

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

SAINT CHRISTOPHER AND NEVIS

NEVHCVAP2022/0009

BETWEEN:

[1] NOTRE DAME INVESTMENTS LIMITED

[2] ANGELA DIALA LIST

Appellants

and

[1] ROWNTRY TRADING LIMITED

[2] PAUL LIST

[3] BCM INTERNATIONAL LIMITED

Respondents

Before:

The Hon. Mr. Mario Michel

The Hon. Mde. Margaret Price Findlay

The Hon. Mr. Trevor M. Ward

Justice of Appeal

Justice of Appeal

Justice of Appeal

Appearances:

Mr. Delano Bart, KC with him Ms. Midge Morton and Mr. Errol Williams for the Appellants

Ms. Jean M. Dyer for the Respondents

2023: November 23;

2024: June 19

Interlocutory Appeal - Interim injunction – Whether judge erred in refusing to grant appellants’ application for interim relief – Exercise of judicial discretion - Whether the judge’s ruling fell outside the generous ambit within which reasonable disagreement is possible – Whether judge conflated considerations for final and interim injunctions - Interim declarations - Whether judge incorrectly conflated the test for an interim injunction and an interim declaration which are two distinct interim reliefs - Whether judge arrived at a wrong conclusion as a result of conflating the two tests

The appellants, Notre Dame Investment Limited (“Notre Dame”) and Angela Diala List (“Mrs. List”), are a company incorporated in the island of Nevis and a Ghanaian businesswoman, shareholder

and director of Notre Dame, respectively. Mrs. List also served as a director of the third respondent BCM International Limited ("BCM"). The second respondent, Paul List ("Mr. List") is the estranged husband of Mrs. List. He is said to be 'the operating mind and will' of the first respondent, Rowntry Trading Limited ("Rowntry"). Rowntry is said to be registered as the majority shareholder of BCM.

On 7th December 2021, Mr. List filed a claim form against several parties, including the appellants, seeking several reliefs including declarations that Mrs. List breached her fiduciary duties to the entity BCM Investments Limited. This was subsequently followed by an amended claim form and statement of claim filed on 10th March 2022, expanding on previous allegations.

On 7th February 2022, the appellants filed an ancillary claim alleging that Mr. List and 'his cohorts' fraudulently planned to remove Mrs. List as a director and one Mr. Jonathan Adongo as Administration Manager, in order to perpetrate fraud against BCM. Mrs. List alleged that from 2001 to 2020 she served as a director of BCM, in charge of its finance and administration. She also alleged that she was BCM's de facto Chief Executive Officer ("CEO"), with Mr. List only acting as CEO on paper. Mrs. List claimed that on or about 3rd October 2020 she served on Mr. List, a written resignation in her capacity as director. However, Mr. List in his capacity as CEO of BCM Ghana, BCM and its subsidiaries, rejected her resignation on or about 5th October 2020. Mrs. List, in full reliance on this representation and subsequent discussions with Mr. List, retracted her resignation and continued to serve in her previous roles for and on behalf of the BCM Group of companies, including BCM.

Mrs. List averred that on 18th March 2021, she received via email a signed letter by Mr. List purporting to accept her resignation from BCM with effect from 1st February 2021. Mrs. List claimed to have responded to Mr. List, reminding him of his prior rejection of her resignation in October 2020. As such she continued executing her duties as director of BCM. In addition to this she alleged that on or about 13th June 2021, Mr. List assaulted Mr. Adongo in the offices of BCM to unlawfully gain access to the records of BCM, presumably to deny the appellants of their rights and interests in BCM and to alter the records of BCM to her detriment. Mrs. List claimed to have received a copy of a letter dated 28th December 2021, signed by attorneys for Mr. List addressed to Arab Bank plc, a financial institution to which BCM conducts business, directing that the bank no longer accepts instructions from Mrs. List as she had resigned from BCM.

In addition to the ancillary claim, the appellants filed an urgent application and later an amended application for interim relief seeking an interim injunction to restrain the appellants from taking certain actions involving BCM, as well as for interim declarations and other relief. On 27th June 2022 and 20th July 2022, the amended application for interim relief was heard before the learned judge. The learned judge upon hearing the parties delivered his ruling on 3rd August 2022 and refused the appellants' application.

Dissatisfied with the learned judge's ruling, the appellants filed a notice of interlocutory appeal on 16th May 2023. The main issue to be decided is whether the learned judge in his ruling fell outside the generous ambit within which reasonable disagreement is possible.

Held: dismissing the appeal and ordering that the appellants pay the respondents costs to the appeal to be assessed by a judge of the High Court if not agreed within 21 days of the date of this judgment, that:

1. An interim injunction is a remedy which is granted to regulate the position of the parties until their rights are determined at trial. This interim remedy has for the past 40 years been governed by the American Cyanamid test which has also been adopted by this Court in several cases. However, while the American Cyanamid test provides structure and sequence in determining whether to grant or refuse an interim injunction, it still remains guidance. The overarching principle that must be considered is whether it is just or convenient to grant the interim injunction. In this case, while it can be said that there is a serious case to be tried, it cannot be said that it was just or convenient to grant the interim injunction prayed for, especially when one considers the totality of the evidence. When one looks at the evidence, it is apparent that the evidence provided is lacking and would not persuade a court that an interim injunction should be granted. In the amended application there is no real identification of the acts or behaviours upon which an interim injunction can be granted. In the instances where acts or behaviours have been described, there is no cogent evidence provided to establish a nexus between the alleged acts and the risks faced if the interim injunction is refused. While the judge did not adequately set out the tests to be considered, this error by the learned judge does not make or result in the decision to refuse the amended application for an interim injunction being plainly or blatantly wrong so as to move this Court to interfere with the learned judge's decision.

CM Row Law of Injunctions 11th Edn, approved; **American Cyanamid Co v Ethicon Limited** [1975] AC 396 applied; **National Commercial Bank Jamaica Ltd v Olint Corpn Ltd** [2009] UKPC 16 applied; **N.W.L Ltd v Woods** [1979] 3 All ER 614 applied; **Cambridge Nutrition Ltd v British Broadcasting Corp** [1990] 3 All ER 523 applied; **Villa Cornucopia Limited v Esther Developments Limited** BVIHCVAP2023/0001 (delivered 8th December 2023, unreported) followed; **Dufour and Others v Helenair Corporation Ltd and Others** (1996) 52 WIR 188 followed; **Nilon Limited and another v Royal Westminster Investments SA and others** [2015] UKPC 2 followed.

2. Interim declarations are known as a fairly new power of the court. A court when hearing an application for an interim declaration should take into account the justice to the claimant; justice to the defendant; whether the declaration would serve a useful purpose;

and whether there are any other special reasons why the court should or should not grant the declaration. However, as the rights of a party are by their nature permanent, courts have been cautious to declare rights on a temporary basis and appellate courts have generally disapproved of the making of declarations at an interim stage.

Riverside Mental Health Trust NHS v Fox [1984] 1 FLR 614 considered; **Bank St Petersburg v Arkhangelsky and another** [2014] EWHC 574 (Ch) applied.

3. The interim declarations prayed for by the appellants also run into a similar challenge to the application for an interim injunction - there is no explanation as to the effect of the declarations on the parties. This goes to the heart of determining whether granting the interim declaration would serve a useful purpose. Both Mrs. List's and Mr. Adongo's positions in BCM are live issues at trial. If granted, the interim declaration that Mrs. List is a director of BCM would have the effect of pre-emptively determining one of the key issues in the trial, being, whether Mrs. List's resignation was properly effected. Likewise, to declare Mr. Adongo secretary of BCM on an interim basis is to determine the circumstances surrounding his alleged displacement from BCM. At that stage, it was not appropriate for the learned judge to make such declarations. Therefore, while it is evident throughout the judge's ruling that the learned judge at times failed to adequately make the distinction between interim injunctions and interim declarations, sometimes using these terms interchangeably and thus conflating their separate tests, like the error committed by the learned judge in relation to the tests for interim injunctions, this did not result in a decision that was plainly or blatantly wrong. Accordingly, the appeal is dismissed.

JUDGMENT

- [1] **PRICE FINDLAY JA:** This is an interlocutory appeal against the decision of the learned judge in the court below, whereby he refused the appellants', Notre Dame Investment Limited's ("Notre Dame") and Angela Diala List's ("Mrs. List"), application for interim relief.
- [2] I shall set out the relevant background to the application for interim relief in order to provide the requisite context for the interlocutory appeal.

Background

- [3] Notre Dame is a company incorporated in the island of Nevis pursuant to the **Nevis Business Corporation Ordinance**.¹ Mrs. List is a Ghanaian businesswoman and a shareholder and director of Notre Dame. She also served as director of the third respondent BCM International Limited (“BCM”), a company also incorporated under the **Nevis Business Corporation Ordinance**. The second respondent, Paul List (“Mr. List”) is the estranged husband of Mrs. List. He is said to be ‘the operating mind and will’ of the first respondent, Rowntry Trading Limited (“Rowntry”), a company incorporated pursuant to the laws of Western Samoa. Rowntry is said to be registered as the majority shareholder of BCM.
- [4] On 7th December 2021, Mr. List filed a claim form against several parties,² including the appellants seeking several reliefs including declarations that Mrs. List breached her fiduciary duties to the entity BCM Investments Limited by knowingly and willfully taking an unfair advantage against the shareholding interest of Mr. List; knowingly, willfully and fraudulently conspired to and had removed Mr. List’s rights and interest in the shareholding of BCM Investments Limited; and breached her statutory duties as a director of BCM Investments Limited. This was subsequently followed by an amended claim form and statement of claim filed on 10th March 2022, expanding on previous allegations.³
- [5] On 7th February 2022, the appellants filed an ancillary claim⁴ alleging that Mr. List and ‘his cohorts’ fraudulently planned to remove Mrs. List as a director and one Mr. Jonathan Adongo as Administration Manager, in order to perpetrate fraud against BCM. Mrs. List alleged that from 2001 to 2020 she served as a director of BCM, in charge of its finance and administration. She also alleged that she was BCM’s de facto Chief Executive Officer

¹ Cap 7:01(N) as amended.

² See Lower Court Hearing Bundle filed 15th September 2022 at page 1057.

³ Ibid at 1046.

⁴ See Lower Court Hearing Bundle filed 15th September 2022 at page 5.

(“CEO”), with Mr. List only acting as CEO on paper. Mrs. List claimed that on or about 3rd October 2020 she served on Mr. List, a written resignation in her capacity as director. However, Mr. List in his capacity as CEO of BCM Ghana, BCM and its subsidiaries, rejected her resignation on or about 5th October 2020. Mrs. List in full reliance on this representation and subsequent discussions with Mr. List, retracted her resignation and continued to serve in her previous roles for and on behalf of the BCM Group of companies, including BCM.

- [6] Mrs. List averred that on 18th March 2021, she received via email a signed letter by Mr. List allegedly backdated to 1st March 2021, purporting to accept her resignation from BCM with effect from 1st February 2021. Mrs. List claimed to have responded to Mr. List, reminding him of his prior rejection of her resignation in October 2020. As such she continued executing her duties as director of BCM. In addition to this she alleged that on or about 13th June 2021, Mr. List assaulted Mr. Adongo in the offices of BCM to unlawfully gain access to the records of BCM, presumably to deny the appellants their rights and interests in BCM and to alter the records of BCM to her detriment. Mrs. List claimed to have received a copy of a letter dated 28th December 2021, signed by attorneys for Mr. List addressed to Arab Bank plc, a financial institution to which BCM conducts business, directing that the bank no longer accept instructions from Ms. List as she had resigned from BCM. signed by attorneys for Mr. List addressed to Arab Bank plc, a financial institution to which BCM conducts business, directing that the bank no longer accept instructions from Mrs. List as she had resigned from BCM.

- [7] In addition to the ancillary claim, the appellants filed an urgent application for interim relief⁵ and later an amended application for interim relief⁶ seeking the following:

“1. An interim Injunction restraining the 1st and 2nd and 3rd [Respondents], their

⁵ Lower Court Hearing Bundle filed 15th September 2022 at page 23.

⁶ Bundle of Documents filed 16th May 2023 at page 462.

servants and or agents, including any officer or manager, listed director, secretary, receiver, receiver manager or liquidator (hereinafter referred to herein as “servants and or agents”), as follows,

- a. from acting in a manner which is unfairly prejudicial to the interests of either of or both the [appellants], the minority shareholders of [BCM];
 - b. prohibiting the 1st and 2nd and 3rd [Respondents], their servants and or agents from dealing in any way with the assets of [BCM] and from disposing of and or dissipating the assets and or diminishing the value of the assets of [BCM];
 - c. **preventing the 1st and 2nd [Respondents], their servants and or agents from holding itself and or themselves, out as the sole shareholder of [BCM];**
 - d. **from making any changes to [BCM's] Register of directors and officers, which purports to amend its record prior to 14 June 2021.**
2. An Order directing [BCM] to show cause why the [Appellants], as a shareholder/directors (sic) of [BCM], should not be granted an order permitting it to inspect the books of [BCM], to which the 4th Defendant [Morning Star Holdings Limited] is its registered agent AND to forthwith produce the Certificate of Incumbency, which is at all material times within the domain of the 4th Defendant.
 3. An interim declaration that [Mrs. List] is a director of [BCM].
 4. An interim declaration that Michael Cooke is not a director and or secretary of [BCM].
 5. An interim declaration that Jonathan Adongo is a secretary of [BCM].
 6. Costs associated with this application be borne by the [Respondents].
 7. Any further relief that this Honorable Court deems necessary.” (Emphasis added)

[8] On 27th June 2022 and 20th July 2022, the amended application for interim relief was heard before the learned judge, with the appellants centering their application on the interim injunction and the interim declarations as emphasised above.⁷ The learned judge upon hearing the parties delivered his ruling on 3rd August 2022 and refused the appellants’ application. In doing so he relied on **American Cyanamid Co v Ethicon Limited**⁸ and **Cayne v Global Natural Resources plc**⁹ stating that the framing of the interim injunction sought was too broad; that the interim declarations sought touched and concerned critical

⁷ Pages 6-7 of Transcript of Trial dated 27th June 2022 filed on 29th November 2022.

⁸ [1975] AC 396.

⁹ [1984] 1 All ER 225.

matters to be resolved at trial; that damages would be an adequate remedy to the appellants; and that the balance of convenience lay with maintaining the status quo. The learned judge also refused the appellants' application to strike out the respondents' defence filed on 24th May 2022¹⁰, on the basis that striking out is a draconian remedy and that the appellants had not demonstrated to the court why the respondents' defence should be struck out particularly when their defence could be amended. on the basis that striking out is a draconian remedy and that the appellants had not demonstrated to the court why the respondents' defence should be struck out particularly when their defence could be amended.

Appeal

- [9] Dissatisfied with the learned judge's ruling, the appellants filed a notice of interlocutory appeal on 16th May 2023 supported by 14 grounds of appeal. These 14 grounds can be ably crystallised into one issue: whether the learned judge in his ruling fell outside the generous ambit within which reasonable disagreement is possible.

Appellants' Submissions

- [10] Counsel for the appellants Mr. Delano Bart KC, raised several arguments in support of the appellants' principal argument that the learned judge erred in his refusal to grant their application for interim relief. He argued that the learned judge fell into error when he continuously inferred that the relief sought by the appellants was 'final' as opposed to 'interlocutory', thus attracting different considerations. He further stated that under Part 17 of the **Civil Procedure Rules 2000**, a litigant can petition the court for interim relief, even if he pursued similar relief in their claim as the court's consideration of an interim remedy does not conclusively determine the substantive issues of the claim. Further, he argued that there could be a grant of an interim remedy whether or not there had been a claim for a final

¹⁰ Bundle of Documents filed on 16th May 2023 at page 664.

remedy at the time.

[11] The appellants also contended that the learned judge made an error in interpreting the language used in the application for injunctive relief and the draft order, particularly the phrase 'unfairly prejudicial'. Mr. Bart KC submitted that the judge determined that the use of the word 'unfairly prejudicial' was too broad to meet the required level of precision or specificity for the grant of an interim remedy. He submitted that what was required was that the language used clearly delineates what actions are permitted and prohibited. He argued that in this case, given the evidence indicating that the respondents were likely acting in a manner detrimental to the legal and beneficial interests of the appellants, the learned judge should have granted the interim remedies sought. Mr. Bart KC argued that the learned judge's failure to address the meaning of 'unfairly prejudicial' in light of the extensive evidence before the court rendered the judge's decision fundamentally flawed and open to review by this Court. He submitted that the learned judge's failure to appreciate this distinction resulted in a serious error where the appellants were required to show a stronger case beyond the threshold required in such matters due to the learned judge's reliance on **Cayne v. Global Natural Resources** as more applicable than **American Cyanamid**. Mr. Bart KC argued that the appellants were only required to show, as they did, that the claim before the court demonstrated a serious question to be tried. Further, there was sufficient evidence presented in the lower court regarding the appellants' rights, specifically their legal and beneficial interests in BCM.

[12] Mr. Bart KC also submitted that the learned judge erred in his determination that damages would suffice as a remedy in his consideration of the interim remedy sought. He argued that when one considered that Mrs. List asserted an equitable stake in BCM and that the actions or inactions of Mr. List could result in triggering a recall of a loan with CAT Finance for which Mrs. List served as guarantor, the learned judge erred in finding that damages were

adequate as an alternative to the grant of interim relief. He also argued that the learned judge erred in determining that the balance of convenience favoured maintaining the status quo without establishing or appreciating what precisely constituted the status quo. This failure to address the balance of convenience, he argued, represented a legal misstep. Moreover, he argued the learned judge failed to provide a basis for concluding that maintaining the status quo was advantageous. Mr. Bart KC also highlighted in his submissions that the judge seemingly fell into error by addressing his mind to the **American Cyanamid** test, which is an authority that deals specifically with interim injunctive relief and not, interim declaratory relief as aptly dealt with by **Bank St Petersburg v Arkhangelsky and another**.¹¹ He submitted that the learned judge disregarded that test and by doing so, the learned judge fell into further error where he appeared to confuse the just and convenient factor applicable on an application for interim injunctive relief with declaratory relief – which are two distinct forms of relief, garnering two distinct legal considerations.

[13] Mr. Bart KC in his submissions also took issue with the learned judge's assertion that Mrs. List was entitled to a 25% shareholding in BCM, as there was no evidence presented to support this claim. He argued that throughout the proceedings, it was consistently evident that Notre Dame, not Mrs. List, held the 25% shareholding. By conflating Mrs. List with Notre Dame, the learned judge disregarded established legal principles regarding separate legal personality and piercing the corporate veil.

[14] Lastly, counsel for the appellants argued that the learned judge incorrectly asserted that the application to strike the defence was premature, as the defendants had the opportunity to amend during case management proceedings. Mr. Bart KC submitted that the learned judge failed to address this crucial issue and instead focused erroneously on whether the defence should be struck out entirely. Such a decision was evidently flawed and constituted a legal

¹¹ [2014] EWHC 574 (Ch).

error.

Respondents' Submissions

- [15] The respondents in reply rejected the appellants' submissions arguing that the learned judge did not err in refusing to grant the interim declarations requested by the appellants. Counsel for the respondents, Ms. Jean Dyer submitted that courts are slow to grant interim declarations when the grant might pre-empt key issues best suited for trial. In this case, Ms. Dyer argued that the interim declaration prayed for by the appellants that Mrs. List be declared a director of BCM, touched and concerned a live issue to be determined at trial, specifically the ownership of BCM, and that required cogent evidence which had not been led before the learned judge. Given these circumstances, the learned judge's decision to withhold interim declarations was correct.
- [16] Ms. Dyer also argued that the refusal of the learned judge to grant the injunctive relief rested on several grounds. Firstly, the learned judge emphasised the need for specificity or precision in injunctions, which was lacking in the appellants' application. She submitted that the terms of the interim injunction and interim declarations did not clearly outline the actions to be restrained, which is essential for those affected to understand what is expected of them. Furthermore, there was insufficient evidence presented to establish the risk claimed by the appellants. The evidence merely indicated a dispute regarding the legal or beneficial interest in BCM and Mrs. List's directorship status within the company.
- [17] Secondly, Ms. Dyer argued that the learned judge's decision not to grant the interim injunction was based on the finding that damages would be an adequate remedy and that maintaining the status quo favoured the balance of convenience. Therefore, contrary to the appellants' arguments, the learned judge did not fail to exercise discretion according to established principles. Regarding the balance of convenience, she argued that the principles

outlined by Lord Hoffmann in **National Commercial Bank Jamaica Ltd v Olint Corpn Ltd**¹² were considered. These principles highlight the court's task of determining whether granting or withholding an injunction is more likely to result in a just outcome after a trial. If damages are sufficient compensation for the claimant and there is a serious issue to be tried, an injunction should typically be granted.

[18] Counsel for the respondents also forcefully rejected the appellants' argument that the learned judge made an error by deviating from the **American Cyanamid** test and instead adopting the test from **Cayne v. Global Natural Resources plc**. Ms. Dyer drawing this Court's attention to paragraph 4 of the ruling highlighted that, the judge suggested that since the interim declarations sought would partially dispose of the claim, justice could be served through an application for summary judgment, which would require a stronger case than just a 'serious question'. This indicates that the judge acknowledged the court's general reluctance to grant interim declarations when justice can be served in an obvious case.

[19] In her conclusion Ms. Dyer submitted that when considering this evidence, the learned judge was correct in determining that maintaining the status quo was most appropriate, ruling that the interim injunction sought by the appellants would not have been fair or convenient given the circumstances. She argued that the appellants' submissions that the judge failed to address the balance of convenience issue were incorrect and that it could be inferred that the judge believed that the factors were evenly balanced or that the respondents would suffer the most if the injunction was granted.

Discussion

¹² (Practice Note) [2009] 1 WLR 1405 (PC); [2009] UKPC 16.

Appellate court's jurisdiction

[20] It has been accepted by both the appellants and the respondents that this appeal concerns the exercise of judicial discretion. As highlighted by both parties in their written and oral submissions, in order for this Court's jurisdiction to be invoked the appellants must meet a high threshold as set out by Floissac CJ in **Dufour and Others v Helenair Corporation Ltd and Others**¹³ and recognised by the Board in **Nilon Limited and another v Royal Westminister Investments SA and others**.¹⁴ An appellate court will rarely interfere with the exercise of judicial discretion unless it is shown that the judge erred in principle by failing to take into account relevant factors and considerations, or that as a result of the error(s) of principle committed by the judge his decision was plainly or blatantly wrong such that it exceeds the generous ambit within which reasonable disagreement is permissible. As such it is only if the appellants in this case demonstrate that such an error in principle was committed by the learned judge, will this Court interfere with the learned judge's decision.

[21] As highlighted in the fulsome written and oral submissions before this Court, the appellants have raised issue with several aspects of the learned judge's 4 page ruling. I will deal with the appellants' contentions in the order in which they were addressed in the submissions above.

Conflation of tests and reliefs

[22] The appellants have argued that the learned judge at paragraph 4 of his ruling conflated the considerations for a 'final' injunction with the consideration of an 'interim' injunction and thus arrived at a higher threshold to be satisfied by the appellants.

¹³ (1996) 52 WIR 188.

¹⁴ [2015] UKPC 2; [2015] 3 All ER 372.

[23] Paragraph 4 of the learned judge's ruling reads:

"The Court has carefully considered the factual background as was helpfully summarized by Mr. Bart QC. In this Court's view, if it were to grant the interim declaratory relief, the likely effect would be at least partially disposing of the claim. The American Cyanamid test presupposes a subsequent trial of uncertain issues. See *Cayne v Global Natural Resources plc* [1984] 1 All ER 225. The court does have a jurisdiction to grant a final injunction where it is just and convenient to do so. **However, if the Applicants were seeking to dispose of the issue(s) completely, the Applicants would have had to establish a far stronger case than merely a 'serious question' but analogous to the test for summary judgment.**" (Emphasis added)

[24] Upon reading paragraph 4 of the learned judge's ruling, it is apparent that it has been inelegantly crafted and has not adequately set out the tests to be considered. While the learned judge speaks about the hypothetical 'if the Applicants were seeking to dispose of the issue(s) completely', laying down the test for a final injunction, a test inapplicable in the circumstances, he is silent as to the test for interim injunctions.

[25] However, this error by the learned judge does not in my view make or result in the decision to refuse the amended application for an interim injunction being plainly or blatantly wrong.

[26] An interim injunction is a remedy granted to regulate the position until the parties' rights are determined at trial. These injunctions can be prohibitory or mandatory. These interim remedies have for the past 40 years been governed by the **American Cyanamid** test which requires an applicant for an interim injunction to satisfy a court of the following:

1. that there is a serious question to be tried;
2. if so, and the claimant were to succeed in establishing their right to a permanent injunction at trial, could they be adequately compensated in damages for harm which they would not have suffered but for the refusal of an interim injunction;

3. if the defendant were to succeed in establishing their right to do that which they sought to be prevented from doing, could they be compensated in damages for the grant of an interim injunction;
4. if there is doubt as to the adequacy of the respective remedies in damages, where does the balance of convenience lie (having regard to the general prudence of preserving the status quo);
5. if the matter is still in doubt, where other factors appear to be evenly balanced, the counsel of prudence is to preserve the status quo.

The test as laid out in **American Cyanamid** has also been adopted by this Court in cases such as **Brilla Capital Investment Master Fund SPC Limited v Leeward Isles Resorts Limited (In Liquidation)**¹⁵ and **Villa Cornucopia Limited v Esther Developments Limited**.¹⁶

[27] Counsel for the appellants Mr. Bart KC has also in his written submissions helpfully and correctly cited **C.M. Row's Law of Injunctions**,¹⁷ which sets out the considerations to be made by a court when considering whether to grant an interim injunction. It states that:

"Interlocutory injunctions are such as are to continue, until the hearing of the cause upon the merits, or generally until further order. The object of an interlocutory injunction is to preserve matters in status quo until the case can be tried...It cannot be considered in argument as affecting the ultimate decision of a cause. It does not assume finally to dispose of the right, and will only impose such restraint as may suffice to stop the mischief complained of...**A man who comes to the court for an interlocutory injunction, is not required to make out a case which will entitle him at all events to a relief at the hearing. Yet it is for him to show that his claim is serious and capable of being substantiated.** It is enough if he can show that he has a fair question to raise and to the existence of the right which he alleges, and

¹⁵ AXAHCVP2013/0010 (delivered 12th January 2015, unreported).

¹⁶ BVIHCVAP2023/0001 (delivered 8th December 2023, unreported).

¹⁷ 11th Edn. page 26.

can satisfy the court that the property should be preserved in its present actual condition, until such a question can be disposed of.” (Emphasis added)

[28] While the **American Cyanamid** test has been widely adopted and applied, courts have been reminded that these principles are not mandatory but useful guidance. The Privy Council in **National Commercial Bank Jamaica Ltd v Olint Corpn Ltd**¹⁸ made clear that ‘a box-ticking approach does not do justice to the complexity of a decision as to whether or not to grant an interlocutory injunction’. Further, the court should ‘take whichever course seems likely to cause the least irremediable prejudice to one party or the other’.

[29] In **N.W.L Ltd v Woods**¹⁹ Lord Diplock stated:

“My Lords, when properly understood, there is in my view nothing in the decision of this House in *American Cyanamid Co. v. Ethicon Ltd.* to suggest that in considering whether or not to grant an interlocutory injunction the judge ought not to give **full weight to all the practical realities of the situation to which the injunction will apply**. *American Cyanamid Co. v. Ethicon Ltd.*, which enjoins the judge on an application for an interlocutory injunction to direct his attention to the balance of convenience as soon as he has satisfied himself that there is a serious question to be tried, was not dealing with a case in which the grant or refusal of an injunction at that stage would, in effect, dispose of the action finally in favour of whichever party was successful in the application, because there would be nothing left on which it was in the unsuccessful party's interests to proceed to trial.” (Emphasis added)

[30] In **Cambridge Nutrition Ltd v British Broadcasting Corp**²⁰ the English Court of Appeal stated that:

“It is important to bear in mind that the *American Cyanamid* case contains no principle of universal application. The only such principle is the statutory power of the court to grant injunctions when it is just and convenient to do so. The *American Cyanamid* case is no more than a set of useful guidelines which apply in many cases. It must never be used as a rule of thumb, let alone as a strait-jacket The *American Cyanamid* case provides an authoritative and most helpful approach to cases where the function

¹⁸ [2009] UKPC 16.

¹⁹ [1979] 3 All ER 614 at 625.

²⁰ [1990] 3 All ER 523 at 534-535.

of the court in relation to the grant or refusal of interlocutory injunctions is to hold the balance as justly as possible in situations where the substantial issues between the parties can only be resolved by a trial.”

- [31] In **Villa Cornucopia Limited v Esther Developments Limited**, Ellis JA in considering whether a master took a flawed approach in considering the principles under the **American Cyanamid** test by considering the balance of convenience before addressing the issue of adequacy of damages reiterated:

“Ultimately, I can only reiterate that the overarching and indeed the only principle is the statutory power of the court to grant interim injunctions when it is **just or convenient** to do so. There is therefore no rigid four stage approach by which a court is to exercise its discretion.”²¹

- [32] It is therefore clear that while the **American Cyanamid** test provides structure and sequence in determining whether to grant or refuse an interim injunction it still remains guidance. The overarching principle that must be considered is whether it is just or convenient to grant the interim injunction. This approach is in accord with the principles enunciated in **N.W.L Ltd** and **National Commercial Bank Jamaica Ltd v Olint Corpn Ltd** which underscore that the judge must give full weight to the practicalities of the situation, taking whichever course seems likely to cause the least irremediable prejudice to one party or the other.

- [33] In this case, while it can be said there is a serious case to be tried, it cannot be said that it was just or convenient to grant the interim injunction prayed for especially when one considers the totality of the evidence. As Mr. Bart KC submitted, it is for the appellants to show that their claim is not only serious but also capable of being substantiated. When one looks at the evidence in support of the amended application and the ancillary claim and statement of claim, it is apparent that the evidence provided is lacking and would not persuade a court that an interim injunction should be granted. In the amended application

²¹ Villa Cornucopia, n.18 at paragraph 43.

there is no real identification of acts or behaviours upon which an interim injunction can be granted. In the case where acts or behaviours have been described, there has been no cogent evidence provided to provide a nexus between the alleged acts and the risks faced if the interim injunction is refused. It is left to the reader of the application to decipher the risks associated with the respondents' alleged unsubstantiated behaviour. The appellants have relied on evidence like Mrs. List's guarantee of the CAT loan but there has been no explanation provided and evidence of how the respondents' acts would trigger default of the loan. In the totality of the circumstances, it cannot be said to be just or convenient to grant the interim injunction and restrain the respondents in the manner prayed for. Refusing to grant the injunction seems likely to cause the least irremediable prejudice, maintaining the status quo as at 2021 when the alleged acts were said to have been committed. I therefore find that the learned judge was correct in his conclusion to refuse the interim injunction.

[34] The appellants also raise that throughout the ruling the learned judge incorrectly conflated two distinct interim reliefs – an interim injunction and an interim declaration thereby making the learned judge's decision to refuse the application plainly wrong. I do agree with the appellants. It is also clear throughout the ruling that the learned judge at times failed to adequately make the distinction between interim injunctions and interim declarations sometimes using these terms interchangeably and thus conflating their separate tests.

[35] Interim declarations are known as a fairly new power of the court being previously termed in **Riverside Mental Health Trust NHS v Fox**²² as 'a creature unknown in English law'. Interim declarations are specifically provided for by rule 17.1(1) (a) of the **Civil Procedure Rules 2000** which states:

“17.1 (1) The court may grant interim remedies including-
(a) an interim declaration;”

²² [1984] 1 FLR 614.

[36] A court when hearing an application for an interim declaration should take into account justice to the claimant, justice to the defendant, whether the declaration would serve a useful purpose; and whether there are any other special reasons why the court should or should not grant the declaration. In **Bank St Petersburg v Arkhangelsky and another** Hildyard J stated that:

“[H]owever, the making of a declaration is always discretionary, and when considering whether to grant a declaration or not, the court takes into account justice to the Claimant, justice to the Defendant, **whether the declaration would serve a useful purpose, and whether there are any other special reasons why or why not the court should grant such relief**: see *Nokia Corp v InterDigital Technology Corp* [2006] EWCA Civ 1618, [2007] FSR 570, [2007] IP & T 490.” (Emphasis added)²³

[37] However, as the rights of a party are by their nature permanent, courts have been cautious to declare rights on a temporary basis. As such a party seeking an interim declaration must be prepared to deal with such conceptual difficulties and the court’s reluctance to grant, especially if the justice of the case can be met in an obvious case by an application for summary judgment, interim injunction or an early trial. As a result, appellate courts have generally disapproved the making of declarations at an interim stage.²⁴

[38] In my view, like the error committed by the learned judge in relation to the tests for interim injunctions, this did not result in a decision that was plainly or blatantly wrong.

[39] While the test for the grant of an interim declaration is whether the declaration would serve a useful purpose, and whether there are any other special reasons why or why not the court should grant such relief, the interim declarations prayed for by the appellants also run into a similar challenge: that there is no explanation as to the effect of the declarations on the

²³ [2014] EWHC 574 at paragraph 12.

²⁴ Atkin’s Court Forms Interim Remedies Volume 23(1): Interim Remedies: In detail.

parties. This to me strikes at the heart of determining whether it would serve a useful purpose. In the substantive case, both Ms. List's and Mr. Adongo's positions in BCM are live issues at trial. If granted, the interim declaration that Ms. List is a director of BCM would have the effect of pre-emptively determining one of the key issues in the trial, being, whether Ms. List's resignation was properly effected. Likewise, to declare Mr. Adongo secretary of BCM on an interim basis is to determine the circumstances surrounding his alleged displacement from BCM. At that stage, it was not appropriate for the learned judge to make such declarations. While the learned judge did make errors in structuring his ruling and conflating terms, his decision is not one which is plainly or blatantly wrong such that it exceeds the generous ambit within which reasonable disagreement is permissible where there where it is blatantly wrong.

[40] Accordingly, this Court will not overturn the ruling of the learned judge.

Conclusion and Disposition

[41] For the above reasons I would dismiss the appeal. The appellants will pay the respondents' costs to this appeal, to be assessed by a judge of the High Court if not agreed within 21 days of the date of this judgment.

I concur.
Mario Michel
Justice of Appeal

I concur.
Trevor M. Ward
Justice of Appeal

By the Court

Deputy Chief Registrar