mohammed
Judge