THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ON MONTSERRAT

CASE NO. MNIHCV2017/0037

In the estate of William Anthony Tuitt, deceased, and an action for possession of land and in trespass

Between: **TERRANCE WADE (as the sole executor of the late William Anthony Tuitt)** **Applicant**

and

JAMES WEEKES **Respondent**

APPEARANCES

Mr Jean Kelsick for Terrance Wade.

Mr David Brandt for James Weekes.

2018: MARCH 15

MARCH 28

RULING

On recusal

1 **Morley J**: On 21.12.17, I ruled on an interlocutory injunction application that the defendant (Weekes[1]) should give the keys to the house on parcel 14/15/71 to the claimant (Wade), as the house had been specifically left to Wade by his father William, Weekes being Wade's cousin. I fixed the trial, as to who owns the house, to take place on 28.03.18. On 20.02.18, Weekes obtained leave to appeal against my interim ruling. He then made an application to stay the trial pending the interlocutory appeal. The argument for a stay was set for 15.03.18. On that day, Counsel Brandt conceded the argument on a stay, but argued instead in a skeleton circulated on 13.02.18 that I should recuse myself from conducting the trial in light of my ruling on 21.12.17. I will refuse, as indicated to the parities orally on 23.03.18, promising written reasons, which are these.

2 Counsel Kelsick makes the preliminary point in his skeleton filed on 21.03.18 that Counsel Brandt did not file a formal recusal application, supported by affidavit, as per **r11.6 Civil Procedure Rules 2000** (CPR) and for this reason his application should be dismissed. While technically probably correct, in my discretion I have entertained the application.

3 Moreover, Counsel Kelsick makes a powerful case that the application is part of a tactic by Counsel Brandt to delay any resolution of who owns the house. If I am recused, so the trial does not proceed on 28.03.18, which would mean the argument on appeal retains relevance as not overtaken by the trial, and if the Court of Appeal then reverses the order to hand over the keys, in this situation Counsel Kelsick worries that the case with a different judge, not regularly on Montserrat, might play out endlessly, with an eventual decision in favour of Wade unfairly not occurring for many years.

4 In addition, Counsel Kelsick argues that the application to recuse ought to be sought quickly, if a genuine concern, and not wait three months, from 21.12.17 to 13.03.18, so that the delay shows the application disingenuous. While an intelligent point, in weighing it however I remind myself that it was the court that alerted Counsel Brandt on 08.03.18 that he may wish to

[1] For the purposes of this judgment, the parties and others will be referred to as bracketed for ease of reading, and no disrespect is intended by not writing out on each mention full names and titles or the legalese as to whether claimants or defendants.

consider recusal as the better argument over stay, so that it may be inconsistent to refuse it for delay alone.

5 In writing this ruling, I should like to record that I have been much assisted by the skeleton argument prepared by Counsel Kelsick on 21.03.18, particularly at his paras 8-15, and by the skeleton of Counsel Brandt of 13.03.18, with oral submissions and authorities in support on 15.03.18.

6 Counsel Brandt relies particularly on **London Borough of Ealing v Jan 2002** EW Civ 329, where a learned judge said *'frankly I do not trust your client or Mr Stanley further than I could throw them'*, and who was then recused on appeal. Plainly this had been an *ad hominem* remark, not rooted in the evidence. Counsel Brandt says that reference by me to his client *'clutching at straws'* is a similar type of remark. I will turn later to this and to what was said in the ruling.

The law on recusal

7 The law on recusal for apparent bias, often stated in many cases over time, has been neatly restated in the recent case of **O'Neill v Her Majesty's Advocate No 2 (Scotland) 2013** UKSC 36, where Lord Hope at para 49 quoted with approval the Constitutional Court of South Africa in **President of the Republic of South Africa v South African Rugby Football Union 1999** (4) SA 147, 177.

> "The question is whether a reasonable, objective and informed person would on the correct facts reasonably apprehend that the judge has not or will not bring an impartial mind to bear on the adjudication of the case, that is, a mind open to persuasion by the evidence and the submissions of counsel. The reasonableness of the apprehension must be assessed in the light of the oath of office taken by the judges to administer justice without fear or favour; and their ability to carry out that oath by reason of their training and experience. It must be assumed that they can disabuse their minds of any irrelevant personal beliefs or predispositions."
>
> [Underlining added]

8 At para 50, in addressing dicta in **Locabail UK Ltd v Bayfield Properties Ltd 2000** QB 451, Lord Hope went on to say:

"While it was emphasised that every application for recusal must be decided on the facts and circumstances of the individual case, the court noted that a real danger of bias might well be thought to arise 'if, in a case where the credibility of any individual were an issue to be decided by the judge, he had in a previous case rejected the evidence of that person in such outspoken terms as to throw doubt on his ability to approach such person's evidence with an open mind on any later occasion'."

[Underlining added]

9 Moreover in the **White Book 2016** volume 2 at para. 9A-48 (ps 2350-4), *interalia* we find:

"On the matter of impartiality, the decided cases draw a distinction between actual bias and apparent bias (**Director General of Fair Trading v Proprietary Association of Great Britain and another [2001]** All ER 372). The phrase actual bias has been applied to the situation (1) where the judge has been influenced by partiality of prejudice in reaching his decision, and (2) where it has been demonstrated that a judge is actually prejudiced in favour of or against a party. Examples of actual bias on the part of a judge are rare.

"The court must first ascertain all the circumstances which have a bearing on the suggestion that the judge was biased. It must then ask whether those circumstances would lead a fair-minded and informed observer to conclude that there was a real possibility or a real danger, the two being the same, that the tribunal was biased, (**Porter v McGill [2001]** UKHL 67).

"The fair minded observer is not unduly sensitive or suspicious, (**Helow v Secretary of State for the Home Department [2008]** UKHL 62).

In **Oktritie Internatinnal Investment Ltd v Urumov [2014]** EWCA Civ 1315, the court stated amongst other things: (1) that the general rule is that where a judge is hearing an application (or a trial) which relies on his own previous findings he should not recuse himself unless he considers that he genuinely cannot give one or other party a fair hearing or that a fair minded and informed observer would conclude that there was a real possibility that he would not do so; (2) that although actual bias or a real possibility of bias must conclude the matter in favor of the applicant for recusal, there must be substantial evidence of bias of one form or the other before the general rule can be overcome; (3) that there is a consistent body of authority to the effect

> that bias is not to be imputed to a judge by reason of his previous rulings or decisions in the same case (in which a party has participated and been heard) unless it can be shown he is likely to reach his decision 'by reference to extraneous matters or predilections or preferences'; and (4) that it is important that judges should not recuse themselves too readily in long and complex cases otherwise the convenience of having a single judge in charge of both the procedural and substantial parts of the case will be seriously undermined, and the impression would be created that parties were able to select judges to hear their cases simply by criticizing those they did not want to hear them."
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> "A judge to whom a case has been assigned for trial has to be very careful, in ruling on pre-trial applications, not to pre-judge any matter that will be argued and decided at trial, and not to preempt any decision that will be made on that occasion….However to characterize too readily a judge's conduct in this role as conduct at risk of being perceived as apparent bias would subvert the proactive management of cases expected of judges under the CPR (**AB v British Coal Corporation [2006**] EWCA Civ 172".
>
> [Underlining added]

10 In deciding actual bias, I approach the test in this way: a judge should be sure of none. This should not be a test on the balance of probabilities. A judge should not say it is possible I am biased but will continue as it is not probable.

11 In deciding apparent bias, I approach the test in this way: it is not that a judge is sure of none; but instead that a judge considers it is more probable than not that the impartial, reasonable informed, not unduly sensitive or suspicious observer would not conclude a real danger of bias. As to sureness, logically it cannot be the test as it is unlikely a judge can be 'sure' of what an observer will think. As to 'would not conclude', the test ought not to be 'could not conclude', as the word *'could'* imports into the test what may be a bare possibility that an observer might conceivably *de minimis* conclude bias, which widens the test to something impossible, namely, that a judge would have to be sure there is no bare possibility of apparent bias, which will never be satisfied as far too broad and theoretical. In short, the test can only work realistically if it is 'would on balance', not 'could in theory'.

12 Distilling matters, it seems to me that the questions for a judge accused of bias should be:

a. Concerning actual bias, am I sure that I am not actually biased?

b. Concerning apparent bias, on balance would a reasonable, informed, and not unduly-sensitive or suspicious observer conclude there is no real danger of bias?

c. In weighing matters, as supplementary and guiding questions, I should ask,

   i. Am I sure I have not already expressed an *ad hominem* opinion on the veracity of a party?

   ii. On balance, is the application to recuse merely part of a tactic to elongate the proceedings to the advantage of the applicant?

The ruling

13 Concerning *Wade v Weekes*, this case, it came on as follows:

a. 20.11.17 – Wade filed for the house with an interim application for the keys.

b. 30.11.17 – First appearance adjourned for lack of service.

c. 08.12.17 – Weekes attended at court after being fetched from Carrs Bay, but was without a lawyer. He addressed the court he did not accept the terms of the Will, requiring it to be proved genuine (which it was already, as probate had been granted on 15.08.17). Counsel Brandt was in court, was instructed to act, and immediately opined that the house may have been gifted to Weekes.

d. 14.12.17 - Counsel Brandt filed an argument that the house had been promised to Weekes by William for caring for him.

e. 20.12.17 – Hearing by skype, while I was on Antigua, on whether to order interim return of the keys.

f. 21.12.17 – Interim ruling that Weekes should return the keys to Wade by midnight, with trial fixed for 28.03.18.

g. 09.01.18 – Contempt hearing by skype, while I was still on Antigua, as Weekes was refusing to return the keys on the advice of Counsel Brandt.

h. 19.01.18 – Further contempt hearing by skype.

i. 26.01.18 – Further contempt hearing by skype, but the keys had by now been handed over.

j. 20.02.18 – Leave to appeal the interim ruling was granted by Thom JA.

k. 08.03.18 – Counsel Brandt sought a stay of the trial pending the appeal on the interim ruling on the keys, and it was discussed whether recusal might be the better argument.

l. 13.03.18 – Counsel Brandt filed a skeleton argument on recusal.

m. 15.03.18 – Counsel Brandt conceded the argument on the stay and argued for recusal, and, taken by surprise by authorities not filed earlier, Counsel Kelsick asked to file a later skeleton argument.

n. 21.03.18 – Counsel Kelsick filed a skeleton argument on recusal.

o. 23.03.18 – Recusal was refused, with reasons in writing to follow[2].

14 The whole interlocutory ruling merits reading and is at appendix.

15 The impugned areas of the ruling, identified in Counsel Brandt's skeleton of 13.03.18, appear in paras 8, 9, 11 and 17 of the ruling, as edited below. Counsel Brandt suggested in concluding his skeleton that these meant that the court had already 'formed a view of the case', meriting recusal:

> 8 There is no independent evidence, in writing or from any other witness, to show that William intended that Weekes should inherit the house. Instead, this is merely what Weekes says...
>
> 9 Weighing noticeably against what Weekes has said is an email dated 09.03.16…from the person who prepared William's Will in the UK, named Michael Lancaster of *Lancaster Wills and Trusts* of Palmers Green, London, [reporting] William said, as specifically recorded in Lancaster's notes, *'with my heart and soul I want the property for my son'*.
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> 11 …on the papers, the argument raised by Weekes is both frivolous and vexatious, designed to frustrate the Will. The preponderance of the evidence is that Weekes is clutching at straws to keep the house which has become for him a source of income.

[2] Moreover on 27.03.18, on the eve of delivering the judgment, Counsel Brandt then passed into the Registry two further authorities to support his argument, notwithstanding he knew recusal will not arise: **El Faragy v El Faragy 2007** EWCA Civ 1149, and **Walsh v Ward 2015** CCJ 14. The *El Faragy case* concerns jocular remarks, distinguishable from here as in a sense ad hominem, leading to recusal on appeal; and the *Walsh case,* in a strong judgment by Saunders JA identified that the test for apparent bias at para 95 is 'would conclude', as opined above at para 11, and set out the procedure which should follow if seeking recusal, to begin in chambers, and then to be a formal application supported by affidavit, none of which has happened here.

> 17 I therefore order immediately that by midnight, today 21 December 2017, Weekes give up the keys to Wade of his [Wade's] late father's home and ceases presence at it, pending trial.
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> [Underlining added]

16 It is to be noted I hope that each impugned observation in the ruling ties back to the evidence. Nothing is personal to the defendant. It is the case as presented which has seemed hopeless and to be clutching at straws, not him. It is not *ad hominem*, as happened in the **Ealing case** (supra).

17 Moreover, to fail pointedly to say how weak a case is, for fear of a later recusal application, would be to mislead a party, and therefore would not be acting judicially, if a judge was to water-down the court's concerns. The party is entitled to know what the court is thinking about the case as presented, and a judge should not be hiding his or her opinion, as ultimately that would be unfair on the party.

18 The result of the ruling has been that Weekes, in order to improve his case, has filed more materials, specifically some paperwork from the tax office, and three affidavits from independent persons who say they recall William verbally appearing to leave his home to Weekes. The weight of the case has improved, and it is arguable that had the court not expressed itself so clearly, this may not have happened, so that the views on the evidence expressed have in fact helped to concentrate the defence case.

19 Applying the questions which seem to derive from the submissions and authorities, I find as follows.

a. Insofar as I am able to say this, or any judge is ever capable of saying it, consistent with my judicial oath I am sure I am not actually biased in this case and my *'mind is open to persuasion'* per the **South African case** (supra).

b. As to apparent bias, the impartial informed observer is required to be *'not unduly sensitive or suspicious'*, per **the Helow case** (supra). With this in mind, on balance, I am of the view

that an observer would actually expect a robust assessment of a case, as here, and that she or he would appreciate judicial frankness, seeing that what was said was not *ad hominem* as to veracity but on the evidence as to strength.

c. Turning to whether the recusal application is in reality a delay tactic, a number of features in this case are of interest:

    i. There was no assertion by Counsel Brandt on behalf of Weekes as to his ownership of the house in response to letters from Counsel Kelsick in 2016;
    ii. On 08.12.17, Weekes was saying he did not accept the Will was valid, and still not asserting ownership of the house (until helped in the face of the court by Counsel Brandt);
    iii. Weekes flatly refused to hand over the keys on 21.12.17, requiring three listings for contempt of court.

d. Recusal was not the issue on 08.03.18, but instead a stay, and had never been an issue hitherto. It is noticeable that no thought as to recusal was raised until I raised it on 08.03.18, suggesting there has not been any real concern. However, I do not consider this conclusive: it would have been possibly supportive of recusal if raised soonest, but being raised late is merely neutral.

e. Weighing the case history, there is indeed an intelligent argument the recusal application is a delay tactic. However, in my judgment, notwithstanding, there is still very good reason to consider the application, even if not filed within the rules, and whether tactical or not, because in fairness it does merit careful consideration, so that I assess its lateness, technical impropriety, or possible tactical character is not reason to ignore it.

20 In sum, though the application puts the court in the awkward positon of having to justify itself, and subject to review elsewhere, the recusal is refused as lacking actual bias; and concerning apparent bias, the court is of the view an informed observer would expect the court to offer robust and honest case assessment, so that knowing a judge can be expected to work toward

his or her oath of impartiality, on balance there is no real danger a reasonable and not unduly sensitive observer would think the judge here biased.

21 There shall be no order as to costs, and trial remains fixed for 28.03.18[3].

The Hon. Mr. Justice Iain Morley QC

High Court Judge

28 March 2018

[3] Though at the time of delivery of the ruling, owing to time constraints, regrettably the trial will have to be stood out to a date June or July.

APPENDIX

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ON MONTSERRAT

CASE NO. MNIHCV2017/0037

In the estate of William Anthony Tuitt, deceased, and an action for possession of land and in trespass

BETWEEEN: TERRANCE WADE (as the sole executor of the late William Anthony Tuitt) Applicant

and

JAMES WEEKES Respondent

APPEARANCES

Mr Jean Kelsick for Terrance Wade.

Mr David Brandt for James Weekes.

2017: DECEMBER 20

DECEMBER 21

JUDGMENT

On interlocutory application for possession of inherited house

1 **Morley J**: The applicant (Wade) [4] wants possession of the home at Judy Piece of his deceased father (William), who died on 25.08.15, leaving by his Will of 26.11.14 his property to Wade, but currently controlled by the defendant (Weekes), who is William's nephew, meaning Wade and Weekes are cousins. In answer, Weekes claims that William verbally promised him the home.

2 Wade has applied for an interim injunction restraining Weekes from entering or renting parcel 14/15/071, and wants the keys. He is sole executor of Williams' Will. By a fixed date claim form filed on 20.11.17, he is suing Weekes for a declaration he is a trespasser, for lost rent from the date of his father's death, and for damages for the building falling into dilapidation, particularly after Hurricane Maria in September 2017.

3 Wade is 37, in a wheelchair, living with his mother Maureen Tuitt (Maureen) in Judy Piece on Montserrat. William lived in England on and off from 2003. Weekes is a fisherman, and builder, and in 2003 William asked Weekes' ex-wife Rosanna Weekes to rent out the property, collect the rent, and to build a fund to repair the roof. She spent the money and was later sued. From 2011, Weekes then collected the rent, on the understanding that if hungry he could use some of the money[5].

4 On 20.01.16, Maureen showed Weekes the Will, and asked for the keys, which were refused. On 22.01.16, Maureen was challenged by letter from Counsel Brandt as to whether William really was Wade's father, and whether he really was dead. There has been trouble ever since.

5 The injunction application was called on for hearing on 30.11.17, there being filed on 20.11.17 an affidavit from Wade and Maureen, and was adjourned for lack of service to 08.12.17, when Weekes attended without a lawyer, but while in court then instructed Counsel Brandt. The application was heard on 20.12.17, by skype, mostly by audio after initial video, where I as the judge was on Antigua, Counsel Kelsick appeared in court, Wade appeared on skype owing to

[4] For the purposes of this judgment, the parties and others will be referred to as bracketed for ease of reading, and no disrespect is intended by not writing out on each mention full names and titles or the legalese as to whether claimants or defendants.
[5] See para 21 of the affidavit of James Weekes of 14.12.17.

his disability, and Counsel Brandt attended in court with Weekes. In the interim between 08.12.17 and 20.12.17, Weekes has filed two affidavits, and Wade and Maureen filed each one more, and skeleton arguments were filed by both counsel.

6 Sadly, from 2013 William was losing the ability to use his hands and arms. Weekes says that William promised to give Weekes his home in 2013[6] because they had a *'good relationship[7]'* and asked in exchange for his house that Weekes care for him in his declining years when on Montserrat; and in particular Weekes did so in William's last two weeks before he went to England in 2015 for medical care in his final days. The care involved cleaning his home, bathing him, feeding him, and assisting with his toilet (even at the airport as he left). Moreover, Weekes adds that on that final journey to the airport, William told him *'do not deliver the keys to anyone when I die. The house belongs to me'* (meaning to Weekes)[8].

7 In support of his claim, he refers to how, though it is not clear when, at the Inland Revenue Sarah Sweeney helped William to sign with an 'x' a form recording that Weekes should pay the taxes on the home. In support, he offers as exhibit JW(a)[9] a receipt dated 03.09.15 in his name recorded against the property number, 14/15/071, paying $1908.62ec *'on behalf of'* William (on the document named '*Anthony Tuitt'*). Specifically in his supplementary affidavit of 19.12.17, prepared by Counsel Brandt, Weekes says *'The testator placed my name on the title [to the property] at the Inland Revenue[10]…I paid the taxes on the property after my name was put on the title[11]….He put my name on the title to his land at the Inland Revenue[12]*'.

8 There is no independent evidence, in writing or from any other witness, to show that William intended that Weekes should inherit the house. Instead, this is merely what Weekes says. Recording Weekes as the person who will be responsible for paying the taxes is not the same as putting Weekes' name *'on the title to his land[13]'*. It is obviously an agency agreement, which makes sense as Weekes was collecting the rent, and so would receive the money to pay the

[6] See para 15, ibid.
[7] See para 3, ibid.
[8] See para 6 of the affidavit of James Weekes of 19.12.17.
[9] See para 5, ibid.
[10] See para 4, ibid.
[11] See para 5, ibid.
[12] See para 10, ibid.
[13] See para 10, ibid.

taxes. To the court's mind, it was misleading to characterise the agency agreement as putting Weekes name on the title, three times, in an affidavit prepared by counsel, when it is clear, and it was conceded in the hearing, it does no such thing, being said by way of apology to be the wrong use of the word 'title'. There is no dispute that the title to the land currently at the Land Registry is recorded in the name of William, so that the house is property to devolve under the Will to Wade, unless Weekes can raise proprietary estoppel on the basis of what he has said, unsupported.

9 Weighing noticeably against what Weekes has said is an email dated 09.03.16, exhibit MT2[14], from the person who prepared William's Will in the UK, named Michael Lancaster of *Lancaster Wills and Trusts* of Palmers Green, London, (admissible under CPR 30.3(2) in an interlocutory hearing, such as this). In that email, he says that as he prepared the Will, William said, as specifically recorded in Lancaster's notes, *'with my heart and soul I want the property for my son'*. Of interest is that this is said on 26.11.14, long after Weekes has asserted that from 2013 William wanted the house to go to Weekes, and yet when making his Will, said nought to his benefit, and indeed to the contrary, naming Wade in paragraph 7[15].

10 Assessing the test for an injunction, in **Jipfa Investments v Brewley et al 2011** [BVI, ECSC], I must examine (1) whether there is a serious issue to be tried, and if so (2) whether damages would be adequate for the applicant, and (3) where the balance of convenience lies.

11 In my judgement, on the evidence provided, there is no serious issue to be tried. The issue has to be 'serious', and not just a punt at an argument. I find in my discretion that on the papers the argument raised by Weekes is both frivolous and vexatious, designed to frustrate the Will. The preponderance of the evidence is that Weekes is clutching at straws to keep the house which has become for him a source of income. In particular, I note that when argument began in January 2016 over his returning the keys, in letters from Counsel Brandt Weekes has not once asserted that the house is his as promised to him by William, notwithstanding pre-litigation letters from Counsel Brandt on 22.01.16[16], 26.07.16[17], and 11.08.16[18]. Instead, the argument

[14] Appended to the 'affidavit in reply' of Maureen Tuitt filed on 18.12.17.
[15] The Will is appended to the affidavit of Terrance Wade filed on 20.11.17, as exhibit TW1.
[16] TW2, ibid..
[17] TW5, ibid.

was that Weekes would not hand over the keys as he does not accept that Wade is William's son, or is a beneficiary under the Will. This is glaring. It beggars belief that Weekes was expecting to inherit the house and yet since early 2016 said nought, strongly suggesting that his assertion now of inheritance is just not true. Moreover, I recall that at court on 08.12.17, when representing himself, before instructing Counsel Brandt, Weekes was at first saying that he thought the Will a fraud, and so would not abide by it, which I had to point out to him was not correct, as its validity had been established by probate, sealed on 15.08.17. It was only then that the argument moved toward an assertion the house was his, at first as having been gifted to him, and then with assistance from Counsel Brandt, who happened to be in court on another matter, as having been left to him. The matter was adjourned to 20.12.17 for clearer exposition of this fresh position being offered by Weekes, in order for him to have a fair opportunity, with counsel's help, to marshal clearer argument, and on what has been filed, it quite simply lacks any weight.

12 On the one hand, it is well known from the judgment of Lord Diplock in **American Cyanamid v Ethicon 1975** 1AER 504, the leading case establishing the principles in adjudicating on interim injunction applications, that *'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.*[19]*'*

13 On the other hand, the Court must enquire robustly into whether the issue to be tried is 'serious', or else the floodgates may open for anyone at any time, through bare assertion, luminously inconsistent with other documents, to frustrate any Will, for years. On what has been presented, Weekes' position seems hopeless, and just because he wants to have a go should not mean he can keep control of the house the Will says Wade owns.

14 More simply, it seems irresistible that Weekes, being able bodied, has only ever been helping to collect the rent. Though he helped William in his final days, with some unpleasant duties, this would most unlikely be reason to suppose he gets the house, in the teeth of the Will, with

[18] TW7, ibid.
[19] See p510e.

nothing in writing, and the common sense position that William would know Wade will need it as disabled. It is quite simply implausible to say William promised him the house in a way which is meaningful so as to give rise to proprietary estoppel, and therefore an exhaustive analysis of its doctrine is not required in this interim injunction application. As to suffering detriment, if any, Weekes has been compensated at all times by control over the rent which he has been able where needed to put to his own use.

15 Going further, if I have to, concerning the adequacy of damages, if Weekes does win at trial, then he can be compensated by the rent lost, which at $1500ec per month, as pleaded in the fixed date claim form[20], which, assuming the trial comes on within a year would be about $18000ec, is a sufficiently modest sum for the court to be confident can be met. On the other hand, I assess that Wade cannot be so easily compensated, given the emotional feature, not merely financial feature, that the house is his late father's bequest, so that he should rightly and for peace of mind be in possession of it unless there is an serious issue to be tried, which on Weekes' bare assertions there is not.

16 For the same reason, the balance of convenience is in favour of Wade taking possession of his inheritance, rather than that it remains controlled by a person who is not a beneficiary, to whom it can be returned if Wade loses at trial.

17 I therefore order immediately, by midnight, today 21 December 2017, that Weekes give up the keys to Wade of his late father's home and ceases presence at it, pending trial. I suggest he give them to Counsel Brandt who will then pass them to Counsel Kelsick.

18 Insofar as this decision might be appealed, if I am able I express the expectation, or at least the hope, that the keys are not returned until after any appeal decision adverse to my finding. This is in order to avoid Wade being drawn into protracted litigation, where once the keys are back in the possession of Weekes, any appeal process then gets delayed possibly for years. In the meantime, I order that the trial is expedited with a view to it being heard in March 2018, and on delivering this judgment will discuss directions with counsel.

[20] See fixed date claim form at para d filed on 20.11.17.

19 I further order that the defendant, as the losing party where I judge there is no serious issue raised by what has been filed, shall pay the costs of this application.

The Hon. Mr. Justice Iain Morley QC

High Court Judge

21 December 2017