

SUPREME COURT OF NOVA SCOTIA

Citation: Walker v. Hadley, 2009 NSSC 103

Date: 20090331

Docket: Hfx No. 308379

Registry: Halifax

Between:

Danna Mae Walker and Ralph Roberts

Applicants / Intended Plaintiffs

v.

Lucy Hadley, Lucy Hadley/Executrix of the Estate of
Maizie Belle Walker and 1115563 Nova Scotia Limited

Respondent / Intended Defendant

Judge: The Honourable Justice Walter R.E. Goodfellow

Heard: March 27, 2009, in Halifax, Nova Scotia

Written Decision: March 31, 2009

Counsel: Daniel L. Weir, for the Applicants Danna Mae Walker
and Ralph Roberts
Joseph M.J. Cooper, Q.C., for the Respondent Lucy Hadley

By the Court:

BACKGROUND:

[1] J. Albert Walker operated a number of funeral parlours. He died on the 27th of August, 1992. In a brief Will dated the 8th of December, 1987 he left all his property of every nature in kind whatsoever to his wife, Maizie Belle Walker.

[2] Maizie Belle Walker died the 23rd day of February, 1994 and her Will dated the 23rd of November, 1992 was admitted to probate on the 8th of January, 2007. Probate of the Will was granted to Scott Hadley, the sole Executor named in the Will.

[3] Scott Hadley passed away on the 1st of November, 2006 and on December the 28th, 2006 his widow, Lucy Marcella Hadley, was appointed his successor as executrix of the Estate of Maizie Belle Walker.

[4] At the time of Scott Hadley's death the estate of Maizie Belle Walker was a sole owner of all the shares in 1115563 Nova Scotia Limited (formerly J. Albert Walker Funeral Homes Limited). The company is the sole owner of the property known as 1234 Cole Harbour Road, Nova Scotia, the Cole Harbour Funeral Home and Crematorium (hereinafter "Cole Harbour unit").

[5] The Cole Harbour unit is a proprietorship owned by the numbered company with Scott Hadley as registered agent. At the time of Scott Hadley's death there was only one property left in the estate, namely, the shares of the company which owns the Cole Harbour unit and one property on the Herring Cove Road, civic number 145, which is being occupied by Lucy and Danna's sister, Christine.

[6] At the time of J. Albert Walker's death there were a number of properties and funeral home operations, one at 149 Herring Cove Road; a second at 307 Prince Albert Road; a third at Seabright; and, the fourth the Cole Harbour unit. The Seabright funeral parlour had not been operated for over five years and the property outstanding is as indicated, Cole Harbour.

[7] The Will of Maizie Belle Walker, after disposing of a number of personal items to granddaughters, a trust for grandchildren and gifts to a son and son-in-law, left the residue to her daughters Lucy, Danna Mae, Christine and her son, Ronald. The Will specifically provided nothing further for daughter Jennie Anne or her son Donald, indicating that they had been adequately provided for, for many years.

[8] There were substantial debts outstanding of the estate and at one time a claim outstanding by Donald Walker, which was settled in August, 2007 by conveying the Dartmouth operation to Donald Walker, this was settlement in a court action commenced by Donald Walker.

[9] The parties recognizing the prospects of disposing of Cole Harbour and securing adequate funds for the interested parties was such that they determined it was better to look at alternative solutions to salvaging the remaining assets of the estate. Several meetings occurred and discussions took place between their solicitors

resulting in a settlement entitled “Statement of Concordance and Intentions” signed by all four parties, namely, Lucy Hadley, Danna Mae Walker, Scott Hadley and Ralph Roberts.

STATEMENT OF CONCORDANCE AND INTENTIONS:

[10] The statement of concordance and intentions is reproduced below:

STATEMENT OF CONCORDANCE AND INTENTIONS

IN THE MATTER OF: THE ESTATE OF MAIZIE BELLE WALKER

and

IN THE MATTER OF: NOTICE OF THE INTENTIONS OF THE PARTIES
HEREIN TO FORM A PARTNERSHIP IN
BUSINESS

KNOW ALL MEN BY THESE PRESENTS that SCOTT HADLEY, LUCY HADLEY, DANA MAE WALKER, and RALPH ROBERTS hereby state and affirm the following which is attested to by the execution of their respective signatures hereto below:

1. That none of the above named oppose the sale of the funeral home business and property located at 149 Herring Cove Road to the New Brunswick company known as Select Community Funeral Homes Inc., or its lawful nominee, and will not wilfully do anything to impede the sale.

2. That it is the intention of SCOTT HADLEY, LUCY HADLEY, DANA MAE WALKER, and RALPH ROBERTS to form a business partnership governed by the laws of Nova Scotia with a partnership/shareholder’s agreement to provide for absolute equality amongst the parties and which agreement shall be drafted in accordance with the laws of Nova Scotia and accepted legal practice in Nova Scotia.

3. That it is also the intention of each of the parties that after the sale to Select or its Nominee is completed and the debts of the Estate of Maizie Belle Walker have been paid (so that the final distribution of the gifts of the Testatrix can be made) the parties shall receive, as soon as practicable, equal shares of the funeral home operation located in Cole Harbour and that this shall be the subject of their partnership such that each shall own equal shares

of the property and the company which they shall create to carry on in the business of operating a funeral home and crematorium.

4. That each of the parties agrees with the interpretation of the will of Maizie Walker which holds that the “proprietorship property” is comprised of all of the property listed in Schedule C-1 of the Inventory of the Estate. This said Schedule is entitled “Proprietorship Valuation” and dated February 23, 1994.
5. That each of the parties solemnly intends to undertake the course of action described above and promises not to withhold their acceptance of either their shares in the property and the business or their participation in the business partnership. The partnership/shareholder agreement shall be binding upon all of the parties and in case of disagreement before execution and acceptance of the agreement (whether with the agreement as a whole or any provision of it) each of the parties agrees to be bound by the determination of an independent arbitrator. Costs of arbitration shall be borne by the loser or losers of the arbitration. The agreement shall contain provisions for, among other matters, sale of shares and resolution of disputes amongst the partners and it will become binding upon each after its execution.
6. All the parties are agreed that the object of their partnership is the profitable operation of the Cole Harbour property and that the basis of the partnership is equality of ownership of the funeral home and crematorium.

DATED AT HALIFAX IN THE Halifax Regional Municipality this 21 day of February, 2005.

[witnessed and signed by the parties as noted above, para 2]

RELIEF SOUGHT:

[11] Danna Mae Walker and Ralph Roberts seek an interim injunction for the following relief:

1. The defendants, their servants, agents, police and representatives are enjoined/restrained from interfering with the Plaintiffs' conduct of the business of the Cole Harbour Funeral Home and Crematorium...;
2. The Defendants are enjoined/restrained from any financial dealings with the account of the Cole Harbour Funeral Home and Crematorium...;
3. The Defendants are enjoined/restrained from transferring/conveying or encumbering any ownership in the property at 1234 Cole Harbour Road, Cole Harbour, Nova Scotia...;
4. The Defendants are enjoined/restrained from transferring, conveying or in any way disposing of the shares of 1115563 Nova Scotia Limited....;
5. The Defendants are enjoined/restrained from any change in the ownership and/or directorship of the shares of 1115563 Nova Scotia Limited....;

APPLICATION:

[12] Initially the application was *ex parte* and then notice was given to the defendants. The application is supported by the affidavit of Danna Mae Walker filed March 10, 2009; the supplementary affidavit of Danna Mae Walker filed March 10, 2009; the further supplementary affidavit of Danna Mae Walker filed March 16, 2009; the revised affidavit of Danna Mae Walker filed March 18, 2009; the revised supplementary affidavit of Danna Mae Walker filed March 18, 2009.

[13] The application is also supported by the affidavits of Ralph Roberts, one filed March 10, 2009; revised affidavit filed March 18, 2009 and a response affidavit filed March 23, 2009.

[14] The application is opposed on the affidavits of Lucy Hadley filed March 20, 2009 and Joseph M.J. Cooper, Q.C. filed March 16, 2009.

CIVIL PROCEDURE RULES:

[15] The following Rules, 41.03, 41.04 and 41.06(1) are outlined below:

CPR 41.03 – Motion on notice

A party who moves for an interlocutory injunction or interlocutory receivership must make the motion by notice of motion to be heard in chambers or by special appointment.

41.04 - Interim injunction or receivership

(1) A party who files an undertaking as required by Rule 41.06 may make a motion for an interim injunction or interim receivership.

(2) A judge who is satisfied on all of the following may grant the motion:

(a) the party claims an injunction or receivership as a final remedy in the proceeding, or it is in the interests of justice that an injunction or receivership be in place before determination of the claims in the proceeding;

(b) the party has moved, or will move, for an interlocutory injunction or interlocutory receivership and is proceeding without delay;

(c) an urgency exists and it cannot await the determination of the motion for an interlocutory injunction or interlocutory receivership;

(d) considering all of the circumstances, it is just to issue an order for an interim injunction or interim receivership.

41.06 - Undertaking and award of damages

(1) A party who makes a motion for an interim or interlocutory injunction, or an interim or interlocutory receivership, must file, with the ex parte motion or notice of motion, an undertaking to do all of the following:

(a) indemnify another party for losses caused by the interim or interlocutory injunction or the interim or interlocutory receivership if a judge who finally determines the claim is satisfied that the

injunction or receivership is not justified in light of the findings on final determination;

(b) move without delay for an interlocutory injunction or interlocutory receivership, if the party successfully makes a motion for an interim injunction or interim receivership;

(c) bring the party's claim to a final determination without delay.

THE LAW:

[16] There is no real dispute as to the law. A claim for injunctive relief requires a three-stage analysis as follows:

1. Is there a serious question to be tried....?
2. Would the Applicants suffer irreparable harm if the remedy were refused?
3. What is the balance of inconvenience?

[17] The *Judicature Act*, R.S.N.S. 1989 (as amended), 43(9):

(9) *Mandamus or injunction or appointment of receiver* – A *mandamus* or an injunction may be granted or a receiver appointed by an interlocutory order of the Supreme Court, in all cases in which it appears to the Supreme Court to be just or convenient that such order should be made, and any such order may be made either unconditionally or upon such terms and conditions as the Supreme Court thinks just, and if an injunction is asked, either before or at or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted if the Supreme Court thinks fit, whether the person against whom such injunction is sought is, or is not, in possession under any claim of title or otherwise or, if out of possession, does or does not claim a right to do the act sought to be restrained, under any colour of title, and whether the estates claimed by both or by either of the parties are legal or equitable.

1. IS THERE A SERIOUS QUESTION TO BE TRIED...?

[18] An interlocutory injunction is an extraordinary remedy because it affects the rights of parties prior to trial where matters can be explored and assessed fully. In the brief filed by Joseph M.J. Cooper, Q.C., he acknowledges on the first step of the test

that there is no dispute and certainly the evidence advanced by affidavit and through cross-examination makes it abundantly clear in any event that there are serious questions to be tried. Amongst the issues is the extent of the legal effect of “Statement of Concordance and Intentions”. It is suggested that this is a partnership agreement and yet terms that are fundamental to a partnership agreement do not appear. The issue of the degree of acquiescence by Lucy Hadley and its impact, the manner and conduct of the Cole Harbour unit since 2005, the duty to account, et cetera, et cetera.

2. WOULD THE APPLICANTS SUFFER IRREPARABLE HARM IF THE REMEDY WERE REFUSED?

[19] This is an interim application and many of the disputes and differences expressed by the parties as to what did or did not do or should or should not have transpired will have to await a full hearing; however, from the evidence before me it is abundantly clear that in 2005 and prior, the Albert J. Walker funeral parlours were not being conducted in an efficient financial and management manner, resulting in substantial indebtedness, et cetera. The parties very wisely recognized the situation and this led up to the execution of the “Statement of Concordance and Intentions”. The intent was for the parties to move on and operate the Cole Harbour unit in a partnership arrangement with the execution of a shareholders agreement, et cetera. What intervened was first and most unfortunately the illness of Scott Hadley, the husband of Lucy Hadley. The parties had successfully disposed of the Halifax operation enabling substantial outstanding debts to be paid and these debts were clearly crippling the estate. Unfortunately the disposition of the Halifax operation did not remove all debts and place the Cole Harbour unit in good standing financially; hence, the need to pull together and keep the Cole Harbour operation from going under. It was recognized by all parties that the Cole Harbour unit was in need of some upkeep, repair and the establishment as a going concern, the parties agreed to bring in Ralph Roberts as he would be doing most of the physical work because of Scott Hadley’s deteriorating health.

[20] Ralph Roberts had no interest under the Will under Maizie Belle Walker. It was March of 2006 when Scott Hadley took sick and his illness was progressive resulting in his passing away November 1, 2006. Quite understandably during this period of time, Lucy Hadley’s focus was on her husband and being his personal care giver. The operation of the Cole Harbour unit was essentially, progressively, almost entirely in the hands of Danna Mae Walker and Ralph Roberts.

[21] Post Scott Hadley's death, Lucy Hadley quite naturally needed some time to recover and my preliminary assessment of the evidence at this stage is that although she relates a measure of participation in the Cole Harbour business, my conclusion based solely on the evidence before me at this stage is that she never did return in any effective manner to a participation level in the operation of the Cole Harbour unit. She advances that she was precluded from fully participating, not consulted on decisions, et cetera, et cetera. Unfortunately the relationship between the sisters and parties deteriorated. It serves no purpose to recite the incidences confirming deterioration, but it may be helpful to give an overview.

[22] There is no doubt that the evidence shows that Danna Mae Walker and Ralph Roberts who became the principal and major operators of the Cole Harbour unit, the error they made is that they began over time to run the business as if it was their own exclusively. Instead of providing transparency in what they were doing by reporting with some regularity to Lucy Hadley, they adopted the attitude that she could, by her own efforts, determine what was taking place. While there is a measure of truth in that she could make inquiries, et cetera, it was not conducive to their relationship for Danna Mae Walker and Ralph Roberts to act to the full extent in the manner in which they did. Nor is the extent of response by Lucy Hadley entirely appropriate.

[23] What resulted was that Lucy Hadley took steps to remove Danna Mae Walker and Ralph Roberts and effectively lock them out of the operation of the business, very much to the detriment of the business and to the detriment of the interests of all parties, including Lucy Hadley's interests.

[24] On February 23, 2009, Lucy Hadley had notices under the *Protection of Property Act*, R.S. 1989, c. 363, served upon Ralph Roberts and Danna Mae Walker, removing them from the property. It does not surprise me that matters went from bad to worse. The prejudice and irreparable harm to all parties is clear if the Cole Harbour unit is not a going concern. The irreparable harm to Danna Mae Walker and Ralph Roberts is immeasurably greater because they have put such a tremendous amount of effort into the business since 2005. While they may have in the final accounting received some taxable or non-taxable benefits, it is clear from the 2007 financial statements that no measure of salary was paid by the company. I strongly urge Danna Mae Walker, Ralph Roberts and Lucy Hadley to exchange their respective personal income tax returns going back to 2005 so as to disclose what, if any, taxable benefits, salary, et cetera, they received from what source and, in particular, the Cole Harbour unit. The Cole Harbour operation represents Danna Mae Walker and Ralph Roberts'

somewhat late in life major commitment and effort to salvage some level of security approaching inevitable retirement. Lucy Hadley has a major interest in the success of the Cole Harbour unit becoming and remaining a going concern as she has a considerable financial interest in the eventual outcome and probable disposition of the Cole Harbour unit.

[25] It is clear from the evidence that Danna Mae Walker and Ralph Roberts were the principal operators of the Cole Harbour unit and it was interesting to see the manner in which Lucy Hadley endeavoured to answer the question whether Danna Mae Walker and Ralph Roberts were the principal operators. All parties attempted to give their evidence in a truthful manner subject to their own personal interests and Lucy Hadley had difficulty answering that question and the manner in which she answered it merely increased my conclusion that in fact Danna Mae Walker and Ralph Roberts, since 2005 to approximately February 23, 2009, were the effective managers and operators of the Cole Harbour unit.

[26] I indicated that I would not do a review of the evidence but I do want to point out one fairly important fact and that is in relation to the number of cremations since March 2005. In the affidavit of Ralph Roberts filed March 10, 2009, he recites the revitalization of the Cole Harbour operation as follows:

<u>Increased Business</u>	<u>No. of Cremations</u>
August 16, 2005 to December 31, 2005	18
January 1, 2006 to December 31, 2006	80
January, 2007 to December 31, 2007	177

[27] Since Lucy Hadley removed Danna Mae Walker and Ralph Roberts from the Cole Harbour unit on February 23, 2009, my understanding of the evidence is that they have done one cremation and one funeral and quite possibly the funeral resulted in the cremation. Lucy Hadley, after removing Danna Mae Walker and Ralph Roberts, promptly left the country and spent in the range of two weeks in Arizona with her return date related to this application. Unless the Court intervenes, there will be irreparable harm to all parties and the hard work and efforts of all parties and, in particular, Danna Mae Walker and Ralph Roberts since 2005, will be for not.

3. WHAT IS THE BALANCE OF INCONVENIENCE?

[28] This third portion of the test requires the examination of all of the surrounding circumstances and, again, the parties are anxious to have some determination and I will not recite the evidence. Very clearly, the balance of inconvenience is in favour of Danna Mae Walker and Ralph Roberts. Ralph Roberts, in particular, has made a substantial contribution to the operation of the Cole Harbour unit. I say that based only on the evidence before me and not on a full and complete assessment as would take place upon trial.

[29] I am convinced at this stage without putting Danna Mae Walker and Ralph Roberts back into the management and operation of the Cole Harbour unit that there is a serious probability that the operation will falter. The Cole Harbour operation needs a great deal of time and effort to reach a stage of being and maintaining itself as a going concern. I note that one of Lucy Hadley's supporters indicated an interest in possibly purchasing the business in the future.

[30] There is much at stake and much to be salvaged. The property value of the Cole Harbour unit itself is substantial. The initial property assessment dated March 1, 2005 was \$735,000.00 and an update as of January 31, 2007 indicates a property value of \$930,000.00. Undoubtedly, if the parties can set aside their differences and be supportive, the business may well achieve a higher market value as a going concern. The 2007 financial statements for the company are now available and I accept at this point Ralph Robert's evidence that up to and including 2007 there has been a considerable overlap addressing deficiencies of the former J. Albert Walker funeral home finances. It appears at this stage that considerable headway has been made and Ralph Roberts indicates a distinct possibility that the 2008 financial statements will show a modest profit. The parties should do everything possible to get the 2008 financial statements complete and I gather that they have agreed on the continuation of the company's accountant for the preparation of financial statements and income tax returns.

[31] Lucy Hadley, it appears, wrote cheques totalling \$13,500.00 on the numbered company account and, in her evidence, she indicated \$2,000.00 of this went to Mr. Davis the accountant preparing the financial returns. She volunteered that the remaining \$11,500.00 was owed by her to the company and this should be

communicated to Mr. Davis. It presumably at some point should be listed as an asset in the nature of an account receivable of the company. Similarly, when Danna Mae Walker sold her home in November, 2008, the undated closing statement indicates an indebtedness of her's to the company in the amount of \$16,789.10. I am not certain when and how this was incurred but, obviously, the particulars should be conveyed to Mr. Davis because, again, this represents an asset in the nature of an account receivable of the company. Further in this decision I provide direction as to the manner in which this indebtedness to the company is to utilized.

[32] The one management concern I have is the attempt by Ralph Roberts to secure financing. Financing was to be by promissory note supported by blanket collateral first mortgage on the Cole Harbour unit property. In fairness, it required the participation of Lucy Hadley and the limited company, which stage had not been reached. The financing was for three years in the amount of \$165,000.00 with an annual interest rate of 16 percent with an up-front origination fee of \$16,500.00. I have not calculated the effective rate of borrowing but obviously it would be in excess of the 16 percent and I have not seen any evidence that warrants the capitalization borrowing. It is correct that the financial affairs of J. Albert Walker Funeral Homes did not leave a high credit standing; however, some progress has been made and I would hope that given the underlying substantial value of the property of the Cole Harbour unit that if funding is necessary that it can be obtained at a much less cost than was being explored by Ralph Roberts.

Position of Joseph M.J. Cooper, Q.C. as it relates to Lucy Hadley and the Estate of Maizie Belle Walker:

[33] It is clear from the evidence that Mr. Cooper has had a relationship of some length with the parties to this application. Mr. Cooper felt that he was not the proctor of the estate but that had been engaged from time-to-time by the estate, including to address this application.

[34] I requested confirmation as to the position of a proctor for the estate of Maizie Belle Walker. When the estate was originally probated, Mr. Allan P.D. Chandler, Q.C. was the proctor; however, by letter dated April 26, 1999 he advised that he was no longer acting for the estate. The initial executor, Scott Hadley, passed away November 1, 2006 and Mr. Cooper processed the appointment of Lucy Hadley as the successor executor. At that time, Mr. Cooper did not indicate whether he was or

wished to be proctor of the estate; however, in line with probate practice, the Probate Court having received the application on behalf of Lucy Hadley from Mr. Cooper, recorded him as proctor.

[35] My remarks with respect to Mr. Cooper are not meant in any way to be a criticism, indeed, both myself personally and the Court has respect for Mr. Cooper's professionalism exhibited over the course of many years in the practice of law.

[36] The reality, however, is that the conflicts are primarily between the sisters Danna Mae Walker and Lucy Hadley and, under the estate, they are to receive equal shares of the residue. This means that whenever Mr. Cooper bills the estate when he really is acting for Lucy Hadley in her personal capacity, that such billing, when paid, provides payment of legal fees and services to Lucy Hadley from the estate; therefore, in part, from Danna Mae Walker. This is a clear case of conflict and I direct that any outstanding accounts for legal services, advice, disbursements, et cetera, from Mr. Cooper and all legal services and expenses in relation to this application are to be borne personally by Lucy Hadley. Given Mr. Cooper's close relationship and solicitor/client relationship with Lucy Hadley it is not appropriate for him to continue in any way to act for the estate of Maizie Belle Walker. Lucy Hadley, as executor, should arrange for the appointment of a proctor and, while not required, it would ensure objectivity and neutrality by the proctor if Mr. Cooper would consult with Danna Mae Walker's solicitor, Mr. Weir, to come up with a joint recommendation to Lucy Hadley.

CONCLUSION:

[37] Danna Mae Walker and Ralph Roberts have met the requirements of the law and are entitled to an interim injunction. They should be placed back in the effective control and operation of the Cole Harbour unit immediately. Danna Mae Walker and Ralph Roberts are entitled to an order with the provisions for relief sought and referred to in para [11] of this decision. It is clear from the evidence of Ralph Roberts that there is a need for some effective repairs and while I do not have a complete handle on it, it appears there may be a sub-floor problem as well. My recollection is that these repairs are tentatively scheduled for some time in April. It is also clear from the evidence that Danna Mae Walker's solicitor, who did the property transaction in the sale of her home, has a hold-back in trust in the amount of \$16,789.10 and Danna Mae Walker and Ralph Roberts are authorized to utilize these funds for purchases and payments related solely to the Cole Harbour unit and, specifically, in relation to the

repairs. In addition, they are empowered to utilize the funds in the bank account which are indicated to be in excess of \$26,000.00. This authorization is, however, totally conditional upon clear and transparent accounting to Lucy Hadley in her personal capacity and also in her capacity as executrix of the estate of Maizie Belle Walker. Lucy Hadley and the estate are entitled to copies of all invoices, bank statements, cancelled cheques, receipts, correspondence, et cetera, related to the operation of the Cole Harbour unit and the order will provide such a full and detailed accounting by her on the first of May, 2009. In the event that the interim injunction is continued, such accounting shall be required on the 1st day of each and every month until the matters are dealt with on trial or resolved by the parties.

[38] It is essential that the conduct of the operation of the Cole Harbour unit be monitored and I set a return date for the interim injunction for Wednesday, May 27, 2009 at 10:00 a.m., The Law Courts, 1815 Upper Water Street, Halifax, Nova Scotia. This should provide ample time for the operation of the business to recover from the interruption caused by the eviction of Danna Mae Walker and Ralph Roberts and, hopefully, place the operation on a forward-going basis.

[39] In addition, every effort should be made to have the 2007 financial statements completed and available for the return date of May 27, 2009. While not necessary to incorporate in the order, I strongly suggest that sometime shortly before the 27th of May 2009, the parties get together with their counsel, try and map out a course of conduct for the immediate future.

[40] There is a requirement of Danna Mae Walker and Ralph Roberts commencing a formal law suit by way of Originating Notice (Action); however, I extend to the 27th of May, 2009 the requirement of doing so as I am concerned that the commencement of the law suit itself might well be an impediment to the parties getting together and possibly resolving all outstanding issues. The timing of the requirement of commencing an action will be further addressed on May 27th, 2009.

[41] It is clear from the foregoing that Lucy Hadley is to turn over all keys, et cetera and account for whatever business or financial dealings that she may have embarked upon from the 23rd of February, 2009 to the transfer back of the operation to Danna Mae Walker and Ralph Roberts. This includes leaving within the premises all the contents, equipment, financial and other records that existed at the time she took over occupation and management, including relative to her period of occupation and management.

COSTS:

[42] Counsel are always entitled to be heard on the issue of costs. I would hope that a new proctor for the estate would be available for the May 27th, 2009 return date and the manner in which the parties conduct themselves between now and then may well have a substantial if not determining impact on the issue of costs.

J.