

X-Change Facilitators, Inc., by and thru its Manager, Mr. Augustus Dahn, of the City of Monrovia, Liberia Petitioner/Appellee versus The **Intestate Estate of the Late Edwin J. Cooper, Sr.**, by and thru its Administratrixes, Magdaline Cooper-Johnson and Marie E. Leigh- Parker Respondent/Appellant and His Honor **J. Vinton Holder**, Judge, Monthly & Probate Court for Montserrado County
Co-Respondent

APPEAL FROM THE RULING OF THE CHAMBERS JUSTICE GRANTING
THE PETITION FOR A WRIT OF CERTIORARI.

Heard: April 10, 2006 Decided: August 18, 2006

MR. CHIEF JUSTICE LEWIS delivered the opinion of the Court.

Edwin J. Cooper, Sr., at one time a citizen of Liberia and resident of Monrovia, Montserrado County, died on 1 May 1972 in Monrovia. He was survived by eight children: Charlotte Cooper-Farhat, Ernestine Cooper-Harris, Edwin J. Cooper, Jr., Kenneth A. Cooper, Sr., Lydia M. Cooper-Fall, Lucinda C. Cooper-Clinton, Erwin J. Cooper, Henry J. Cooper and Samuel J. Cooper. With the exception of Erwin J. Cooper, who at the time of his father's death was resident in Monrovia, the other surviving children were at the time, and still are, resident in the United States of America. (Edwin J. Cooper, Jr. died in the United States sometime in 2004).

On 19 September 2003, more than thirty years after the death of Edwin J. Cooper, Sr., Erwin J. Cooper filed the following petition with the Monthly and Probate Court for Montserrado County praying for Letters of Administration to administer the intestate estate of his late father:

"And now come, Erwin J. Cooper, petitioner in the above entitled cause of action, and most respectfully petition[s] this Honorable Court [and] showeth the following to wit:

"1. That the petitioner is a son of the deceased who died on the 1s t day of May, A.D. 1972 in the City of Monrovia, Montserrado County, R.L.

"2. That the deceased, the late Edwin J. Cooper, Sr., died intestate leaving properties with[in] the Republic of Liberia.

"3. That because these properties need to be sustained and avoid same going to waste, petitioner requests Your Honor to grant his petition so that he may properly administer the intestate estate of his father, the late Edwin J. Cooper, Sr.

"Wherefore, and in view of the foregoing, petitioner prays this Honorable Court to order a decree in his favor to administer the properties of his father, who died intestate."

The petition was granted on the same day, with His Honor John L. Greaves, Judge of the Monthly and Probate Court for Montserrado County, presiding in the Court's September 2003 term. The Judge decreed the following Letters of Administration:

"Letters of Administration

"Republic of Liberia

"To: Erwin J. Cooper: GREETINGS

"Whereas, Edwin J. Cooper, Sr., died intestate, being at the time of his death a resident of the City of Monrovia, Montserrado County, Republic of Liberia; and having at the time of his death properties within the Republic of Liberia, and being desirous that said properties may be well and faithfully administered properly, applied and disposed of, now

"Upon petition duly made and all proceedings had thereupon, We the Monthly and Probate Court for Montserrado County, Republic of Liberia, do hereby grant unto you the said "Erwin J. Cooper," full power to administer said estate, to demand and receive the debts due the aforesaid deceased at the time of his death, and to pay the debts which the deceased did owe at such time, *and hereby require you to forthwith make a true and perfect inventory of all the properties of the deceased within sixty (60) days from the date hereof which have or may hereafter come to your knowledge, and to be appraised according to law.*

"And we further command you to obey all orders that may from time to time be made by this Honorable Court touching the administration of the said estate hereby committed to you.

"And we further hereby command there presents: deputize, constitute and appoint you the said administrator and have the said estate closed within twelve (12) months or one (1) calendar year from the date hereof, and you are further required to file a valid administrator's bond before this Honorable Court in connection with the said estate within the statutory time.

"It is hereby ordered and decreed, That this Letters of Administration be recorded and/or registered in the Office of the Registrar of Deeds for Montserrado County, Republic of Liberia, with Five Dollars (\$5.00) Revenue Stamps Affixed on the original copy" (Emphasis supplied).

The emphasized orders and instructions contained in the Probate Court's decree are consistent with provisions of the Decedents Estates Law and Probate Procedure Code which require that in all estates, whether testate or intestate, an inventory must be taken showing all of the assets of the estate. The law requires also that should additional assets be discovered after the first inventory, a supplemental inventory shall be taken. *Reeves v. Johnson*, 28 LLR, 30, 33-35 (1979). These are the relevant provisions of the statute:

"Inventory and Appraisalment.

"Requirements as to inventory. Within two months after his appointment, unless a longer time shall be granted by the court, every executor or administrator shall make and return a verified inventory and appraisalment in one written instrument, of all the property of the decedent which shall come to his possession or knowledge, including a statement of all encumbrances, liens and other charges on any item. Such property shall be classified therein as follows:

"(a) Real property with plot or survey description;

"(b) Furniture, household goods, and wearing apparel;

"(c) Corporation stocks described by certificate numbers;

"(d) Mortgages, bonds, notes and other written evidence of debt, described by name of debtor, described by name of debtor, recording data and other identification;

"(e) Bank accounts, insurance policies in which the estate is the beneficiary, and money;

"(f) All other personal property accurately identified, including the decedent's proportionate share in any partnership, but no inventory of the partnership property will be required.

"Requirements as to appraisement. At the time letters testamentary or letters of administration are granted, the court shall appoint two suitable, disinterested persons, as appraisers, to whom the executor or administrator shall exhibit the inventory. The appraisers shall determine and state in figures opposite each item contained in the inventory the fair net value thereof, as of the date of decedent's death, after deducting the encumbrances, liens and charges thereon, and forthwith deliver such inventory and appraisement, certified by them under oath, to the personal representative who shall file it with the court. The appraisers shall be allowed such reasonable fees, necessary disbursements and expenses as may be fixed by the court, which shall be paid by the executor or administrator as expenses of the administration." Decedents Estates Law, L.C.L.Rev., tit. 8, § 119.1 (1) & (2) (1972).

"Supplementary Inventory and Appraisement. Whenever any property not mentioned in the inventory comes to the knowledge of an executor or administrator, he shall either make a supplemental inventory thereof and cause such property to be appraised, such supplemental inventory and appraisement to be returned within thirty days after the discovery thereof, or include the same in his next accounting, unless the court shall order a particular manner of return." Decedents Estates Law, L.C.L.Rev., tit. 8, § 119.2 (1972).

On 20 October 2003, notwithstanding Erwin J. Cooper had not filed any inventory with the Monthly and Probate Court, and had thus not complied with the instructions contained in the Probate Court's decree granting his petition for Letters of Administration, nor the provisions of either Decedents Estates Law, L.C.L.Rev., tit. 8, § 119.1 (1) & (2) (1972) or Decedents Estates Law, L.C.L.Rev., tit. 8, § 119.2 (1972), entered into and executed an Agreement of Lease with X-Change Facilitators, Inc., and "grant[ed] and lease[d] unto the Lessee all that parcel of land, with its building thereon, located on 20th Street, Sinkor, city of Monrovia, Montserrado County, hereinafter referred to as the demised premises bounded and described as follows:

"DESCRIPTION

"Commencing at the Southwestern corner of Melvin A. Sogbandi's adjoining parcel of land, thence running on magnetic bearings: South 54 degrees East 82.5 feet to a point; thence running South 36 degrees West 132 feet to a point; thence running North 54 degrees East 82.5 feet to a point; thence running North 36 degrees East 132 feet along said Melvin A. Sogbandi's adjoining parcel of land to the place of commencement and containing 1 acre of land and no more.

"Said demised premises to be used as Residence/Guest House."

The Agreement of Lease was ordered probated and registered by Her Honor Judge Amymusu Jones, Judge of the Monthly and Probate Court for Montserrado County, presiding over the Court's October 2003 Term.

On 23 March 2004, the parties to the Agreement of Lease executed an "Amendment to Lease Agreement" by which the Lessor granted "full authority to the Lessee to sub-lease the property."

Included in the records certified to this Court is a second Letters of Administration issued to administrator Erwin J. Cooper to administer the identical estate of the late Edwin J. Cooper, Sr., which was decreed on 4 October 2004, by Probate Judge Amymusu Jones.

Also included in the records certified to this Court is a decree by His Honor William B. Metzger, Assigned Judge of the Monthly and Probate Court for Montserrado County, dated 24 May 2005, granting Letters of Administration to Magdalene Cooper-Johnson and Marie E. Leigh-Parker. The title of the decree is: "Re: The Petition of Charlotte Cooper-Farhat, Ernestine Harris-Cooper, Kenneth Cooper, Lydia Cooper, Lucinda Cooper, Henry Cooper and Samuel Cooper, praying Court for the revocation of Letters of Administration issued to Erwin J. Cooper and for the issuance of Letters of Administration to Magdalene Cooper-Johnson and Marie E. Leigh-Parker to administer the Intestate Estate of the late Edwin J. Cooper, Sr."

On 27 May 2005, Counselor F. Musah Dean, Jr., of Dean and Associates, Inc., addressed the following letter to Mr. Charles Bright, X-Change Facilitators, Inc., Monrovia, Liberia:

"We should like to thank you for our meeting of yesterday, May 30, (*sic*) 2005. As indicated, we represent the legal interest of the Intestate Estate of the late Edwin J. Cooper, Sr., and by copy of the attached Letters of Administration, wish to confirm that the Letters of Administration issued to Mr. Erwin J. Cooper to administer the Intestate Estate of the late Edwin J. Cooper, Sr. has since been revoked by the Monthly and Probate Court for Montserrado County. The Court, on May 24, 2005, also appointed Mrs. Magdalene Cooper-Johnson and Mrs. Marie E. Leigh-Parker as Administratrixes of the said Estate, replacing Mr. Erwin J. Cooper.

"In reviewing the records of the Estate, we have observed that an Agreement of Lease was entered into by and between the Estate and X-Change Facilitators, Inc., dated October 20, 2003. We advise that all matters relating to the Lease Agreement, and the property covered by the said Lease Agreement, be handled with the Administratrixes herein above named."

There is nothing in the records certified to this Court, except for the Monthly and Probate Court's decree dated 24 May 2005, that any petition, as titled in the Court's decree, was ever filed with the Monthly and Probate Court. Additionally, there is nothing in the records certified to this Court evincing that any petition for the revocation of either of the two Letters of Administration which had been issued to Erwin J. Cooper to administer the Intestate Estate of the Late Edwin J. Cooper, Sr. was filed with the Monthly and Probate Court, and served on Erwin J. Cooper.

On 21 July 2005, "The Intestate Estate of the late Edwin J. Cooper, Sr., by and thru its Administratrixes, Magdaline Cooper-Johnson and Marie E. Leigh-Parker" as Informant, filed a Bill of Information with the Monthly and Probate Court against X-Change Facilitators, Inc. The informant prayed:

(1) That the Probate Court will convene a hearing into the administration of the estate by Erwin J. Cooper and declare that it was illegal for Erwin J. Cooper to have administered the Intestate Estate without reference to the Monthly and Probate Court for Montserrado County.

(2) That as the duration of the Letters of Administration issued to Erwin J. Cooper was twelve months, it was illegal for him to enter into a ten-year contract with the respondent.

(3) That the contract amount is grossly unfair and inequitable given the fact that the property was being leased in the past for an amount far in excess of United States Dollars Twelve Thousand (US\$12,000.00), namely United States Dollars Thirty Five Thousand (US\$35,000.00) annually.

(4) That the Agreement be declared illegal, null and void.

(5) Rule all costs of these proceedings against the respondent and grant unto informant such other and further relief as in this case may be just and equitable.

On 28 July 2005, X-Change Facilitators, Inc. filed a nine-count respondent's returns in which it contended:

(1) That the Probate Court was fully aware of how the Intestate Estate was being managed, and by these facts in October 2004 renewed the Letters of the Administration which had been granted to Erwin J. Cooper.

(2) That being the only direct heir of his late father resident in Liberia, he was under a legal duty to petition for Letters of Administration thereby avoiding the labor of his late father to go waste, and that the majority of his siblings agreed with that decision and are not aware of and are surprised at the recent revocation of his Letters of Administration and the appointment of strangers to administer the Estate.

(3) That Erwin J. Cooper acted within the scope of his authority when he executed the Lease Agreement with X-Change Facilitators, Inc. on 21 October 2003 and renewed same on 5 October 2004, and contended that both were sanctioned and approved by the Monthly and Probate Court for Montserrado County.

(4) As to counts nine (9) and ten (10) of the petition, the respondent contended that no foundation was laid to establish the averments, and that there has been no denial that a legal contract was entered into by the parties who were clothed with authority.

On 30 September 2005, His Honor J. Vinton Holder, then assigned Judge of the Monthly and Probate Court, after having entertained arguments by the parties on 25 August 2005, rendered a ruling in which Judge Holder held that Erwin Cooper had administered the Intestate Estate without reference to the Monthly and Probate Court, and that the Agreement of Lease executed on 21 October 2003 between the Intestate Estate, represented by Erwin Cooper, and X-Change Facilitators, Inc. "carry[ies] no approval by the sitting Judge, as required by law." The Judge sustained the Bill of Information, denied the respondent's returns, and declared the Agreement of Lease "illegal, null and void," with costs against the respondent.

To the ruling of the Probate Judge, counsel for the respondent noted exceptions, and announced an appeal. The Court noted the exceptions and granted the appeal.

On 5 October 2005, notwithstanding the announcement of an appeal by the respondent to Judge Holder's 30 September 2005 ruling, respondent X-Change Facilitators, Inc. filed a two-count motion requesting the Court to reconsider its ruling of 30 September 2005 by which it declared "illegal, null and void" the

Agreement of Lease entered into between the Intestate Estate and X-Change Facilitators, Inc., and challenged the jurisdiction of the Probate Court to question the legitimacy of said Agreement of Lease. Respondent X-Change Facilitators, Inc. contended that such question was within the competence of the Civil Law Court for Montserrado County.

The respondent filed an eight-count returns, contending essentially that the motion was untimely filed, since while "a Judge may modify or rescind a ruling or judgment in the term in which he is sitting, but only upon notice to the other parties, as the ruling sought to be modified was delivered on 30 September 2005 in the September Term. The respondents maintained, also, that the "ruling sought to be modified [was] not a ruling for cancellation of contract, but rather a ruling which declare[d] the Lease Agreement null and void, meaning no contract ever existed or came into being."

Counsel for the movant not having appeared to argue his motion, counsel for the respondent invoked Civil Procedure Law, 1 L.C.L. Rev., tit. 2, § 10.7 (1973), and requested the Court for a default on the motion.

The Monthly and Probate Court, in its ruling dated 2 November 2005, identified two issues:

- (1) Whether or not the motion was timely filed?
- (2) Whether or not the ruling sought to be modified is a ruling for cancellation of contract?

As to the first issue, the Court held that the motion was belatedly filed, since it was not filed within the Term of Court during which the ruling was rendered. As to the second issue, the Court held that the 30 September 2005 ruling did not "cancel" the said Agreement of Lease, but rather it declared the Agreement of Lease "null and void, meaning no contract ever existed or came into being. By that ruling, this Court only held that the contract is void, which means that the contract never had any legal existence or effect."

Counsel for the Movant noted exceptions to the ruling of the Judge.

On 27 January 2006, X-Change Facilitators, Inc. filed a fourteen-count Petition for a Writ of Certiorari growing out of the Monthly and Probate Court's ruling dated 2 November 2005. On 6 February 2006, respondent, the Intestate Estate of the late

Edwin J. Cooper, Sr., by and through its Administratrixes, Magdaline Cooper-Johnson and Marie E. Leigh-Parker, filed a 30-count returns to the petition.

The petition and returns were heard before His Honor James W. Zotaa, then ad hoc Associate Justice, who by judgment dated 23 February 2006, "sustain[ed] the certiorari as to Erwin Cooper to afford him the opportunity of having his Bill of Information before the Probate Court heard" and "that the judgment ordering the revocation of the Letters of Administration of Erwin Cooper and the cancellation of [the Agreement of Lease with X-Change Facilitators and the eviction of X-Change Facilitators stayed pending the hearing and final determination of Erwin Cooper's Bill of Information."

Because of the decision we have taken in this case, we shall address the following issues:

1. Whether Erwin J. Cooper was properly and legally removed as administrator of the intestate estate of the late Edwin J. Cooper, Sr?
2. Whether the Monthly and Probate Court had legal basis for declaring "illegal, null and void" the Agreement of Lease entered into between the Intestate Estate of the late Edwin J. Cooper, Sr., represented by Erwin J. Cooper, as administrator, and X-Change Facilitators, Inc?
3. In the absence of the filing of a inventory of the intestate estate of the late Edwin J. Cooper, whether Erwin J. Cooper, as administrator, was legally clothed with authority to enter into the Agreement of Lease with X-Change Facilitators, Inc?

The Decedents Estates Law, L.C.L.Rev., tit. 8, § 107.10 (1972), on Suspension, Modification or Revocation of Letters Testamentary or of Administration, provides:

"Suspension, modification or revocation of letters for disqualification or misconduct. In any of the following cases a creditor or person interested, any person in behalf of an infant or any surety on bond of a fiduciary, may present to the court having jurisdiction a petition praying for a decree suspending, modifying or revoking those letters *and that the fiduciary may be cited to show cause why a decree should not be made accordingly:*

"(a) Where the respondent was, when letters were issued to him, or has become since ineligible or disqualified to act as fiduciary and the grounds of the objection did not

exist or for good cause the objection was not taken by the petitioner or a person whom he represents before the letters were granted;

"(b) Where by reason of his having wasted or improperly applied the assets of the estate, or made investment unauthorized by law or otherwise improvidently managed or injured the property committed to his charge or by reason of other misconduct in the execution of his office, or dishonesty, drunkenness, improvidence, or want of understanding, he is unfit for the execution of his office;

"(c) Where he has wilfully refused or without good cause neglected to obey any lawful direction of the court contained in any decree or order or any provision of law relating to the discharge of his duty;

"(d) Where the grant of his letters was obtained by a false suggestion of a material fact;

"(e) Where by the terms of a will, deed or order, his office was to cease upon a contingency which has happened;

"(f) Where he has failed without sufficient reason to notify the court of change of his domiciliary address within thirty days after such change;

"(g) Where he has removed property of the estate outside of the Republic of Liberia without prior approval of the court;

"(h) In the case of a testamentary trustee, where he has violated or threatens to violate his trust or is insolvent or his insolvency is apprehended or is for any other cause deemed an unsuitable person to execute the trust (Emphasis supplied).

For whatever of the eight reasons that a fiduciary who has been granted letters of administration may be removed, and while the statute uses the permissive word "may," implying that the Probate Court has the discretion whether or not to cite the administrator prior to his removal, there is no record that a petition for the removal of Erwin J. Cooper was ever filed before the Monthly and Probate Court for Montserrado County, or that he was cited to show cause why a decree removing him as administrator should not be. In the absence of record that a petition for his removal as administrator was filed with the Probate and Monthly Probate Court for Montserrado County, and that he was cited to show cause why a decree removing him as administrator should not be, we hold that the decree of the Probate Court

removing Erwin Cooper as administrator and appointing Magdalene Cooper-Johnson and Marie E. Leigh-Parker was improper and illegal. In accord: *Dennis v. Weeks*, 11 L.L.R. 317, 319 (1952); *The Minor Children and Beneficiaries of the Workmen's Death Compensation of the late Emmett J. Scott v. Johnson*, 30 LLR, 30, 36 (1982); *Mendobdou v. Geandoe*, 39 L.L.R. 742, 749 (1999).

We address next the issue whether the Monthly and Probate Court had legal basis for declaring "illegal, null and void" the Agreement of Lease entered into between the Intestate Estate of the late Edwin J. Cooper, Sr., represented by Erwin J. Cooper, as administrator, and X-Change Facilitators, Inc?

His Honor J. Vinton Holder, in his 30 September 2005 ruling, held that Erwin Cooper had administered the Intestate Estate without reference to the Monthly and Probate, and that the Agreement of Lease executed on 21 October 2003 between the Intestate Estate, represented by Erwin Cooper, and X-Change Facilitators, Inc. "carr[ies] no approval by the sitting Judge, as required by law."

If the basis for the Judge's conclusion that Erwin Cooper had administered the Intestate Estate without reference to the Monthly and Probate Court is because the Agreement of Lease "carr[ies] no approval by the sitting Judge," we hold that the premise is wrong because there is no requirement that before an administrator can enter into an Agreement of Lease involving the property of an intestate estate under his administration he has to obtain the approval of the Probate Court.

One of the issues considered and decided in *Page v. Ward*, 31 LLR 637 (1983) was "whether an administrator may dispose of real property of an estate without an order of the Probate Court?" In resolving the issue, the Court clarified and held as follows:

"Before referring to authority to resolve this contention, it is vital to observe here that the disposition of the property in this case is a lease for fifteen years and not an upright sale of the property. With regards to the need for orders of court, the authorities state:

"If an administrator acts in pursuance of, and in accordance with law, he need not secure an order of court to protect him in the discharge of his duties.' 31 Am. Jur. 2d., *Executors and Administrators*, § 156, and 5t6 ALR 530."

The third issue we consider is whether in the absence of the filing of a inventory of the intestate estate of the late Edwin J. Cooper, Erwin J. Cooper, as administrator,

was legally clothed with authority to enter into the agreement of lease with X-Change Facilitators, Inc?

While it is true that Erwin J. Cooper, as administrator, had not complied with the provisions of either Decedents Estates Law, L.C.L.Rev., tit. 8, § 119.1 (1) & (2) (1972) or Decedents Estates Law, L.C.L.Rev., tit. 8, § 119.2 (1972) when he executed the Agreement of Lease dated 20 October 2005 and the Amendment to Lease Agreement dated 23 March 2004 with X-Change Facilitators, Inc., there is no provision in the Decedents Estates Law which provides that a failure to so perform shall invalidate acts properly undertaken by the administrator in performance of his fiduciary duties. We hold, therefore, that the administrator was legally clothed with authority to enter into the Agreement of Lease and the Amendment to Lease Agreement with X-Change Facilitators, Inc.

In view of the foregoing, we hereby affirm the ruling of the Justice in Chambers, with the provision that this Judgment makes moot the issues raised in the Bill of Information filed by Erwin J. Cooper with the Monthly and Probate Court dated 10 February 2006. The Clerk of this Court is ordered to send a mandate down to the court below commanding the judge therein presiding to resume jurisdiction over the estate, and proceed to handle the same de novo, beginning with the requirement that administrator Erwin J. Cooper file within two months of this decision an inventory of all of the assets of the estate according to the requirements of the statute; that the judge therein presiding appoints two appraisers to value the estate in keeping with statute; and that the judge regard as null and void and of no effect the decree of Judge William B. Metzger dated 24 May 2005 removing Erwin J. Cooper as administrator, and appointing Magdalene Cooper-Johnson and Marie E. Leigh-Parker as co-administratrixes. And it is hereby so ordered.

Certiorari granted.

COUNSELOR JAMES E. PIERRE OF PIERRE, TWEH AND ASSOCIATES APPEARED FOR THE PETITIONER/APPELLEE.

COUNSELORS NECULAR Y. EDWARDS AND F. MUSAH DEAN, JR. OF DEAN AND ASSOCIATES, INC. APPEARED FOR THE RESPONDENT/MOVANT.

COUNSELOR M. WILKINS WRIGHT OF WRIGHT, JANGABA AND ASSOCIATES LAW FIRM APPEARED FOR THE APPELLEE/INTERVENOR