

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2024/0073

BETWEEN

CRD Holdings Ltd.

AND

Mr. Geoffrey Bollers

Mr. Achille Pastor-Ris

Mr. Andrev Kharchenko

Mrs. Fulvia Sancin De'Longhi

Mr. Roger M. Cave

Before: The Hon. Mde. Justice Gertel Thom (Ag.) High Court Judge

Appearances

Mr. Ian Benjamin, Senior Counsel and with him Mr. Michael Koeiman and Mrs. LaKeisha John-Farrell of Denton Delany Law Firm of Counsel for the Claimant
Mr. Joseph Delves of Counsel for the 2nd Defendant
Mr. Sten Sargeant of Counsel for the 3rd, 4th and 5th Defendants

2024: June, 7

June, 21

JUDGMENT

Thom, J (Ag.): The Claimant CRD Holdings Ltd. made an application for an interim injunction against all of the Defendants.

Background

- [1] The brief background to the application is that the Claimant is a company registered in the Bahamas. It is the developer of a large area of land on the Island of Canouan in the State of St. Vincent and The Grenadines called “The Grenadines Estate” which consists of several private homes, a luxury hotel and several undeveloped lots.

- [2] There is a “Home Owners Association” called “The Grenadines Estate Community Association Ltd. (GECA). GECA is responsible for the administration and management of “The Grenadines Estate”. Its share capital consists of Class “A” shares and Class “B” shares. All home owners are members of GECA and hold Class “A” shares. Only the Claimant holds Class “B” shares.

- [3] In January 2018 both the Claimant and GECA were struck off the Companies Register for failing to file annual returns and to pay annual filing fees and penalties. GECA was restored to the Companies Register in January 2024. The Board of GECA then passed several resolutions on February 6, 2024 including a resolution appointing the 3rd to 5th Defendants as Directors of GECA subject to ratification at the Turnover Meeting, and that notice be served on the shareholders for a “Turnover Meeting”. The Turnover meeting was eventually set for 17th May, 2024 and notices sent to shareholders.

- [4] The first Defendant served as a Director of GECA from its incorporation in October 2007 until February 29, 2024, when he resigned.

- [5] The second Defendant is a Director of GECA. In his affidavit evidence he has indicated his intention to resign from the position when new Directors are appointed. The third Director, Mr. Saladino resigned on 6th February, 2024 and he died on 13th April, 2024.

- [6] The third to fifth Defendants are all persons who were appointed as Directors of GECA on 6th February, 2024 subject to ratification at the “Turnover Meeting” pursuant to section 6 of the By-Laws of GECA.

- [7] On 29th April 2024 the Claimant filed a claim against the Defendants in which it sought several reliefs including the following:

1. An Order of the Court pursuant to Section 241 (3) (a) of the Companies Act 1994 on account of the Defendants' acts and omissions which are oppressive and unfairly prejudicial to the Claimant's interests as a shareholder and major investor in The Grenadines Estate Community Association Ltd (GECA).
2. An Order of the Court pursuant to Section 244 (1) and 244 3 (a) of the 1994 Act requiring GECA's share capital register and records to be rectified to accurately reflect the Claimant's shareholding and other interests in GECA.
3. An Order of the Court pursuant to section 244 (1) and 244 (3) (a) of the 1994 Act requiring that GECA's register of Directors and records to be rectified to reflect the (i) removal of Mr. Antonio Saladino, Mr. Achilles Pastor-Ris, and Mr. Geoffrey G. Bollers from the Board of GECA and (ii) the appointment of Mr. Colm Casey, Mr. John McGreal and Mr. Patrick Smyth as Directors of GECA'S Board.
4. A permanent injunction restraining the Defendants from taking any step to convene a "Turnover Meeting" within the meaning of GECA's By-Laws.
5. A permanent injunction restraining the Defendants from taking any steps to appoint any Director and/or ratify the appointment of any Director to GECA's Board including the Third to Fifth Defendants.
6. A permanent injunction restraining the Defendants from taking any steps purporting to cancel or issue any shares (whether Class "A" or Class "B") in GECA.

[8] On the said April 29 2024, the Claimant made an application for an interim injunction against the Defendants and sought several orders including the following:

1. The Defendants shall not take any steps to convene the "Turnover Meeting".
2. The Defendants shall not take any steps to effect the transfer of the leasehold in the "Common Areas" to GECA.
3. The Defendants shall not take any steps to appoint any Director and or ratify the appointment of any Director to GECA's Board, including the Third to Fifth Defendants.
4. The Defendant shall not take any steps to cancel all existing Class "B" shares in GECA.

[9] On the direction of the Court, Learned Senior Counsel for the claimant and the defendants filed detailed written submissions. At the hearing, Mr. Bollers who appeared in person and Mr. Delves who appears for the second defendant informed the Court that they adopt and rely on the submissions of Mr. Mendes SC who appeared for the 3rd to 5th defendants.

[10] In the written submissions the Defendants objected to the grant of an injunction on the following grounds:

- (a) Abuse of process for failure to comply with CPR 11.7 in that the Claimant failed to outline the grounds of the application in the application.
- (b) CRD Holdings has no standing to bring the Claim pursuant to Sec 357 (1) of the Companies Act 1994.
- (c) It is not just and convenient to grant an injunction.

[11] At the Oral hearing, the Defendants did not pursue the first objection - the abuse of process point. The Claimant had since filed an amended application which outlined the grounds of the application.

Standing

[12] The Defendants submitted as a preliminary issue, that pursuant to section 357 (1) of the Companies Act, the Claimant lacks standing to bring and pursue the claim because the Claimant being an external company was struck off the Register of External Companies and has not been restored.

Section 357 (1) reads as follows:

“An external company that is not registered under this Act may not within the State maintain any action, suit or other proceedings in any court in respect of any contract made in whole or in part in the State in the course of or in connection with the carrying on of any business by the company in the State.”

[13] It is not disputed that the Claimant is incorporated in the Bahamas and was registered in Saint Vincent and the Grenadines as an external company. The Claimant was struck off the register of companies on the 18th of January, 2018 for failure to file annual returns, pay filing fees and penalties, and to date it has not been restored.

[14] The Defendants contend that the Claimant's claim and the application are in respect of a contract being the By-Laws of GECA, which was made in St. Vincent and the Grenadines in the course of or in connection with the carrying on of business in St. Vincent and the Grenadines and are therefore barred under Section 357 (1). The claim and the application should therefore be struck out. They relied on Halsbury's Laws of England Vol. 7 paragraphs 140-142 and several Canadian Authorities including **Fidelity Management Research Co. v Gulf Canada Resources Ltd** SCR [1967] 233; **Dusanjh v**

Appleton [2017] BCSC 340 and **Whittall v Vancouver Lawn Tennis and Badminton Club** [2005] BCCA 430. These authorities make the general statement that By-Laws are a contract between the company and the members. These authorities do not address whether By-Laws fall within the phrase “any contract” in legislative provisions similar to section 357(1) of the St. Vincent Act.”

[15] The Defendants also relied on the case of **Glenford Roberts v SK Nevis Resort LLC** NEVHCV 2015/0132 a decision of the High Court of St. Christopher and Nevis where an application to set aside a default judgment by an external company which was not registered in Saint Christopher and Nevis was dismissed for among other reasons, that it was barred by section 357(1) of the Companies Act which is in the same terms as the St. Vincent Act. The claim related to a contract of employment in which the Claimant contended that he was unfairly dismissed.

[16] The Claimant in response submits that its claim is based mainly on statutory reliefs pursuant to Section 241 and 244 of the Companies Act. Mr. Benjamin SC submitted that the applicable legal principles are those outlined in Andrew Burgess: **Commonwealth Caribbean Company Law (Cavendish 2013); SCP Gestion SAS and Ors v Francione Bakery Ltd Ors claim No. ANU HCV 2010/0340; and Nature Island Investment Company Ltd v Marpin Telecoms and Broadcasting Ltd (In Receivership) Civil Appeal No.1/2005** (Dominica) paragraphs 6-8.

[17] Learned Senior Counsel submitted that the proposition of the Defendants that the By-Laws of a company constitute a contract is not settled law. Counsel acknowledged that By-Laws have been referred to by the Court as contracts, but Counsel urged the Court to view such statements as an analogy rather than a principle of law. Senior Counsel submitted further that St. Vincent and the Grenadines Companies Act does not contain a similar provision as sec 33(1) of the UK Act which reads:

“The provisions of a company’s constitution bind the company and its members to the same extent as if there were covenants on the part of the company and of each member to observe those provisions.”

[18] In **SDP Gestion SAS and Ors v Francione’s Bakery Limited and Ors**, on which the Claimant relied, the Petition was filed pursuant to section 241 of the Companies Act of Antigua which is in similar terms to the St. Vincent

provision. The parties had agreed to operate a “French bakery” in Antigua. The petitioners alleged among other things that the business was not properly managed by the Third respondent the General Manager of the 1st Respondent. The Petitioners alleged that the business of the Company had been conducted in a manner that was oppressive, unfairly prejudicial to the petitioners, or unfairly disregarded their interests and that the powers of the Director of the first defendant have been exercised in a manner that was oppressive unfairly prejudicial and which unfairly disregarded their interest being the minority shareholders of the Company.

- [19] The Third respondent advanced a preliminary point in the same terms as the present Defendants, that the Petitioners being unregistered Companies were barred by section 357 (1) of the Antigua Companies Act which is in the same terms as the St Vincent Act, from instituting or maintaining an action pursuant to any contract. It was common ground that the Petitioners were unregistered external companies. The Learned judge having referred to **Andrew Burgess: Caribbean Company Law** found at paragraph 64 as follows:

“64. In any event, section 357 (1) of the Companies Act only applies if the action, suit or other proceedings is in respect of a contract. The Petitioners have filed the Petition pursuant to Section 241 of the Companies Act complaining of oppressive conduct. As deposed to by Alfred Peters in paragraph 23 of his Affidavit filed on the 12th January 2011, the Petitioners right of action is derived from statute and not from contract. Learned Counsel for the Petitioners contends that this action is not only in respect of a contract and the Petitioners do have locus standi, notwithstanding a failure to register as an external company. I agree.”

- [20] The Learned judge dismissed this ground of the application.

In **Bratton Seymour Service Co. Ltd v Oxborough** [1992] BC LC 693 the English Court of Appeal considered whether it was possible to imply into articles of association of a company set up to manage a development of flats a term that shareholders of flats should make contributions for the upkeep of the common areas of the development. In so doing the Court considered the nature of articles of associations which are now referred to as By-Laws. The Court was unanimous that articles of associate was a contract of a peculiar nature, it was a statutory contract. It was not the normal Contract such as where all parties had to consent for there to be any alteration. Alterations are done by special resolution.

- [21] Dillon LJ stated at p.696:

*"I see insuperable difficulties in the way of any such implication into the articles of association of the company. It is said, "Oh, the articles constitute a contract between the Company and its members, and so you can imply any term into such a contract as you can imply any term into any other contract in order to give business efficacy." But the articles of association of a company differ very considerably from a normal contract. They are documents which have statutory force. If a company limited by shares, chooses to have articles of association instead of merely relying on Table A, then those articles have to be registered. These articles were registered when the company was incorporated. The articles thus registered are one of the statutory documents of the company open for inspection by anyone minded to deal with the Company or to take shares in the Company. It is thus a consequence, as was held by this court in **Scott v Frank F Scott (London) Ltd** [1940] 3AER 508, [1940] Ch.794, that the court has no jurisdiction to rectify the articles of association of a company, even if those articles do not accord with what is proved to have been the concurrent intention of the signatories of the memorandum at the moment of signature.*

[22] Steyn LJ stated at p.698:

"Section 14 (1) of the Companies Act 1985 provides that "the memorandum and articles, when registered, bind the company and its members to the same extent as if they respectively had been signed and sealed by each member". By virtue of section 14 the articles of association became, upon registration, a contract between a company and members. It is, however, a statutory contract of a special nature with its own distinctive features. It derives its' binding force not from a bargain struck between parties but from the terms of the statute. It is binding only insofar as it affects the rights and obligations between the company and the members acting in their capacity as members...Similarly, if the provisions are not truly referable to the rights and obligations of members as such it does not operate as a contract. Moreover, the contract can be altered by a special resolution without the consent of all the contracting parties. It is also unlike an ordinary contract, not defeasible on the grounds of misrepresentation, common law mistake, mistake in equity, undue influence or duress. Moreover, as Dillion LJ has pointed out, it cannot be rectified on the grounds of mistake".

[23] The applicant also relied on the following passage from **Andrew Burgess: Commonwealth Caribbean Company Law**- p.33 where the learned author

referred to the Companies Act of several Caribbean countries including St. Vincent and the Grenadines Section 357 (2) and opined:

“If an unregistered external company becomes registered or has its registration restored as the case may be, the company may then maintain an action, suit or other proceeding in respect of a local contract as though the company had never been disabled. This is so whether the contract was made, or the proceeding instituted by the Company before the date the Company was registered or had its’ registration restored.”

- [24] This was also the view of Gordon JA in considering the equivalent provision in the Dominica Act in **Nature Island Investment Co. Ltd v Marpin Telecoms and Broadcasting Limited**.

Discussion

- [25] It is common ground that the Claimant was struck off the Companies Register in January 2018 and has not been restored to date.
- [26] Having reviewed the authorities relied on by both the Defendants and the Claimant, in my view there is a common theme that the By-Laws are a contract between the Company and its members. The fact that the contract is described in some authorities as being of a special nature is of no moment when considering the effect of section 357(1).
- [27] The Companies Act permits external companies to conduct business in St. Vincent on the condition that they are registered under the Companies Act. An integral aspect of conducting business is the ability to enforce contractual rights. On some occasions, to do so require the intervention of the Court. However, Section 357(1) bars a company that is not registered or which is no longer registered from seeking relief from the Court in respect of any contract.
- [28] In my view section 357(1) is very broad. It bars relief under any contract. It does not exclude any type of contract, statutory or otherwise. The effect of the section is in order to seek the Court’s protective and enforcement powers of its contractual rights, a company must be registered in the jurisdiction of the Court. I note that the Claimant did not adduce any authority which shows that section 357(1) does not apply to By-Laws of a company.

- [29] This is not the end of the matter. The Claimant contends that its claims are not based on contract but are claims based on statutory relief pursuant to Sections 241 and 244 of the Companies Act. Learned Senior Counsel referred to **Andrew Burgess: Commonwealth Caribbean Company Law** at p.330 where the learned author explained the effect of the provisions as follows:

“These provisions are not a codification of the common law, rather, they are intended to confer upon individual shareholders and other complainants a remedy which removes the impediments of the rule in Foss v Harbottle [which held that only the company itself could sue its directors for a breach of their duty to it] and ensures that they are insulated from conduct that is oppressive or unfairly prejudicial or that unfairly disregards their interests.”

- [30] The sections enable a shareholder to seek relief for conduct of directors that has been exercised in oppressive or unfairly prejudicial manner; or unfairly disregarded the interests of the shareholder. Section 357(1) has no application to these claims, it is restricted to claims in respect of any contract. I will therefore dismiss the preliminary point on standing.

The Injunction

- [31] The principles governing the grant and refusal of an interlocutory injunction are well settled and are not in dispute. The Court's jurisdiction to grant an interlocutory injunction is outlined in Section 24 (1) of the Eastern Caribbean Supreme Court (St. Vincent and the Grenadines) Act. The Section reads as follows:

“An injunction may be granted by an interlocutory order of the High Court or of a Judge thereof in all cases in which it appears to the Court or Judge to be just or convenient that the order should be made.”

- [32] The principles which guide the court in the exercise of its discretion are the those set out in **American Cyanamid Co. v Ethicon Ltd** (1975)Ac 396 and restated by Lord Hoffman in **National Commercial Bank Jamaica Ltd v Olint Corporation Ltd**. [2009] 1WLR 1405 in particular paragraphs 16-19. They read as follows:

*“16...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. At the interlocutory stage, the court must therefore assess whether granting or withholding an injunction is more likely to produce a just result. As the House of Lords pointed out in **American***

Gyanamid Co v Ethican Ltd [1975] AC 396, that means that if damages will be an adequate remedy for the plaintiff, there are no grounds for interference with the defendant's freedom of action by the grant of an injunction. Likewise, if there is a serious issue to be tried and the plaintiff could be prejudiced by the acts or omissions of the defendant pending trial and the cross-undertaking in damages would provide the defendant with an adequate remedy if it turns out that his freedom of action should not have been restrained, then an injunction should ordinarily be granted'.

17. In practice however, it is often hard to tell whether either damages or the cross-undertaking will be an adequate remedy and the Court has to engage in trying to predict whether granting or withholding an injunction is more or less, likely to cause irremediable prejudice (and to what extent) if it turns out that the injunction should not have been granted or withheld, as the case may be. The basic principle is that the Court should take whichever course seems likely to cause the least irremediable prejudice to one party or the other. This is an assessment in which, as Lord Diplock said in **American Cyanamid** case [1975] AC 396, 408:

"It would be unwise to attempt even to list all the various matters which may need to be taken into consideration in deciding where the balance lies, let alone to suggest the relative weight to be attached to them."

18. Among the matters which the Court may take into account are the prejudice which the plaintiff may suffer if no injunction is granted or the defendant may suffer if it is; the likelihood of such prejudice actually occurring; the extent to which he may be compensated by an award of damages or enforcement of the cross-undertaking; the likelihood of either party being able to satisfy such an award; and the likelihood that the injunction will turn out to have been granted or withheld, that is to say, the court's opinion of the relative strength of the parties' cases.

19. There is however no reason to suppose that in stating these principles, Lord Diplock was intending to confine them to injunctions which could be described as prohibitory rather than mandatory. In both cases, the underlying principle is the same, namely, that the court should take whichever course seems likely to cause the least irremediable prejudice to one party or the other: What is required in each case is to examine what on the particular facts of the case the consequences of granting or withholding of the injunction is likely to be. If it appears that the injunction is likely to cause irremediable prejudice to the defendant, a court may be reluctant to grant it unless satisfied that the chances that it will turn out to have been wrongly granted are low; that is to say, that the court will feel, as Megarry J said in

Shepherd Harris Ltd v Sandham [1971] Ch. 340, 351, “a high degree of assurance that at the trial it will appear that the injunction was rightly granted”.

- [33] It is also not in dispute that before the above principles are engaged, the Claimant must show in the words of Chief Justice Dame Janice Pereira (Retired) in **Suzanne P.Gryspeerd et al v Clico Investment Bank Limited. (In Compulsory Liquidation)** (SLU HCVAP 2017/0016), delivered 8th September 2017, unreported:

“This clearly suggests that the Claimant must be able to demonstrate that his case discloses a serious issue to be tried or put another way, that he has a real prospect of succeeding in his claim for a permanent injunction at the trial as a threshold issue as it is only where that threshold is met that the court is then required to consider where the balance of convenience lies.”

- [34] Mr. Mendes S.C. submits firstly that there is no serious issue to be tried since the Claimant’s claims are misconceived and based on an incorrect understanding and or wrong interpretation of the By-Laws. Alternatively, if the court finds there is a serious issue to be tried, the Claimant will not suffer any harm if the “Turnover Meeting” is held. Further, the balance of convenience weighs against the grant of an injunction.

Mr. Benjamin SC in his written and oral submissions contends that the Claimants of oppressive conduct and unfair prejudice claims raise serious issues to be tried by the Court. He identified these issues to be:

- (a) The correct interpretation to be placed on Section 6 of the By-Laws in particular Section 6: 2 and 6: 5.
- (b) Whether the Claimant has been disenfranchised as shareholder by the first and second respondents failure to amend GECA’s share capital to reflect the Claimant’s entitlement to Class “A” and Class “B” shares.
- (c) The conduct of the respondents as outlined in the statement of claim and the affidavit in support inclusive of the failure of the 1st and 2nd Respondent to amend the records of GECA to reflect the Claimant’s Class “A” and “B” shareholding of the Claimant in GECA’s share capital schedule constitute oppressive conduct within the meaning of Section 241 of the 1994 Act.

- [35] Mr. Benjamin SC further submits that the above issues are not spurious, vexatious or otherwise unsuitable for trial. He also contends that the By-Laws must be interpreted within a commercial context and in so doing, the Court would be required to consider evidence of the commercial context. Learned

Counsel relied on paragraphs 15-23 in the case of **Arnold v Britton** [2015] 2WLR 1593.

- [36] In relation to adequacy of damages, Learned Senior Counsel submitted that the claims are not in relation to causes of action in respect of which injury can be adequately compensated by damages. Learned Counsel relied on the decision of the Barbados Court of Appeal in **Ansa McAL (Barbados) Limited and Bank Holdings Limited v Slu Beverages Ltd**, CivApp. No.21 of 2015 at paragraphs 111-118 where Burgess JA opined that claims for oppressive remedy constitute an “exceptional” class of claims. These types of claims cannot adequately be compensated in damages. Further the loss of voting rights attached to the Class “B” shares cannot adequately be compensated in damages.
- [37] In relation to the balance of convenience, Mr. Benjamin SC submitted that having regard to all of the circumstances, the grant of an interim injunction to preserve the status quo is the least risk of injustice. It would be extremely difficult if not impossible to reverse the effect of the Turnover Meeting. The prejudice to the claimant would be severe. GECA would not be left with an inquorate Board as contended by the defendants since the claimant as developer has by resolution appointed Mr. Colm Casey, Mr. Ian McGreal and Mr. Patrick Smyth to the Geca Board.
- [38] Mr. Mendes SC in response submitted that while the Claimant’s case falls under five broad headings being:
- (a) The Claimant’s alleged and the alleged disavowal of its status as a shareholder.
 - (b) The Defendant’s alleged illegal attempt to trigger the “Turnover Date” and change GECA’s governance scheme.
 - (c) The Defendant’s alleged clandestine and illegal attempts to hijack board appointments.
 - (d) The Defendants alleged attempts to “extinguish” the Claimant’s entitlement to Class “B” shares and dilute the Claimant’s concentration of power.
 - (e) The Defendant’s alleged intention to improperly appropriate the Claimant’s leasehold interest in the “Common Areas”;
- [39] The Claimant’s claims are misconceived and are based on an incorrect understanding and or wrong interpretation of the By-Laws.
- [40] Learned Senior Counsel further submitted that the Claimant has not adduced any documentary or other evidence to demonstrate ownership of the residential lots claimed. There is also no evidence that the Claimant has

complied with the provisions of Section 4.1.5 to 4.1.8 of the By-Laws. Also the Claimant was struck off the Register in 2018 and was only restored in January 2024.

- [41] Learned Senior Counsel further submitted that on a proper construction of Section 6.2, the need for GECA to be without deficit for 12 months is misconceived for two reasons. Firstly, the requirement only applies to subparagraph (iii). It does not apply to subparagraphs (i) and (ii). The respondents also deny that GECA was operating at a deficit and was supported by funding from the Claimant. Learned Senior Counsel referred to the affidavit evidence of Pastor-Ris that funds collected from the home owners is sufficient to meet the cost of maintenance of the common areas. Further the Claimant has not provided any evidence in support of its contention that damages would not be an adequate remedy.
- [42] Learned Senior Counsel also submitted that the balance of convenience is in favor of the defendants. It would be unfair and prejudicial to the owners if GECA is left with only one validly appointed Director to represent the interest of the Villa Owners since Mr. Saladino who resigned on the 29th February 2024, died on April 13, 2024. If the injunction is refused the consequences of the “Turnover Meeting” will take effect, but no irremediable harm would be suffered by the Claimant, as the consequences are outlined in the By-Laws which form part of the shareholders agreement and the Claimant was required to convene the Turnover Meeting several years ago.

Discussion

- [43] The crux of the Claimant’s application is to prevent the holding of the Turnover Meeting referred to in Section 6 of the By-Laws of GECA until the Claimant’s claims are determined by the Court.
- [44] As stated earlier the applicable principles are well settled and are not in dispute. The Court has a broad discretionary jurisdiction to grant or refuse an interlocutory injunction where it appears to be just and convenient to do so. In order for the Court to exercise its discretion to grant an interlocutory injunction, the applicant must have a serious issue to be tried. Conversely, where there is no serious issue to be tried, no injunction should be granted.
- [45] As stated earlier, on February 6, 2024, the “new” Board of GECA passed a resolution to hold the Turnover meeting referred to in section 6 of the By-Laws of GECA. The parties join issue on the correct interpretation of the By-Laws, when the Turnover Meeting is required to be held, whether the time for convening the meeting has already elapsed, whether there is any pre-condition to be satisfied, and who should convene the Meeting. This requires

the Court to determine the correct interpretation of the By-Laws and if there is a pre-condition and to make factual findings on whether the pre-condition has been met. The affidavit evidence is conflicting. There is also documentary evidence on which the parties disagree in relation to the funding of GECA which would need to be examined carefully. Also, whether the Claimant has met the requirements for the issue of the Class A and B shares is a factual issue on which there is conflicting affidavit evidence.

[46] I am reminded of the statement of Lord Diplock in **American Cyanamid v Ethicon Ltd** at p. 396 where Lord Diplock stated: "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 main argument of either party may ultimately depend nor to decide difficult questions of law which call for mature consideration. These are matters to be dealt with at the trial."

[47] I am also reminded that where there is no serious issue to be tried as the Court of Appeal found in the case of **Suzanne P Gryspeerd et al v Clico Investment Bank Limited (In Compulsory Liquidation)** SLUHCVP2017/0016 the application should be dismissed.

[48] In my view the present case is distinguishable from **Suzanne P Gryspeerd** where the learned judge found and the Court of Appeal agreed that there was no ambiguity in the Deed of Settlement and there was nothing in the Deed of Settlement which gave any indication that the Mortgage Deed pursuant to which the receiver was appointed, was superseded by the Deed of Settlement. The present case involves both finding of law and fact in circumstances where there is conflicting affidavit evidence.

Damages

[49] I am more persuaded by the submissions of the Claimant. I agree with the reasoning of Burgess JA as he then was in **ANSA** on which the Claimant relied. Having regard to the types of rights which would be lost by the Claimant if the Turnover Meeting is held including the loss of the Class "B" shares and the ability to appoint the majority of the Directors of GECA, in my view damages would not be an adequate remedy.

Balance of Convenience

[50] Having considered the submissions of the parties, in my view the balance of convenience lies in favor of the Claimant. It is not disputed that if an injunction is not granted the Turnover Meeting will take place and the consequences of the Turnover Meeting are not in dispute. The Claimant would lose the right outlined in his written and oral submissions including the Class B shares. This would be irreversible. On the other hand, if an injunction is granted the Turnover Meeting would be postponed, the defendants would not immediately get managerial control of GECA, they would have to await the outcome of the trial of the matter. This wait would not be inordinate as the Court has indicated its willingness to give the matter an expedited hearing.

[51] In my view the granting of an injunction in this case is more likely to produce a just result. The granting of an injunction is likely to cause the least irremediable prejudice. However I am of the opinion that an injunction should not be granted against Mr. Graham Bollers. He is no longer a Director of GECA. He has resigned effective 29th February, 2024. Notwithstanding Mr. Bollers resignation in its written reply to submissions at paragraph 34, the Claimant submitted:

“Because the Respondent’s actions were shrouded in secrecy it is not yet clear what role Mr. Bollers played, and may continue to play, in the context of this dispute that will have to be determined at trial, including after disclosure and cross-examination. However, what is clear at this stage is that Mr. Bollers was a central figure in the various actions taken against the Applicant. Indeed, his signature can be found on many of the key documents, including the notices filed at CIPO purporting to appoint the Third to Fifth Defendants. Further, as noted above the evidence shows that earlier this year Mr. Bollers was evasive and non-communicative when pressed by the Applicant about its share in GECA, and failed to disclose the actions that were being taken by the GECA Board to further disenfranchise the Applicant. Including for these reasons, Mr. Bollers is central to the conspiracy and oppressive claims advanced by the Applicant. It is right that he be subject to any interim order issued by the Court, not least because it is not clear what informal role Mr. Bollers might play in procuring a Turnover Meeting or generally supporting the various Respondents in their efforts against the Applicant.”

[52] When Mr. Benjamin SC was passed at the oral hearing, the submissions did not improve. I am not persuaded. When the grounds of the application and the terms of the draft orders sought are considered, the interim injunction is sought to prevent the holding of the Turnover Meeting before the matter is

heard. Mr. Bollers is no longer a Director of GECA, there is no evidence that he is an owner at The Grenadines Estate. He has no legal duty to discharge as a director. The submissions of what role Mr. Bollers might play in procuring the holding of a Turnover Meeting are at best highly speculative. In Mr. Bollers' case it is just and convenient to refuse the application for an injunction. The Claimant is not likely to suffer irremediable prejudice if no injunction is granted against Mr. Bollers. I will therefore dismiss the application against Mr. Bollers.

CONCLUSION

- [53] For the reasons stated above, the application for an interim injunction against the first defendant is dismissed. An interim injunction is granted against the 2nd to 5th Defendants restraining them from taking any steps to convene the "Turnover Meeting", effect the assignment of the leasehold in the Common Area to GECA, appoint any Director and or ratify the appointment of any Director to GECA's Board including the third to fifth Defendants, or cancel all existing Class "B" shares in GECA. The interim injunction shall continue until the hearing and determination of the claim or until further order of the Court. The issue of costs will be addressed at the hearing and determination of the Claim.

Gertel Thom
HIGH COURT JUDGE (Ag)

By The Court

Registrar