

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

CLAIM NUMBER: SLUHCV2025/0072

BETWEEN:

ALLEN CHASTANET
**(In his personal capacity and in his capacity as
Parliamentary Representative for Micoud South)**

Claimant

and

ERNEST HILAIRE
**(Minister having responsibility for the
Citizenship By Investment Programme)**

First Defendant

CITIZENSHIP BY INVESTMENT BOARD

Second Defendant

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence

High Court Judge

Appearances:

Mr. Garth Patterson, SC with Mr. Dexter Theodore KC, Ms. Akeelia Richards and
Mr. Michael Riviera for the Claimant

Mr. Seryozha Cenac, Mrs. Rochelle John-Charles and Mr. Luke Kamel-Smith led
by Mr. Douglas Mendes SC for the First Defendant

Ms. Marie-Ange Symmonds with Ms. Rene St. Rose KC led by Mr. Anthony
Astaphan SC for the Second Defendant

2025: July 15; (Hearing)
 October 30. (Decision)

JUDGMENT

Introduction

[1] Before the Court is an application for an interlocutory injunction filed by the claimant on 20th February 2025. The claimant also filed a fixed date claim for administrative

orders including judicial review on even date. In that claim, the claimant seeks administrative orders regarding illegality and/or invalidity and/or unlawful and/or unreasonable conduct and administration by the defendants regarding Saint Lucia's Citizenship by Investment Programme ("CIP"). The defendants deny any wrongdoing and criticise the claimant for bringing such a claim in the first place.

- [2] The opportunity to have this interlocutory application rolled up with the substantive claim addressed on an urgent basis rather than an interlocutory injunction being disposed of separately was not accepted by the claimant. Therefore, the Court is constrained to only deal with the interlocutory injunction aspect of the case. Having considered the application and affidavits in support, response and reply filed and the oral and written submissions of the parties, I have determined that the application should be refused for the reasons which follow.

Background

- [3] The CIP allows persons to acquire a second citizenship by making a significant financial investment/contribution to a foreign country's economy, in this case Saint Lucia, typically through investments, for example, in real estate, government bonds among others. This programme exists in several of the Eastern Caribbean States.
- [4] Saint Lucia launched its CIP in 2015 with the **Citizenship by Investment Act**¹ ("the Act"). The claimant is a former Prime Minister of Saint Lucia and had responsibility for the CIP. The CIP has become a substantial economic venture for Saint Lucia. One of the programmes approved by the claimant in 2018 was the Galaxy Canelles Resort Project ("the Canelles Resort Project")² which is a real estate project under the real estate option under the **Citizenship by Investment Regulations** ("the Regulations")³. In relation to this project, an agreement was entered into between The Government of Saint Lucia and Caribbean Galaxy Real Estate Limited dated

¹ Chap. 1.20, Revised Laws of Saint Lucia 2020.

² Agreement between The Government of Saint Lucia and Caribbean Galaxy Real Estate Limited dated 26th March 2018.

³ Chap. 1.20, Revised Laws of Saint Lucia 2020.

26th March 2018 (“the 2018 Agreement”). In 2021, there was a change of government and under this new government the new CIP Board entered into a new agreement with Galaxy which made significant changes to the 2018 agreement⁴ (“the 2022 Agreement”).

- [5] The CIP Board also approved two projects under the Enterprise Option of the Act: the Bemax Rock Hall Housing Development Project (“the Bemax Project”) and the Galaxy National Infrastructure Improvement Programme (“the Galaxy Project” or “the Infrastructure Option”) (“together the Enterprise Projects”). Sales were suspended for these projects on 1st July 2024 as a result of a Memorandum of Agreement (“MOA”) dated 3rd June 2024 between OECS countries offering citizenship by investment. Cabinet suspended the Bemax Project on 28th October 2024 and terminated its agreement with Bemax on 24th March 2025. On 24th March 2025, the Galaxy Project was suspended and terminated as well.
- [6] According to the defendants, no application for citizenship has been granted by the Board under the Enterprise Projects and no Certificates of Registration have been issued by the Minister under these projects.
- [7] Having suspended and terminated these Enterprise Projects, the Cabinet has mandated a review of the Act and Regulations. However, the claimant alleges that the conduct of the defendants thus far in relation to these projects has crossed into the realm of fraud, gross mismanagement, irrationality and unreasonable conduct.

The Claim and Evidence

- [8] The grounds for the claim are:
- (a) The illegal and/or unlawful and/or unreasonable administration of the CIP by the second defendant generally and in relation to the approved real estate project being developed by Galaxy-the Canelles Resort Project;

⁴ Agreement between the Citizenship by Investment Board and Caribbean Galaxy Real Estate Ltd. dated 1st December 2022.

- (b) The second defendant unlawfully approved certain agreements with Galaxy (the 2022 Agreement) which resulted in an increase in the number of applications to be submitted by Galaxy in the Canelles Resort Project from 700 applications to now 200 per month but not to exceed 5000 over two years;
- (c) The illegal approval or failure to properly regulate and prohibit the grant of citizenship by investment (sale of passports) at discounted prices as low as USD \$65,000 below the legally mandated minimum for CIP investments in approved real estate projects;
- (d) The failure by the second defendant to issue regulations or guidelines for investments in an Enterprise Project in particular the Infrastructure Option, as required under section 7(1)(f) of the Act. Therefore, processing applications under this Option is arbitrary, irrational, unlawful, unreasonable and illegal;
- (e) The first defendant approved the Enterprise Projects without there being any regulations or guidelines establishing its nature, criteria or approval etc. In the case of the Infrastructure Option, no clear indication was stated in the Gazette as to the nature or specifics of this Project and is not one of the classes or categories of Enterprise Projects listed in Schedule 4 of the Regulations, and therefore could not legally or properly be approved by the first defendant as a qualifying investment. Approvals for the Enterprise Projects were published by the Board on 12th September 2024 by Extraordinary Gazette and stated to have a commencement date of 12th January 2024. The same applies to the Bemax Project. The first defendant had no power to make those approvals with retrospective effect as stated in the Gazette;
- (f) The approval of contracts for these Enterprise Projects were made ultra vires the **Public Procurement and Asset Disposal Act**⁵ (“the Public Procurement Act”) or the Finance Act (which I think refers to the **Finance (Administration) Act**.⁶) The projects had to be approved by Cabinet or the Minister responsible for the procurement, but these approvals were not obtained by the first defendant;

⁵ Cap. 15.10, Revised Laws of Saint Lucia 2020.

⁶ Cap 15.01, Revised Laws of Saint Lucia 2020.

(g) In July 2024, the minimum investment amount in relation to the Infrastructure Option was increased from USD\$100,000.00 to USD\$250,000.00. However, due to the retroactive effect of the 12th September 2024 Gazette taking effect from 12th January 2024, applicants who invested USD\$100,000 would still be considered despite the increase to USD\$250,000.00.

[9] At the time of filing of his claim, the claimant applied for an interlocutory injunction to restrain the first and second defendants from approving or granting citizenship by investment to any applicant in respect of (i) an approved real estate project being developed by Galaxy where the full investment sum has not been paid or (ii) any investment into the Caribbean Galaxy Real Estate Limited-National Infrastructure Improvement Programme (the Infrastructure Option) and the Bemax-Rock Hall Housing Development Project (the Bemax Project) - the Enterprise Projects.

[10] The parties filed several affidavits in this matter, which are summarised below. The evidence of the parties is detailed and lengthy. They are not replicated in detail as the determination of an interlocutory injunction does not require the same level of analysis of facts as would be necessary at a trial.

Claimant's First Affidavit – filed 20th February 2025

[11] The following is a short summary of the claimant's first affidavit.

[12] The claimant is the Leader of the Opposition, Parliamentary Representative for the Constituency of Micoud South, Political Leader of the United Workers Party and a citizen of Saint Lucia. He was the Prime Minister of Saint Lucia from June 2016 to July 2021 during which time he was the Minister responsible for CIP. He made amendments to the Regulations and is familiar with the CIP. He describes the CIP's origin, function and purpose.

[13] On 26th March 2018, Galaxy contracted with the Government of Saint Lucia regarding the Canelles Resort Project, with the claimant being the responsible

Minister at that time. According to the claimant, the Canelles Resort Project was to be financed through the sale of Qualifying Investment Units under the CIP. The 2018 Agreement was altered after the claimant was no longer in Government by the 2022 Agreement which he says he only became aware of when it was leaked in December 2024.

[14] The claimant is of the view that the 2022 Agreement only benefits Galaxy and not Saint Lucia. He is of the view that the sale of CIP units through Galaxy is being done at undervalue. He references an email from one Gerard Sansoni as evidence. He also deposed that Galaxy's lawyer, Mr. Thaddeus Antoine who is also a licensed authorized CIP agent and personal lawyer for the first defendant, was involved in the 2022 Agreement preparation, implying that the defendants knew of this scheme and in fact encouraged it. He says this underselling scheme has been linked to investigations in the United States in which Galaxy and the first defendant have been implicated (no evidence in support is provided in this regard). He is critical of contract documents for applicants which do not prohibit these illegal practices. The claimant says that there is another scheme where Galaxy loans applicants a portion of the investment to be paid, whereby the applicant only has to pay US\$50,000, but in fact this is a scheme to create the illusion that the applicant pays the full amount when it is never paid in reality.

[15] In December 2023, the Regulations were amended to include the Infrastructure Option or Option 3 and in July 2024 there was a further amendment to increase the minimum investments required under Option 3. The claimant says there are no regulations or guidelines for the Infrastructure Option and calls the entire arrangements secretive, clandestine and shadowy.⁷

[16] The claimant explains that there is regional controversy relating to the CIP which resulted in the OECS territories that currently operate CIPs signing a Memorandum of Agreement in June 2024 to enhance due diligence and increase transparency.

⁷ Para 47 of claimant's first affidavit.

Criticisms of the CIP in Saint Lucia include misuse of funds by the CIP, lax due diligence (exhibit AC 5 shows company profile for Galaxy Vice President and a registry of a company in Hong Kong where the same person is the owner and director of a due diligence firm), underselling of citizenship, and funds mismanagement.

- [17] The claimant says the first defendant cannot approve projects by Extraordinary Gazette with retrospective effect, in particular the Purported Enterprise Projects of 2024 and further that there is no clear indication in the Gazette of the nature or specifics of the Enterprise Project which Galaxy is expected to carry out. There was an agreement between the first defendant acting on behalf of the Government of Saint Lucia and Galaxy dated 12th January 2024 (“the Galaxy Infrastructure Agreement”) but he has grave and serious concerns about it.⁸ By way of example, the claimant says that Galaxy Infrastructure Agreement is in clear violation of the ‘Roads and Public Works Act’ and also of all good governance principles and procedures.
- [18] There was also an agreement dated 3rd November 2023 with Bemax (“the Bemax Agreement”), which is also flawed in his view. He says that the first defendant cannot enter into these agreements and approve these projects as qualifying investments in the absence of the necessary regulations or guidelines.
- [19] Further, the claimant says that the Bemax Agreement and Galaxy Infrastructure Agreement were not procured lawfully in accordance with the Public Procurement Act or the ‘Finance Act’. These kinds of contracts for infrastructural work require Cabinet or Ministerial approval (Minister responsible for procurement) except in very limited circumstances. He believes therefore that these agreements were entered into by the first defendant in contravention of applicable laws and was beyond the defendants’ lawful authority. The claimant also says that both the Bemax and the

⁸ See para 61 of the claimant’s first affidavit.

Infrastructure Option were being offered in the market prior to the December 2023 amendment to the Regulations which introduced Option 3.

- [20] He describes several blogs and online media posts about corruption exposure within the CIP by US investigations. He says that the Board has failed to lay its report before Parliament according to the statutory period (1 year late for 2022-2023) and 2023-2024 was not laid at the time of filing the claim despite being due by October 2024. The claimant provided several exhibits, contracts, online posts, company registrations and an email about concerns of corruption among others.

Claimant's Second Affidavit – filed 3rd March 2025

- [21] In this affidavit, the claimant attempts to rebut the first defendant's allegation of delay. He says the annual report for 2022-2023 was only filed in October 2024 and the 2023-2024 one was not laid as yet. In September 2024 and November 2024, the claimant says he wrote the Prime Minister but got no response. His inquiry was prompted by a blog of 20th September 2024 from Kenneth Rijock.
- [22] To account for the delay, the claimant says the 2022 Galaxy Agreement was leaked in mid-November 2024 which is when he became aware of it. He also blames the first and second defendants for being uncooperative, stonewalling and causing delay. He also says that it was only in December 2024 that certain critical information became known and it took his attorneys some time to formulate and file the claim. The delay was unavoidable.

The First Defendant's Affidavit in Response – filed 3rd March 2025

- [23] The first defendant is the deputy Prime Minister and Minister of Tourism, Investment and Creative Industries, Culture and Information, and the Minister with responsibility for the CIP.
- [24] This affidavit was only filed in relation to delay regarding the injunction application. The first defendant says that since 21st June 2024, the claimant publicly stated his

intentions to file proceedings and provides details of what he calls threats made over months.

- [25] The first defendant says between June 2024 and January 2025, 1,929 applications were received in relation to the Enterprise Options and 15 in relation to the Real Estate Option. There are 2,845 pending applications in the Enterprise Option and 2,400 pending in the Real Estate Option. He averred that a significant number of third parties will be affected and significant revenue loss, and staff retrenchment would be sustained by the grant of the injunction sought. The first defendant ended by expressing that an expedited hearing would be more prudent rather than an injunction.

The Second Defendant's Affidavit In Response – filed 7th April 2025

- [26] This defendant's evidence was given by the corporate secretary of the CIP Board and Legal Officer of the CIP Unit. According to the corporate secretary's evidence, the Board never received any correspondence from the claimant regarding the CIP. She explains the legislative history of the Act and goes on to say that the Enterprise Projects and their underlying agreements have been suspended and therefore paragraphs 43-103 of the claimant's affidavit would not be addressed at this time.
- [27] The corporate secretary explains that there were two approved projects under the Enterprise Option and Guidelines are on the CIP website. Sales under the Enterprise Projects were suspended from 1st July 2024 due to the MOA signed in June 2024. This was partly due to the fact that the MOA caused the minimum investment amount to change from US\$100,000.00 to US\$240,000.00.
- [28] In September 2024, the CIP Unit was informed that Bemax's beneficial owner was arrested. It learnt that Bemax's ownership had been transferred prior to that, and upon the CIP Unit obtaining a due diligence report on the new owner with which it was not satisfied, it submitted the report to the first defendant on 23rd October 2024.

On 14th November 2024, the CIP Unit was notified that Cabinet suspended the Bemax Project until further notice.

- [29] After the MOA was signed, the CIP Unit wrote to Galaxy and had discussions with them about the change in the minimum investment amount and to propose a reduction in the number of qualifying investments or increase in the investment sum. There was no consensus, and the agreement with Galaxy was terminated. The corporate secretary says no applications under these projects were ever granted.
- [30] The corporate secretary explains that in relation to the Real Estate Option, the developer receives the minimum qualifying investment which is confirmed to the CIP Unit by the approved escrow agent and the CIP Unit receives the administrative fees.
- [31] The corporate secretary says the CIP Unit received a Cabinet Memo dated 26th March 2025 advising that the Cabinet at its meeting on 24th March 2025 had approved (a) suspension of the Galaxy National Infrastructure Improvement Programme; (b) termination of the Galaxy Infrastructure Agreement; (c) termination of the Bemax Agreement and (d) review of the CIP Act and Regulations.
- [32] The corporate secretary speaks to the delay in laying the 2023-2024 Annual Report before Parliament and says that this was due to a change in auditors. Allegations of lax due diligence were denied and she explained the steps taken regarding due diligence which she described as a stringent process. Several guidelines were exhibited to this affidavit. She also speaks to the process for the approval of real estate projects and points out that the 2018 Agreement was executed on 26th March 2018 prior to the approval of the Canelles Resort Project as a qualifying investment which was notified to the CIP Unit and the Board by letter dated 10th December 2018.
- [33] Allegations of underselling of units are denied and the corporate secretary says the Act requires that a minimum qualifying investment be paid before citizenship is

granted and the CIP Unit ensures that is done without exception. She explains that before certificates of registration are granted, the CIP Unit receives a letter from the escrow agent confirming that the minimum qualifying investment has been deposited into the escrow account. According to her, no approval has ever been granted without such confirmation having been received from the escrow agent.

[34] Since the filing of the claim and the documents submitted by the claimant so far in these proceedings, the corporate secretary says she is aware that the first defendant has requested that the CIP Unit undertake an investigation based on these documents.

[35] The corporate secretary says should an injunction be granted in relation to the Canelles Resort Project, the real estate option, there would be grave prejudice suffered in that (i) the jobs of the staff of the CIP Unit would be in jeopardy; (ii) applications in progress would be stopped or paused causing further delay in the processing; (iii) it would affect the CIP Unit's third party due diligence firms, local law enforcement and other partners in the process; (iv) the CIP would suffer reputational risk as this may impute wrongdoing on the part of the programme; (v) this could lead to a loss of market share as applicants may withdraw applications at the hint of any contention surrounding the CIP; (vi) applicants would lose monies already paid to begin processing their applications; and (vii) the Saint Lucian economy would be affected given that CIP makes up approximately 10% of the country's Gross Domestic Product.

First Defendant's Affidavit in Response – filed 7th April 2025

[36] The following is a summary of the first defendant's affidavit in response to the substantive issues. It will be recalled that the first defendant's first affidavit was in relation to delay.

[37] According to the first defendant, the claimant is attacking three contracts:
(i) Agreement dated 1st December 2022 between the Citizenship by Investment

Board and Caribbean Galaxy Real Estate Ltd. (the “2022 Agreement”); (ii) Agreement dated 3rd November 2023 between the Government of Saint Lucia and Bemax LLC. (the “Bemax Agreement”) and (iii) Agreement dated 12th January 2024 between the Government of Saint Lucia and Caribbean Galaxy Real Estate Ltd. (the “Galaxy Infrastructure Agreement”).

- [38] The first defendant says the claimant did not write to him prior to filing his claim or the application for injunction and since the filing on 20th February 2025, much has occurred which could have been explained and obviated the need for these proceedings as it would have given him the opportunity to refute and clarify a lot of the statements made by the claimant in his affidavit.
- [39] The first defendant says he does not grant citizenship by investment. That is done by the CIP Board. He says he can grant citizenship upon review of a rejection from the Board which has never been done to date.
- [40] According to the first defendant, no applicant under the Galaxy approved real estate project (the Canelles Resort Project) has been given citizenship without paying the full investment sum first. Like the corporate secretary, the first defendant says the CIP Unit confirms that the minimum investment amount has been paid into the approved escrow account before granting citizenship to any applicant. He says that sales under the Enterprise Projects were suspended from 1st July 2024 as a result of the MOA between OECS territories.
- [41] The Bemax Project was suspended by Cabinet on 28th October 2024 and no citizenship was granted under this project. The Galaxy Project was suspended by Cabinet on 24th March 2025. No certificate of registration has been signed by this defendant under this project and no application was granted by the Board.
- [42] According to the first defendant, the Galaxy Agreement dated 12th January 2024 was terminated by Cabinet on 24th March 2025. The Bemax LLC Agreement dated

3rd November 2023 was also terminated. He says that Cabinet mandated a review of the Act and its regulations on 24th March 2025.

[43] Contrary to the claimant's allegations, the first defendant says that regulations were published for the Enterprise Option and guidelines were issued by the CIP Unit on the website. The arrangements under this Option were not secretive, clandestine or shadowy.

[44] The first defendant says the claimant's allegations of corruption are unfounded, unverified and politically motivated. The claimant, he says, was the Prime Minister of Saint Lucia from 6th June 2016 to July 2021 and made amendments to the Act which lowered the threshold for applicants in relation to the National Economic Fund. The claimant entered into an agreement with Galaxy dated 26th March 2018 in relation to the Canelles Resort Project. The same escrow agent firm the claimant complains of, is the same firm that was approved in 2019 under his administration. The complaints that there is no oversight of projects by the Minister or CIP is false because this administration simply followed what the claimant's administration put in place.

[45] The first defendant says there were criticisms of underselling while the claimant was in Government, and the claimant addressed this with the media stating it was untrue. The first defendant says when he became Minister under the current Government, discussions with Galaxy revealed the difficulties they had with selling units. The first defendant agreed to make adjustments and considered the amendments to Galaxy's agreement commercially rational.

[46] The first defendant says that the due diligence process undertaken by the Board in approving applications is the same process which was undertaken when the claimant was in Government, except that the Financial Investigation Authority now undertakes background checks and applicant interviews are now undertaken virtually or in person. The escrow agent, the guidelines and the escrow agreements all remain the same. The allegations of fraud (illegal schemes to undersell units,

Thaddeus Antoine involved in preparing the 2022 agreement) are all false and unproven says the first defendant. He says an allegation of a third party investing is different from a fraudulent scheme. Furthermore, on 16th March 2021 under the claimant's then administration, the CIP CEO had no issues with loan financing for the real estate option as long as the money was paid into the escrow account. The same escrow agent then is used now and as late as 17th September 2024 that agent signed a non-affiliation statement confirming no affiliation with the developer, Galaxy.

- [47] The first defendant says delays in laying the Annual Reports before Parliament were explained, the last of which was delayed as they were waiting on the auditors.

- [48] The first defendant says the claimant's allegations of underselling are based on hearsay from one Gerard Sansoni of Aid Consultants but as far as he understands Mr. Sansoni ceased to be a licensed promoter for the Saint Lucia CIP at the time the email exhibited by the claimant was sent. The claimant has not shown that there is any illegal scheme, and his allegations are purely speculative and malicious. After being in receipt of the exhibit AC4 for the first time in these proceedings, the first defendant says he has requested the CIP Unit to investigate this matter.

- [49] According to the first defendant, the applications for CIP are not granted without confirmation of full payment. He reiterates that the Enterprise Projects are now suspended, and the underlying agreements are terminated and makes the point that the rest of CIP would suffer if the injunctions are granted.

- [50] The first defendant speaks to the significant sums generated by CIP, some \$240.3 million between April 2023 and March 2024. These funds go to agriculture, national security, constituency development, cultural programs, education, sports, food subsidy, health care, national infrastructure development, social development programs among other things.

[51] The first defendant says many third parties will also suffer as under the Enterprise Option and Real Estate Option these applicants are in limbo and further the developer, Galaxy is also not involved in these proceedings. He says a speedy trial would have been more appropriate and points out that the claimant has not given an undertaking in damages. The first defendant says there is no need for this injunction as applications for citizenship are not being granted without confirmation of the payment of the minimum qualifying investments, the Enterprise Projects have been suspended, and no applications are being sold or approved under these Projects and the underlying agreements have been terminated.

The Claimant's Third Affidavit - filed 2nd May 2025

[52] The claimant says that the first defendant though not personally granting applications for citizenship by investment, does sign the Certificate of Registration which is an indispensable component of the process. He says the first defendant was aware of his public warnings of litigation and should have responded to his queries. In these circumstances, there was no need for a pre-action protocol letter. According to the claimant, the suspension of the Infrastructure Option after this claim was filed, is a tacit admission of his allegations. He says that Galaxy, RIF Trust and Latitude Consultancy engaged in underselling CIP products in neighbouring jurisdictions and this is sufficient evidence of fraud.

[53] The claimant says that evidence of Cabinet decisions is not the same as evidence of actually suspending programmes, which is also different from termination. In this regard, he says there is no evidence of termination of these Galaxy and Bemax Agreements in writing and further that Cabinet was not a party to the Agreements so they could not terminate them. He says the defendants have provided no official publication or public notice to stakeholders about the suspension of the Enterprise Projects; no statutory instrument was published, and the authorised agents have not been advised of these suspensions.

[54] The claimant says the Court should declare the programmes illegal and not allow the defendants to “find the best way forward”. He criticises the figures and data provided by the first defendant about Galaxy’s projected revenue, construction targets etc. The claimant states that evidence of underselling has been provided and the examples from St. Kitts, Grenada and Saint Lucia suggest that underselling is systemic.

Submissions

[55] The parties then filed written submissions on 16th May 2025. Curiously, the defendants applied to strike out parts of the claimant’s evidence (affidavit filed on 20th February 2025) after submissions had been filed but this application was withdrawn on the date of the hearing of the injunction application.

The Claimant’s Fourth Affidavit - filed 30th May 2025

[56] Interestingly, the claimant filed this fourth affidavit after submissions were filed purporting to respond to the defendants’ written submissions which is not usual procedure. However, Counsel for the first defendant and Counsel for the second defendant agreed to this affidavit’s inclusion if they would be permitted to respond.

[57] The claimant in his fourth affidavit responded to the defendants’ submission that his allegations that there was underselling and illegal practice of loan financing arrangements were unsubstantiated and reliant on hearsay. He said he had direct knowledge of the procedure and regulations for CIPs and that it is also public knowledge that Galaxy, Latitude Consultancy and RIF trust are in illegal schemes in other countries. The schemes involve developer backed loans, kickbacks, buy back guarantees by developers and the use of shell companies to obscure ownership which fraudulently misrepresent compliance with the statutory investment requirements.

[58] The claimant believes that loan agreements are nowhere disclosed by any applicant under the CIP. He exhibits certain articles, redacted affidavits in other judicial review

proceedings in other jurisdictions and a redacted letter from another jurisdiction to investors relative the loan financing arrangements. He suggests that these neighbouring issues must have come to the first defendant's attention.

The Defendants' Joint Affidavit in Reply to new issues raised in the Claimant's Fourth Affidavit - filed 23rd June 2025

- [59] At a hearing on 13th June 2025, the defendants requested permission to reply to new issues raised by the claimant in his fourth affidavit. The Court whilst indicating that the filing of an affidavit in response to submissions was not something known to it, allowed the fourth affidavit and considered the defendants' request and granted leave for an affidavit in response to be filed to the fourth affidavit.
- [60] This affidavit was sworn by the corporate secretary of the second defendant and filed on behalf of both defendants and is stated to be in response to the new issues raised in the claimant's third and fourth affidavits. Letters issued to Caribbean Galaxy Real Estate and Bemax were now exhibited regarding termination of the Agreements. According to the corporate secretary, the Enterprise Option was also removed from the CIP Portal. She indicates that the latest annual report would be laid before Parliament on 3rd July 2025.
- [61] The corporate secretary says the claimant has no evidence to suggest that the defendants were aware of illegal financing arrangements and the defendants are not aware of any illegal financing arrangements between the developer and applicant.
- [62] She also says that the second defendant is unaware of any applicant misrepresenting their financial position and if that were the case their citizenship would be revoked under section 38(1) of the Act. Since the claim was filed and documents exhibited as AC4 regarding RIF Trust were disclosed, the first defendant requested the second defendant to investigate and that is ongoing. Further, the

corporate secretary says there is no prohibition against an applicant obtaining citizenship by way of loan arrangements.

- [63] The corporate secretary concludes by saying that the claimant has provided no evidence of an illegal scheme, or an applicant who has received citizenship after paying less than the minimum qualifying investment.

Further Affidavit of the Defendants

- [64] On 10th July 2025, the defendants filed a joint application to file further affidavit evidence addressing the claimant's disclosure requests. The application was dealt with at the hearing of the interlocutory application and granted, Counsel for the claimant having no objection.

- [65] In this affidavit, the corporate secretary indicates that the 2023-2024 CIP Annual Report was laid before Parliament on 3rd July 2025 and exhibits the report (KH38). She also exhibits the Cabinet Memo dated 24th March 2025 in relation to the suspension of the Caribbean Galaxy Real Estate National Infrastructure Improvement Programme.

Summary of the Claim

- [66] In summary, the claimant alleges that:
- (a) the increase in allocation of qualifying investment units under the Canelles Resort Project is unlawful or unreasonable;
 - (b) Galaxy under the Canelles Resort Project is involved in underselling units and the full amount of the minimum qualifying investments are not being paid into escrow accounts;
 - (c) The Enterprise Projects are illegal because there were no regulations or guidelines, the tendering process was not compliant with the Public Procurement Act, 'Finance Act' and the Roads and Public Works Act, and there was no Cabinet approval for awarding of the contracts;
 - (d) The Canelles Resort Project and Enterprise Projects must be halted.

The Law on Interlocutory Injunctions

[67] Hoffmann J in **Films Rover International Ltd. v. Cannon Film Sales Ltd.**⁹

discussed the dilemma of dealing with interlocutory injunctions:

"The principal dilemma about the grant of interlocutory injunctions, whether prohibitory or mandatory, is that there is by definition a risk that the court may make the 'wrong' decision, in the sense of granting an injunction to a party who fails to establish his right at the trial (or would fail if there was a trial) or alternatively, in failing to grant an injunction to a party who succeeds (or would succeed) at trial. A fundamental principle is therefore that the court should take whichever course appears to carry the lower risk of injustice if it should turn out to have been "wrong" in the sense I have described."

[68] In **National Commercial Bank Jamaica Ltd v. Olint Corp Ltd.**¹⁰ at paragraph 16 Lord Hoffman put into perspective the concerns with which judges must grapple when considering the grant of an interlocutory injunction. The purpose of such an injunction is to improve the chances of the court being able to do justice after a determination of the merits at the trial. The court should take the course which seems likely to cause the least irremediable prejudice to one party or the other.

[69] The seminal authority on injunctions, irrespective of private or public law, is the case of **American Cyanamid Company v. Ethicon Ltd.**¹¹ The following is a summary of its guidance: (a) The court must be satisfied that there is a serious issue to be tried. (b) Unless the evidence available at the hearing of the interlocutory application fails to disclose that the plaintiff has a real prospect of success in his claim for a permanent injunction at trial, the court should then proceed to consider whether the balance of convenience is in favour of granting or refusing the interlocutory relief sought. (c) The governing principle in considering the balance of convenience is whether the plaintiff if successful at trial can be adequately compensated in damages for any loss he would sustain by the defendants' continued acts between the application for an interlocutory injunction and the trial. If damages are an

⁹ [1987] 1 WLR 670 at 680.

¹⁰ [2009] 1 WLR 1405 at 1409.

¹¹ [1975] AC 396.

adequate remedy, then no interim injunction should be granted. (d) However, if damages would not be an adequate remedy, the court should then consider if the defendant is successful at trial, he would be adequately compensated for the loss he sustained from the injunction.

[70] The claimant submits that the considerations set out in **American Cyanamid** are cumulative and the court retains a discretion to weigh the overall risk of injustice in deciding whether interim relief should be granted. However, our Court of Appeal in **Villa Cornucopia Limited v Esther Developments Limited**¹² held that the judgment in **American Cyanamid** contains no more than a set of useful guidelines which the court may apply in many cases. The Court pointed out that ‘there is no rigid four stage or box-ticking approach by which a court is to exercise its discretion when considering whether to grant an injunction. The overarching principle is the statutory power of the court to grant interim injunctions when it is just and convenient to do so.’

[71] In **Chief Fire Officer and Public Service Commission v Felix-Phillip and others**¹³ at paragraphs 33 to 39 Bereaux JA looked at the interplay between public law and interim injunctions. The court cited the case of **R v. Secretary of State for Transport, Ex parte Factortame Ltd. and Ors (No. 2)**¹⁴ and summarised Lord Goff’s speech at paragraph 36 of its decision which stated inter alia that:

- (i) The **American Cyanamid** guidelines are applicable to cases in public law;
- (ii) In cases of a public interest nature, it will be necessary for the court to proceed directly to the issue of balance of convenience;
- (iii) Where the party is a public authority performing duties to the public, the balance of convenience must be looked at more widely and must take into account the interests of the public in general to whom these duties are owed.

¹² BVIHCVAP2023/00001, (delivered 8th December 2023, unreported).

¹³ Civil Appeal S-49 of 2013.

¹⁴ [1991] 1 AC 603.

Whether there is a serious issue to be tried

[72] In **American Cyanamid** the court states:

“It is no part of the Court’s function at this stage of the litigation to try to resolve conflicts of evidence on affidavits as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at trial.”¹⁵

[73] The parties’ evidence in this judicial review proceedings and in this application demonstrate substantial conflicts of fact. Their submissions are equally filled with extensive analysis of the facts which as **American Cyanamid** suggests ought to be left for the trial. The claimant alleges that the defendants are guilty of fraud, illegality and unlawful conduct by way of its operation of the CIP programme. The defendants deny this and deposed evidence as to how their conduct is lawful, approved by Cabinet and in keeping with the Act and Regulations.

[74] The claimant submits that he has presented substantial evidence of potential legal violations and mismanagement within the CIP. At first blush the claimant’s allegations are serious, but upon considering the stark conflicts of fact and the true substance of the claimant’s concerns, it is clear that the claimant has not provided direct evidence of the illegal, fraudulent schemes at play in Saint Lucia and that these allegations are based on circumstances and experience in neighbouring countries which Counsel for the claimant says was best evidence .

[75] The claimant’s contention as he submitted is that the expansion of the existing framework for the Canelles Resort Project occasioned by the 2022 Agreement, and similar arrangements entered into thereafter, were ultra vires the Act and Regulations. The agreements in question are said to have been executed without transparency, without any updated development metrics, and without compliance with the fiduciary and statutory responsibilities imposed on the Minister and the

¹⁵ Ibid at p 407.

Board. The claimant's position is that these allegations, if proven, would demonstrate a fundamental breach of the legislative framework underpinning the CIP. However, when one looks at the evidence in support of the claim and the claim itself, the claimant does not assist the Court by indicating what statutory provisions have been violated.

[76] Lord Diplock in the **American Cyanamid** discussed the purpose of injunctions. He was of the view that it was:

“... to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial; but the plaintiff's need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated under the plaintiff's undertaking in damages if the uncertainty were resolved in the defendant's favour at the trial.”¹⁶

[79] At this stage, I would agree with the defendants about the speculative nature of the evidence in relation to the claimant's allegations that the minimum investments required to be paid into the escrow account are not actually being met by applicants. It is not clear from any of the evidence provided by the claimant that there is underselling. That evidence at this stage is based on what the claimant alleges is happening in other countries and what he has been told by third parties such as Gerard Santoni. It may very well be that a full interrogation of the evidence after full disclosure and cross-examination at trial of the claim may reveal a serious issue to be tried but at this stage it is difficult to find that there is a serious issue to be tried on this allegation to warrant the grant of the injunction sought.

[80] The 2023 Bemax Agreement and 2024 Galaxy Infrastructure Agreements were terminated by Cabinet Conclusion dated 24th March 2025. The claimant in his evidence and in submissions says that the suspension of the Enterprise Projects and the termination of their underlying Agreements by a Cabinet Conclusion does not mean that the agreements have in fact been terminated and further, the

¹⁶ Ibid at p 406.

defendants have not provided any evidence of any correspondence to the Galaxy and Bemax which formally terminated the agreements. The termination letters were exhibited to the affidavit in reply of the second defendant albeit dated after the filing of the interlocutory application and the claim.

[81] The first defendant in submissions points out that a Cabinet Conclusion once adopted is a binding decision of the Executive and has immediate effect on the conduct of Government business. The Enterprise Option remains in the Regulations but there is no operative project to which it can be applied, and no applications are being accepted or approved under that option. The first defendant submits that the claimant's suggestion that the programmes continue in substance despite their termination is legally incorrect. The second defendant submits that the Enterprise Projects having been suspended and the underlying agreements having been terminated means that an injunction that prohibits the defendants from "approving or granting citizenship by any applicant whose investment is ... in respect of the illegal Purported Projects" will be entirely abstract as such applicants can no longer exist. I agree with the first and second defendants' submissions in this regard. With the suspension of the Enterprise Projects and the termination of the associated Agreements, there is no ongoing "injustice" as the claimant avers.

[82] The claimant has alleged illegality of the Enterprise Projects on the basis that the defendants have not complied with the Act but has not pointed to the sections which he says are being violated save for section 7. In relation to the Public Procurement Act, the Finance (Administration) Act, and the "Roads and Public Works Act", he speaks broadly about the first defendant in particular not complying with the legislation but does not point to any specific provision(s) of these Acts which has been or is being violated. I have been unable to find the Roads and Public Works Act referred to by the claimant in his evidence. It may be that it is the **Works and Roads Act**¹⁷ but it is unclear whether this is what is being referred to.

¹⁷ Cap. 8.05, Revised Laws of Saint Lucia 2020.

[83] While violations of legislation may well be serious issues to be tried, the Court cannot presume it knows what the claimant alleges has been breached or not complied with. Direct reference to the relevant sections could have assisted the Court in its assessment of whether there is a serious issue to be tried. Therefore, the Court is of the view that the claimant has not shown at this stage that there is any serious issue to be tried to justify the grant of an injunction as sought.

Adequacy of damages and balance of convenience

[84] The Court is still required to address all aspects of injunction applications, as the interplay between the various factors does not allow for an algorithmic yes or no approach. The issue of damages and balance of convenience is now addressed.

[85] Lord Diplock, when considering the adequacy of damages in **American Cyanamid**¹⁸ said:

“...the court should first consider whether, if the plaintiff were to succeed at the trial in establishing his right to a permanent injunction he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendant's continuing to do what was sought to be enjoined between the time of the application and the time of the trial. If damages ... would be an adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the plaintiffs claim appeared to be at that stage.

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

¹⁸ At p 408.

- [86] In public law, the adequacy of damages plays a much less important role than in matters between private litigants. Both parties appear to agree on this. Therefore, the issue of the balance of convenience is more appropriate in public law.
- [87] De la Bastide CJ in **Jetpak Services Ltd v BWIA International Airways Ltd**.¹⁹ stated that focusing exclusively on whether damages were adequate and quantifiable is a far too narrow approach to be taken when considering if an interim injunction should be granted. His Lordship pointed out that:
- “It is a truism that facts are infinitely variable, and it is dangerous to prescribe or apply a single formula for determining whether an interlocutory injunction should be granted in all cases, unless it is expressed in very broad terms.”²⁰
- [88] If the injunction is granted pending the determination of the claim, it is quite clear that it would serve no useful purpose as the Enterprise Projects and their underlying agreements have been terminated. In addition, while it is true that the claimant is not seeking to injunct the entire CIP Programme, an injunction as sought could impact the CIP Programme as a whole since it could be seen as a sign that there are problems with the programme and weaken applicants’ confidence in it, which could have implications for the local economy.
- [89] The Act at section 32 provides that an application may be considered when all the requisite criteria in relation to financial resources are satisfied by the applicant pursuant to such guidelines contained in Regulations. This suggests that there is already an obligation in the Act for the CIP Unit to ensure that all criteria set out in the legislation is met. An injunction to restrain the defendants from granting citizenship to persons where the full investment sum has not been paid is superfluous in my view as the Act already makes this a requirement. If the claimant fails at the trial and the injunction was allowed until then, based on the foregoing, this could hardly be said to be in the public’s interest.

¹⁹ (1998) 55 WIR 362.

²⁰ Ibid at 368.

- [90] If the injunction is refused pending the determination of the claim, and the claimant succeeds, the damage suffered would be less severe. This is because a determination on the merits of the case in the claimant's favour would allow for certain steps to be taken to hold the wrongdoer accountable and a retrospective review of the damage incurred can be ascertained. The applications granted unlawfully, the escrow accounts that show underpayment, investigations into shell companies, all these things can be ascertained ex post facto. The damage incurred would be somewhat measurable when compared to the former situation. In fact, in the very Act itself, at section 38 it makes provisions for situations where persons obtain citizenship unlawfully and for revocation of citizenship in such circumstances.
- [91] Therefore, considering the balance of convenience, or where the greater risk of injustice would lie, the Court is of the view that the dismissal of this injunction would create the least impact when the case is determined.

The status quo

- [92] The preservation of the status quo is an important consideration in dismissing this injunction application. At the heart of the application is the fact that the claimant wants to stop various aspects of the CIP programme because they are facilitating illegal activity. The defendants have come and said they stopped these programmes, and therefore the concerns are no longer immediate. The Court is satisfied that the status quo would remain the same and there is no need for an injunction in the interim.

Delay and Pre-action Protocols

- [93] The defendants have spoken of the delay in these proceedings. It appears that the claimant has been signalling his intent to file such a claim and injunction for months before he actually did. They are also critical of his non-compliance with pre-action protocols. There is merit in these submissions. The delay in bringing this application for injunction has allowed the alleged unlawful actions of the defendants to continue for months on end albeit the claimant says that they are having such a detrimental impact.

- [94] The claimant in his third affidavit says he made several public statements, held press conferences, sent correspondence to the Prime Minister and received no responses and that the first defendant or the Government had ample opportunity to respond. He therefore says there was no need for a pre-action letter to be sent.
- [95] While the claimant may have sent correspondence to the Prime Minister about his concerns, or raised these issues in public fora, this does not amount to compliance with the Pre-Action Protocols in relation to the filing of claims for administrative orders. Having regard to the evidence before the Court, one cannot help but wonder why these issues could not be ventilated with pre-action correspondence. The defendants have essentially taken steps that negate or address the concerns of the claimant, yet here we are entrenched in litigation. The importance of pre-action protocol adherence cannot be overemphasized.²¹
- [96] The Court observes that compliance with the Pre-Action Protocols is not merely a matter of choice. These protocols were introduced to promote the early exchange of information between parties and to encourage the resolution of disputes without the need for litigation. The Court therefore expects all parties to comply with them in substance. As the Privy Council explained in **Singh v Public Service Commission**,²² while the obligation is not absolute in the sense that failure to comply does not automatically invalidate proceedings, it remains an important part of the modern civil procedure framework. The degree of compliance forms part of each party's overall conduct, to which the Court must have regard when exercising its discretion on issues such as costs or case management.
- [97] Accordingly, although the Court retains a discretion as to what, if any, consequence should follow from non-compliance, a party who disregards the Pre-Action Protocols does so at its own peril. The usual result is not that the claim is struck out, but that

²¹ Re Singh v Public Service Commission 2019 UKPC 18 paragraphs 26 and 27.

²² [2019] UKPC 18.

the non-compliant party may face adverse costs orders or other sanctions. The underlying principle, as emphasised by Lord Briggs in **Singh**, is that the protocols play a significant role in achieving the wider objective of avoiding unnecessary legal proceedings and reducing expense and delay. Compliance should therefore be treated as an integral part of proper pre-litigation conduct, rather than an optional formality. This non-compliance must therefore feature in the determination of costs against a claimant.

- [98] It must also be remembered that an injunction is an equitable remedy and the well-known principle of equity that an interim injunction will not be granted if there is undue delay in applying for the injunction. The Court in **Yulia Gurieva-Motiokhov v The Port Manager of the Port Authority of Antigua and Barbuda et al**²³ said that this is rooted in the maxim, “Equity aids the vigilant, not the indolent” which imposes a duty on the applicant to approach the court without delay when applying for interim relief ahead of trial. The court emphasised that delay does not defeat an application for relief in every case, and each case must be decided on its own facts. Given the ultimate outcome of this application, the Court will not embark on an in-depth analysis of this alleged delay at this stage.

The public interest

- [99] The public’s interest must be considered as part of injunctive relief considerations in public law. As stated above, the public has an interest in government activities operating unhindered. For the claimant to satisfy this Court that the public has an interest in stopping such an important economic generating activity, where Cabinet has stopped the specific aspects that the claimant has complained of, requires more than circumstantial evidence of what is happening in other countries. Allegations of fraud and illegality require a higher threshold of evidence in order to justify such findings. As stated above, the risk of citizenships being granted under the Enterprise Projects is not immediate as the projects have been suspended and the underlying agreements have been terminated.

²³ ANUHCVP2023/0028, (delivered at 22nd November 2023 at para 100.

Disposition

[100] The Court should be extremely cautious about granting an injunction more so when there has been no substantive determination of the matter.²⁴ In all the circumstances and based on the foregoing discussion and the submissions of the parties, the application for interim injunction filed by the claimant on 20th February 2025 is refused. The claimant having been unsuccessful in his application is liable to pay costs to the 1st and 2nd defendants. Though costs of interlocutory applications are usually summarily assessed, given the nature of the claim and both parties' cases being led by silk, it is proportional to order that costs be assessed following the detailed costs assessment procedure, if not agreed by the parties.²⁵ The substantive claim is to be fixed for first hearing so that the Court can seek to move towards determination of claimant's claim on its merits.

Order

- [101] In the premises, the Court orders as follows:
- (i) The application filed by the claimant on 20th February 2025 is refused with costs to the 1st and 2nd defendants to be agreed within 21 days, failing which the costs shall be assessed in accordance with the detailed costs assessment procedure in accordance with CPR 65.13.
 - (ii) The fixed date claim filed on 20th February 2025 shall be scheduled for first hearing on 26th January 2026.

[102] I thank Counsel for their submissions.

Kimberly Cenac-Phulgence
High Court Judge

²⁴ Fisherman and Friends of the Sea v Minister of Planning et al [2017] UKPC 37.

²⁵ Bertrand v Elias [2023] UKPC 34.



By The Court

Registrar