[2018] JMSC Civ 35

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

SUIT NO. 2001 E. 00511

BETWEEN	**GERTUDE LAWRENCE**	**APPLICANT**
AND	**JOSEPH LAWRENCE**	**RESPONDENT**

IN CHAMBERS

Mr Kent Gammon instructed by Kent Gammon and Associates, Attorneys-at-Law for the Claimant

Ms Catherine Minto instructed by Nunes, Scholefield, Deleon & Co., Attorneys-at-Law for the Defendant

23rd February and 23rd March 2018

Civil procedure - Consent order - Application to enforce - Whether death of applicant seven months after order a supervening event which undermined or invalidated the basis on which the consent order was entered into

Evidence - Determining the underlying assumption or basis on which a consent order was entered into - Whether conduct of respondent in devising property to children by will sufficient evidence to determine the underlying assumption or basis of consent order

LAING J

Background

[1] The Applicant and the Respondent were married on the 26th July 1950.The marriage broke down and on the 10th October 2001 the Applicant filed the claim herein by an originating summons which was then the applicable process used to claim the relief she sought which was pursuant to the Married Women's Property

Act. By the suit, the Applicant sought fifty percent (50%) of all the property that was acquired by the Applicant and the Respondent during their marriage. The property included seven parcels of real property, and shares in a company known as Lawrence Engineering Limited.

[2] It should be noted, that the fact that the claim continues to survive is due to no fault of the judicial system, but is purely a result the conduct of the parties exacerbated by a series of unfortunate events.

[3] On 20th January 2004, the parties, each being represented by Counsel, agreed to the terms of a consent order made by the Honourable Mr Justice Patrick Brooks (as he then was), (the "Brooks J Order"), paragraph 1 of which reads as follows;

> *1. The Applicant, Gertude Lawrence is entitled to the entire beneficial interest in property situated at 19 Castle Drive Kingston 9, in the parish of Saint Andrew registered at Volume 879 Folio 92 of the Register Book of Titles. The Respondent is to cause the premises to be transferred in to the name of the applicant within* ***three (3) Months*** *of today or as soon as practicable free from any encumbrances or charge. Costs of the transfer to follow normal conveyancing practice.*

[4] On 26th August 2004, the Claimant died intestate, before the Respondent complied with the order. By a will executed on 22nd September 2004, approximately one month after the death of the Claimant, the Defendant devised the 19 Castle Drive residence which was the subject of paragraph 1 of the Brooks J Order, on trust for his two daughters Mary Jodee Lawrence and Diane Bernadette Lawrence who were children of his marriage to Carol Lawrence. On 7th March 2005, the Respondent died.

[5] The Claimant and the Respondent had no children together but the Claimant had two sons from a previous union named Ainsworth Whitfield Fletcher and Lascelles Michael Fletcher. On 26th August 2006 a grant of administration was made to Ainsworth and Lascelles Fletcher.

[6] It is not material but worth mentioning that an individual named Milton Baker became an occupier of 19 Castle Drive with the permission of Ainsworth and/or

Michael Fletcher. Proceedings for an order for possession were initiated against him in the Parish Court by Carol Lawrence, the executor of the estate of Respondent. Those proceedings were struck out on 14th October 2011 pursuant to section 96 of the Judicature (Resident Magistrates) Act.

[7] Claim number 2008 HCV 03474 was filed in the civil division of the Supreme Court seeking enforcement of the Brooks J Order against the estate of the Respondent, a claim to which Carol Lawrence was added. The Court on 27th November 2012 ("the George J Order"), ordered that that Claim number 2008 HCV 03474 be struck out as being an abuse of the process of the Court, with Costs to Carol Lawrence, the First Respondent to be agreed or taxed. It is important to note that the Court also ordered that any action or enforcement of the Brooks J Order is to proceed within Suit. No. E511 of 2001. The George J Order reflects Milton Baker as the holder of a power of attorney representing Lascelles Fletcher (the first applicant) and Ainsworth Fletcher,(the second applicant), administrators of the estate of the Claimant, noting that Lascelles Fletcher, the first applicant, was deceased.

The Applications

[8] By an Amended Notice of Application for Court Orders in the herein - Suit No. E511 of 2001, filed 19th December 2012, a number of orders including the following are sought:

> *1 That the APPLICANT'S NAME be substituted with the names "**AINSWORTH FLETCHERE Administrator of the Estate of Gertude Lawrence (by Milton Baker under Power of Attorney)"- 1st Applicant and GARY FLETCHER Executor of the Estate of Lascelles Fletcher (by Milton Baker under Power of Attorney)- 2nd Applicant.***
>
> *2.That the RESPONDENT'S name be substituted with the name "**CAROL PEARSON-LAWRENCE executor of the Estate of Joseph Lawrence"***
>
> *3. That the substituted Applicants be permitted to proceed to enforcement of the Order of the Honourable Mr Justice Brooks made on the 20th day of January 2004(hereinafter called eh said Order) same not having been complied with by the Respondent, Joseph Lawrence save and except the*

> *payment of Two Million Dollars ($2,000,000.00) to Gertude Lawrence on or around July 2004....*

It was not clear to the Court as to why this notice of application was not pursued.

[9] On 6th July 2016, a Notice of Application was filed ('the Enforcement Application") seeking orders for enforcement which were similar in substance to those prayed for in the Notice of Application filed 19th December 2012 , *inter alia*, the following orders:

> *1 That the Applicant's name be substituted with the names "**GARY DEAN ST. MICHAEL FLETCHER and ANDREA MARIA FLETCHER DAWKINS, Executors of the Estate of Lascelles Fletcher and Personal Representatives of the Estate of Gertude Lawrence.***
>
> *2. That the Respondent's name be substituted with the name "**Carol Pearson-Lawrence Executrix of the Estate of Joseph Lawrence"***
>
> *2. That the substituted Applicants be permitted to proceed to enforcement of the Order of the Honourable Mr Justice Brooks made on the 20th day of January 2004(hereinafter called the said Order) same not having been complied with by the Respondent, Joseph Lawrence, as it relates to paragraphs 1 and 2 of the said Order.*

[10] By Notice of Application filed 14th July 2017 (the "Stay Application"), Carol Lawrence acting for the Estate of the Respondent, applied for an order that the Enforcement Application be stayed pending the payment of the Costs pursuant to the George J Order by Gary Fletcher and Andrea Fletcher-Dawkins, Administrators of the Estate of Lascelles Fletcher. These costs amounted to the sum of Three Million Five Hundred and Eighty-Eight Thousand, Five Hundred and Nine Dollars and Fifty-Five Cents ($3,588,509.55).

The Stay Application

[11] The nature of the Stay Application necessitated its hearing before the Enforcement Application. The fulcrum of the Stay Application is encapsulated in ground number 6 of the listed grounds in support of the application, which is that it is inimical to the overriding objective of the Civil Procedure Rules, 2002

("CPR"), for the Respondent to be called upon to incur additional legal fees to defend the same action twice.

[12] The Court was not convinced by Ms Minto as to the applicability of CPR 26.3(2), primarily because the Enforcement Application herein was the only way that the Estate of the Applicant can obtain the relief sought and in fact was the route suggested by the Court in the George J Order. It was therefore for the Court to apply the overriding objective of dealing with the case justly.

[13] The Court appreciated that there was undoubtedly an interest in trying to ensure that the cost award resulting from the George J Order be satisfied, but considered that the scales of justice weighed heavily in favour of allowing the claim herein to proceed to a final determination without further delay, especially having regard to the age of the matter. The Court considered the fact that the estate of Joseph Lawrence was exposed to the risk of additional costs were the Enforcement Application to be heard. However the Court gave due consideration to the stage at which the matter had reached, and concluded that Counsel would have already incurred the greater portion of time in preparing for the hearing. As a result, the additional exposure at that stage would primarily have been the time occupied by the conduct of the actual hearing. The additional risk of prejudice to the estate of Joseph Lawrence, as a result of this relatively small increment, was, therefore, relatively low. Furthermore, if the estate of Joseph Lawrence was not successful in resisting the Enforcement Claim, it would have the opportunity to enforce its costs award arising from the George J Order against 19 Castle Drive, if that became necessary. Considering all the circumstances in the round, the Court concluded that the interests of justice required the Stay Application to be refused and so ordered.

The Enforcement Application

Applicant's submissions

[14] Mr Gammon submitted that the Brooks J Order was not complied with by the Respondent or his estate and it was the responsibility of this Court to make matters right and ensure that justice be done, by ensuring that the Brooks J Order was complied with. Counsel referred to the case of ***Barder v. Caluori*** [1987] 2 WLR 1350 and submitted that that case did not establish a general principle that the Brooks J Order could not be enforced in the current circumstances. He also argued that one distinguishing feature between the **Barder** case and the case herein is that in **Barder** the husband did not die, whereas in this case he did. Accordingly, different considerations should apply when weighing the issue of who ought to benefit from 19 Castle Drive, the Respondent being unable to do so. Counsel also submitted that three judges of the Supreme Court had conduct of the matter and they were all agreed as to the validity of the enforcement process, the correct course having been identified in the George J Order.

[15] Both Counsel relied on the case of **Barder** and it is convenient at this juncture to examine the facts and *ratio decidendi* of that case in order to place the submissions in context.

The case of Barder v. Caluori

[16] The case of ***Barder*** concerned divorce proceedings. The husband and the wife were married in 1973. They owned the matrimonial home jointly and in July 1983 the husband left the wife who continued living with their two children in the home. In February 1984 the wife filed a petition for divorce which was undefended and in September 1984 the decree was made absolute and the husband remarried. Following negotiations the terms of a consent order on a clean break basis was reached on 20th February 1985 for the husband to transfer all the interest in the house to the wife within 28 days. There were also other undertakings by the

husband to reassign to the wife three policies of life insurance held by the mortgagees and by the wife to reassign two other policies. On 25th March 1985 the wife killed the two children and then committed suicide. The husband sought leave to appeal out of time, and to have the consent order set aside. The wife's mother had obtained letters of administration and would be the sole beneficiary of the wife's estate. She was given leave to intervene in the husband's application to appeal against the order which was then still executory. The trial judge extended the time for appealing the order and set aside the order on the ground that "*the basis of the order had been vitiated by a fundamental mistake, common to both parties, that for an appreciable time after the order the wife and children would continue to live and benefit from the order*." (see page 1354 D).

[17] The intervener successfully appealed to the Court of Appeal and had the order restored which prompted an appeal to the House of Lords. In the House of Lords, Lord Brandon of Oakbrook who delivered the leading judgment and with whom the other Judges agreed, considered the circumstances in which an unexpected supervening occurrence might lead to an ancillary relief order being set aside at page 1363 C-D

> *'There can, in my opinion, be no doubt that the consent order dated 20 February 1985 was agreed between the husband and the wife through their respective solicitors, and approved by the registrar, upon a fundamental, though tacit, assumption. The assumption was that for an indefinite period, to be measured in years rather than months or weeks, the wife and the two children of the family would require a suitable home in which to reside. That assumption was totally invalidated by the deaths of the children and the wife within five weeks of the order being made.'*

[18] At page 1363 G to 1364 A Lord Brandon considered the issue of finality of proceedings as follows;

> *"On behalf of the intervener it was strenuously contended that where, as in the present case, an order relating to financial provision and property transfer was made on a clean break basis, the parties took their chances with regard to the occurrence of any future events that might invalidate any assumption on which the order was made. The whole object of such an order was to achieve finality and that object would be defeated if an appeal were to be allowed because of the occurrence of such events. In*

> *support of this contention reference was made to Minton v. Minton [1979] A.C. 593 and to the observations of Lord Scarman in Jenkins v. Livesey (formerly Jenkis) [1985] A.C. 424, 430. I recognise the importance, in general, of according to clean break orders the finality which they are intended to achieve. But if, by reason of supervening events occurring within a relatively short time, the fundamental assumption on the basis of which such an order was made has become totally invalidated, I cannot see why the circumstances that a clean break was intended should make any difference. The intention to produce a clean break on the terms of the order will itself have been founded on the subsequent invalidated assumption."*

Defendant's submissions

[19] Ms Minto presented two main planks of her opposition to the Enforcement Application. Firstly, she submitted that there were several decisions including the House of Lords' decisions in **Barder** which confirmed the Courts' refusal to enforce an order which was still executory arising from the death of one or both of the parties. Secondly, Counsel submitted that when one examines the way in which the Court goes about exercising its discretion, the **Barder** case demonstrates how the death of one of the parties would render it inequitable to enforce the judgment.

[20] Ms Minto submitted that there was a line of authorities which made the distinction between consent orders and orders handed down by the Court in that the consent orders embody the intent of the parties. In any event the Court could set aside executory consent orders where there was a change in circumstances which would make it inequitable for the orders to be enforced as occurred in the case of **Thwaite v Thwaite** [1981] WLR 96. In that case, the English Court of Appeal upheld the application of this principle in circumstances where a consent order was entered into for the transfer of a house to the wife on the understanding that the house would be the permanent home for the children of the marriage. However after visiting England briefly they were taken back to Australia and there was evidence that the wife had no intention to reside permanently with the children in England.

[21] Counsel submitted that in **Barder** the Court recognised that the intention of the transfer to the wife was for her benefit and the benefit of the children whom it was expected would continue to reside there for a considerable period. The intention was not to benefit any third party and so it was the intention of the parties which drove the terms of the order *vis a vis* an order handed down by the Court after a determination of the claim on the merits.

[22] In determining the intention of the respondent, Ms Minto submitted that the Court should look at this action subsequent to the death of the Applicant. She said that it is noteworthy that less than a month after the Applicant died the Respondent made a will giving 19 Castle Drive to his two children because it was clearly never in his contemplation that anyone other than the Applicant was to benefit from it.

[23] Counsel submitted that just as in **Barder**, 19 Castle Drive was the place at which the wife was residing and the intention was to benefit her. However, in this case it is the grandchildren of the direct beneficiary Gertude Lawrence who would benefit from the enforcement of the Brooks J Order, whereas in **Barder** it was the mother of the deceased wife who was the sole beneficiary. The mother did not succeed and Counsel argued that there is even a stronger reason why the indirect beneficiaries in this case, who are twice removed from the Applicant, ought not to benefit.

[24] On the issue of delay, Counsel submitted that the estate of the Claimant did not take any steps to enforce the Brooks J Order, but seems to have only been spurred in to action on the filing of the claim for possession against Milton Baker.

[25] Finally, Ms Minto submitted that the three orders of the Judges who had conduct of the matter do not provide a sufficient basis for this Court granting the orders sought on the Enforcement Application.

The Barder Principle

[26] There have been numerous cases in which what has been conveniently termed "*the **Barder** Principle*" has been applied, distinguished and in some cases refined. In the case of ***S v. S (Ancillary Relief: Consent Order)*** [2002] 3 WLR 1372 an ancillary order was made by consent between a wife and a husband. Based on a judgment issued by the House of Lords, the law was changed. The wife made an application to set aside the consent order, on the basis that the change of the law was a supervening event which undermined or invalidated the basis on which the settlement was made. The Court held that the decision was foreseeable and therefore it did not constitute a supervening event.

[27] Bracewell J stated at page 1376 paragraphs 4-5 of the judgment that:

> *4. 'The authorities cited before me demonstrate that the grounds for setting aside a consent order fall into two categories. (1) cases in which it is alleged there was at the date of the order an erroneous basis of fact eg misrepresentations or misunderstanding as to the position or assets. (2) cases in which there has been a material or unforeseen change in circumstances after the order so as to undermine or invalidate the basis of the consent order, as in Barder v Barder [1988] AC 20, and known as a supervening event.*
>
> *5. In many of the decided authorities, contractual terms such as 'fraud' and 'misrepresentation' are used, but it is important to remember that court orders for financial provisions in matrimonial proceedings derive their authority not from the agreement of the parties but from the approval of the court and the resulting consent order: see Jenkins v Livesey [1985] AC 424 and Xydhias v Xydhias [1999] 2 All ER 386'.*

[28] Bracewell J confirmed that there are three routes to reopen a consent order. These are, (1) a fresh action, which is not an option which the Courts wish to encourage but which may be necessary in the absence of other options; (2) an appeal and (3) an application for a rehearing. The learned judge noted the appeal process was the procedure used in **Barder** and is the option chosen in most of the supervening event cases and was attracted to the four governing principles laid down by Lord Brandon in **Barder** which he identified at page 1379 paragraph 26 as follows:

> *26 In the House of Lords Lord Brandon of Oakbrook, at p 43, laid down the governing principles to be applied. (a) New events must have occurred since the order which invalidate the basis or fundamental assumption upon which the order was made, so that if were granted, the appeal would be certain or very likely to succeed. (b) The new events must have occurred within a relatively short time of the order. It would be extremely unlikely it could be as much as a year and in most cases will be no more than a few months. (c) The application for leave should be made reasonably promptly in the circumstances of the case. (d) The interests of third partied who have acquired an interest in property in good faith and for valuable consideration should not be prejudiced by grant of leave.*

Analysis

[29] It deserves highlighting that as Bracewell J observed in **S v S** (supra) most of the cases having to do with reopening or setting aside a consent order on the ground of a supervening event, including **Barder**, are cases in which that process is attempted by way of an appeal. In this case, the estate of the Respondent has not applied to re-open the Brooks J Order using a fresh action, an appeal or an application for a re-hearing. What the estate is doing is to challenge the Enforcement Application using the **Barder** principle. Nevertheless, the question of enforcement of the Brooks J Order requires the exercise of the Court's discretion and I am of the view that the four principles laid down by Lord Brandon are of assistance in informing the Court's decision as to how it ought to exercise its discretion in this case, albeit applied to an application for enforcement and not on an application for a reopening.

A. *Unexpected or unforeseen supervening event.*

[30] It is beyond debate after **Barder** and the numerous cases in its wake, that the death of the Applicant in this case is capable of amounting to a supervening event. However it bears stating at the outset that there are a number of important features of the factual matrix in **Barder** which need to be identified before one can safely conclude that a similar result should obtain in this case.

[31] It must be appreciated that in **Barder** the House of Lords concluded that the fundamental assumption or the basis on which the consent order was founded

was the provision of a roof over the head of the wife and two children. In my opinion this is not unusual. Provision for one's offspring is not a uniquely human trait. It is patently obvious in all realms of the animal kingdom as well. As a matter of evidence, in **Barder**, the appeal was by the husband. It was therefore open to him to give evidence in order to satisfy the Court that the underlying fundamental assumption when he agreed to the consent order was that the home would be occupied for an extended period by his wife and children.

[32] In this case the husband is not alive. The Court is being asked to conclude that the underlying fundamental assumption which characterised the Brooks J Order was that the Respondent was providing a home for his wife to live for an extended time. It has been submitted that this can be discerned from his act of devising 19 Castle Drive to his daughters of a different union approximately one month after the death of the Applicant. I am unable to accept this submission. The devise is equally consistent with the opportunistic action of a party who having agreed to a division of property on a clean break basis having regard to the Applicant's contribution and what was fair in the circumstances, was trying to deprive her estate and enrich his.

[33] I am also guided by Lord Brandon's observations that where the intention to produce a clean break on the terms of the order was founded on a subsequent invalidated assumption, the order can still be reopened and the fact that a clean break was intended is not a bar. However, in my view the need to exercise caution in trying to discern the underlying assumption in this case cannot be divorced from the fact that it was a clean break consent order.

[34] It cannot be again said that property matters and in particular division of property matters as between spouses in these Courts are generally fiercely contested. We are a society that evolved from slavery and the resulting lack of opportunity to own land. Over the years ownership of property has commanded a certain pride of place in the hearts of Jamaicans. Coupled with our indomitable spirit is a dream shared by most Jamaicans to be able to leave a house or a piece of land

for one's descendants. I do not suggest for a moment that this is unique to Jamaicans, but it is a feature of our society, which I am of the view, should not be ignored.

[35] It is in this context that one has to analyse the Brooks J Order. The Applicant in the claim herein was not seeking a handout. She was not relying on the generosity of the Respondent. She was asserting a claim of entitlement based on her contribution to the acquisition of the property owned by the couple. She filed evidence to support her contribution and explained the exclusion of her name from the registered titles. She wanted her fair share to which she was legally entitled.

[36] In addition to 19 Castle Drive, the Brooks J Order provided for her to obtain Four Million Dollars within 6 months (failing which the property located at 6 Cargill Ave was to be sold) and two hundred (200) shares or twenty percent (20%) of the shares in Lawrence Engineering Limited. The Respondent on the other hand obtained absolutely, properties located at (1) 54 Spanish Town Road, Kingston 14; (2) 20 Champlain Avenue, Kingston 20; (3) 6 Cargill Ave, Kingston 10; (4) Apartment 4, Hampshire House 10 Reckadom Ave, Kingston 5; (5) 13 Lydia drive Kingston 19 and 1 Capri Close, Red Hills.

[37] 19 Castle Drive was not an isolated award. It was a part of a global settlement agreement between the parties. I am therefore unable to accept that the fundamental assumption underlying the order that it be transferred to the Applicant was the expectation that she would continue to occupy it. This was not a gratuitous award by the Respondent, for which the Respondent could reasonably have been influenced by the purpose to which his gift was to be put. There is no evidence that the Applicant's continued enjoyment of the premises was a relevant consideration. Why should it be? This case is markedly and demonstrably different from **Barder** and **Thwaite v Thwaite** in which there were children of the marriage for whom it was anticipated that the house would provide a residence.

[38] On the evidence before the Court I have found that there was nothing out of the ordinary in this case which would have prompted the Brooks J Order as was the case in **Barder**. The Court finds that there is insufficient basis for concluding that there was a fundamental underlying assumption that 19 Castle Drive would continue to provide accommodation for the Applicant for a considerable time. Having regard to that finding, it follows naturally that the Court is unable to conclude that the death of the Applicant invalidated that fundamental assumption or basis. In the Court's view, on a balance of probabilities, the evidence points to the Brooks J Order having been the result of hard-fought negotiation. In this regard **Barder** must be viewed as fact-specific and inapplicable to this case.

B. *The time between the order and the death of the Applicant*

[39] Lord Brandon opined that the new event must have occurred within a relatively short time of the order. In his view *"it would be extremely unlikely it could be as much as a year and in most cases will be no more than a few months.*" The wife died 8 months after the Brooks J Order. I am of the view that, in this case, seven months would have been too long a period order for the **Barder** principle to apply.

C. *Delay*

[40] The point was made by Ms Minto that there was an inordinate delay by the estate of the Claimant in taking steps to enforce the Brooks J Order. However equally if not more egregious is the conduct of estate of Respondent. As I have previously noted, no application has to date been made by the estate of the Respondent to challenge the Brooks J Order. In the circumstances, I do not find that it would be just to refrain from granting the Enforcement Application on the ground of delay.

D. *The interests of third parties who have acquired an interest in property in good faith and for valuable consideration should not be prejudiced by grant of leave*

[41] There is no evidence before the Court of any third party having acquired an interest in 19 Castle Drive with or without valuable consideration and so this ground is inapplicable. The Court notes however the submission of Ms Minto that because it is the grandchildren of the Applicant who stand to benefit, the Court ought to be less inclined to grant the Enforcement Application. Having regard to the Court's findings expressed previously, that the Brooks J Order was not founded on the underlying assumption that the purpose of the order was to provide a residence for the Applicant which she would continue to occupy for a considerable time, it follows that 19 Castle Drive belongs to the estate of the Applicant by operation of the said order. As a consequence, whether the property ultimately devolves to her grandchildren or a charity is wholly immaterial.

E. *The Justice of the case-the conduct of the Respondent*

[42] Although this was not one of the factors considered a separate head by Lord Brandon, in the particular circumstances of this case it is my view that it deserves special treatment. The point deserves to be emphasised, that the need for the Enforcement Application has only arisen because the Respondent did not "*cause the premises to be transferred in to the name of the applicant within* ***three (3) Months*** *of [the date of the order 20th January 2004] or as soon as practicable free from any encumbrances or charge...*" as he had consented to do. Had he done so, then 19 Castle Drive would have been fully vested in the Applicant at the time of her death.

[43] In my view, it would be grossly unfair and unjust for this Court to assist a litigant who had neglected or refused to comply with a consent order, and who, instead of transferring the relevant property to the Applicant within the time agreed, sought instead to reap the benefits of his non-compliance by purporting to devise the property to his children by his will. The Court ought not to allow the estate of the Respondent to benefit from his non-compliance, which would be the practical result of the Court refusing the Enforcement Application.

The issue as to capacity

[44] The point arose during the hearing as to in what capacity Gary Fletcher and Andrea Fletcher were to be appointed. Mr Gammon submitted that they should be appointed Administrators *De Bonis Non*. Ms Minto submitted that they should not be appointed in that capacity because such a grant was confined to situations where the last surviving personal representative of the deceased person's estate dies, but before completing the administration of the estate. Ms Minto submitted that in this case, Lascelles and Ainsworth Fletcher were both appointed Administrators of their mother's (the Applicant Gertrude Lawrence's) estate. However Lascelles, who is the father of Gary and Andrea, predeceased Ainsworth. It was therefore submitted, that as administrators of their father's estate, Gary and Andrea would not be entitled to a grant *De Bonis Non* since based on the chain of transmission, it is the representative of the last surviving executor's estate (the estate of Ainsworth Fletcher in this case), who is entitled to continue the representation. Furthermore, Counsel submitted that such a grant has to be made by the Registrar.

[45] Ms Minto indicated that she had to objection in principle to Gary and Andrea Fletcher, being appointed as "representatives" and in the circumstances of this case the Court is of the view that such a course is indeed sensible. Accordingly, the Court orders that they should by appointed as representatives for purposes of this claim, which appointment will necessarily include the enforcement of the claim. This order will not accord Gary and Andrea Fletcher with the other rights usually attendant to an administrator having to do with the administration of the estate generally, such as the transferring of property. For those other powers not reasonably incidental to the conduct of this claim they will need to regularise their position in accordance with the general rules of the laws of succession.

[46] There was no objection to the application for the Respondent's name to be substituted with the name "Carol Pearson-Lawrence Executrix of the Estate of Joseph Lawrence" and the Court makes that order.

Disposition

[47] For the reasons herein, the Court grants the orders sought in the Enforcement Application with appropriate modification as follows:

1. The Applicant's name is substituted with the names "GARY DEAN ST. MICHAEL FLETCHER and ANDREA MARIA FLETCHER-DAWKINS, Executors of the Estate of Lascelles Fletcher, representatives of the Estate of Gertude Lawrence for purposes of the claim herein.

2. The Respondent's name is substituted with the name "Carol Pearson-Lawrence Executrix of the Estate of Joseph Lawrence"

3. The substituted Applicants GARY DEAN ST. MICHAEL FLETCHER and ANDREA MARIA FLETCHER-DAWKINS are permitted to proceed to enforcement of paragraphs 1 and 2 of the order of the Honourable Mr Justice Brooks made on the 20th day of January 2004 made in the claim herein.

4. Costs of the Application to the substituted Applicants to be taxed if not agreed.

5. Leave to appeal is refused.