

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ST VINCENT & THE GRENADINES

CLAIM NO. SVGHCV2022/0187

BETWEEN:

[1] BIRDWATCH MANAGEMENT LIMITED

[2] ANGEL BUENANO

[3] ASTRID PEDREGAL

Claimants

and

[1] ANDREA PIGNATARO

[2] CANOUAN DEVELOPMENT CORPORATION LIMITED

[3] CARENAGE BAY HOLDING LIMITED

[4] CANOUAN RESORT SERVICES LTD

[5] CANOUAN PROPERTY SERVICES LTD

[6] CANOUAN UTILITIES LTD

**[7] THE GRENADINES ESTATE COMMUNITY ASSOCIATION
LIMITED**

Defendants

Before:

The Honourable Madam Justice M E Birnie Stephenson

Appearances

Matthew E A Ferrari of Hughes and Company for the Claimants
Christopher Hamel-Smith S.C. of Hamel-Smith Caribbean with him S. Sten Mc
N. Sargeant of Sten Sargeant Law Chambers for the Defendants

2023: March 13th

June 22nd

RULING WITH REASONS

- [1] **STEPHENSON J.:** Before the court is an application for an interlocutory injunction brought by claimants¹ against the defendants². The application is supported by three affidavits sworn by the second named claimant Angel Buenano (Buenano) and two affidavits sworn to by Ian McGreal in response. The facts upon which the claimants rely is set out in their claim form.
- [2] An interim injunction is a very powerful and flexible remedy that is available to applicants. Injunctions can have sweeping affects and serious consequences on the applicants and respondents alike and can dramatically affect the relationships between the parties before the court. In the case at bar the applicant seeks an interlocutory probatory injunction seeking the court's assistance to direct the defendants from carrying out a course of actions against him which he complains, is detrimental to him. The application is being stridently opposed by the defendants.
- [3] Applications for interim injunctions are made pursuant to Part 17.4 of the Civil Procedure Rules (CPR 2000)
- The application**
- [4] In the case at bar the claimants seek an injunction against the defendants restraining whether by themselves, their directors, officers, servants, agents or

¹ The named claimants are Birdwatch Management Limited, Angel Buenano and Astrid Pedregal

² The named defendants are Andrea Pignataro , Canouan Development Corporation Limited, Carenage Bay Holding Limited, Canouan Resort Services Ltd, Canouan Property Services Ltd, Canouan Utilities Ltd And The Grenadines Estate Community Association Limited

howsoever otherwise until further order of the court, from doing any of the following acts against the claimants essentially from:

- I. Blocking, impeding, denying, frustrating or in any way by act of commission adversely affecting the claimants, their family members, servants, agents or caretakers to:
 - a) Make full use of their property;
 - b) Making full use of any and all of property owned by the first named claimant.
- II. Treating of dealing with the claimants including their family members. guests, servants, caretakers or agents in any discriminatory manner or in any manner whereby the legitimate rights and expectations of the claimants might or could be prejudiced, impaired or frustrated including:
 - a. Having the second and third named claimants followed in the resort.
 - b. Placing the second and third named claimants under surveillance.
 - c. Denying access to the common areas of the Resort
 - d. Issuing threats to the second and third named claimants in respect of cutting of their utilities.
- III. Intentional infliction of emotional distress on the second and third named claimants.

[5] The grounds of the application can be succinctly stated that the first named claimant is the registered owner of property in Canouan and the second and third named claimants who are the majority shareholders of the first named claimant company reside in the villa owned by the first named defendant in Canouan and that they have the right to make use of all common areas and facilities that form part of the Canouan Resort.

[6] That by virtue of the mandatory shareholder status of The Grenadines Estate Community Association Limited they are entitled to use the common areas in Canouan Resort and are entitled to access all the bars and restaurants within the resort.

[7] The claimants contend that by virtue of Clause 9 of their conveyance it was covenanted that as purchasers of their lot, they would have at all times remain and be allowed to use their property purchaser and be quietly entered into and upon and held and enjoyed and the rents and profits thereof received by it accordingly without any interruption and disturbance by the vendor and or resorts or any person claiming through or in trust for them or either of them.

[8] The claimants further contend as a ground for their application for an injunction against the defendants that there has been some dispute between Mr Buenano and Mr Pignataro over certain legal transactions and since this has occurred Mr Pignataro has caused and continues to cause harassment, intimidation and persecution to him and his daughter who is the third named claimant.

[9] In the alternative it is the claimants' contention that each of the defendants owe each of the claimants a duty of care to exercise reasonable care and skill to ensure that the claimant are not discriminated against as it relates to the provision of services and facilities at the Canouan Resort or the Grenadines Estate Golf Club or in the granting or rights of access to the property services and facilities of these two entities. The claimants also claim that they are not entitled to be treated any less than other property owners within the Canouan Resort.

[10] Another ground claimed by the claimants is that the defendants are not to arbitrarily, without reasonable cause and or with ulterior motive place pressure on them to compromise their legitimate disputes by withdrawing or impeding their right to be in receipt of or to access the services and to use the facilities of the Canouan Resort.

[11] In particularising their contentions of breach of contract, persecution and unlawful acts by the defendants against them, the claimants contend that since December 2021 the defendants have sought to unlawfully interfere with their rights and ability to make use of any of the areas or facilities within the

Canouan Resort to which shareholders are usually granted access to and use of. Further, that since they have decided not to renew the Maintenance Agreement in July 2020, they have been victims of repeated harassment and persecution on multiple occasions.

[12] That they have been informed by the defendants' employees that:

- i. They are forbidden from eating in any of the restaurants on Canouan Estate or Resort facilities, accessing the beaches, going to the Mandarin Oriental Hotel or Soho House.
- ii. They have not been permitted to have visitors at their villa neither have they been permitted to have staff enter their villa.

[13] The claimants also contend that they have been threatened by the lawyers for the defendants that their utilities will be cut off.

[14] The claimants contend that they paid up all their club membership dues on the 15th February 2022 and have been up to date since and in spite of this they have been denied entry and use of the restaurants and facilities on the Canouan Estates.

[15] The claimant also state that they have instructed their lawyers since December 2022 to demand that the defendants cease in their actions against them, but they have up to the time of filing their claim no response from the defendants.

[16] The claimants filed three affidavits in support of their application averring to the facts which they seek to rely on in their application. In their affidavits the claimants have identified and highlighted the various incidents on the property which they rely on in their claim for harassment, discrimination and denial of their shareholder rights by the defendants. This court does not intend to repeat those averments save for those which may be relevant to the ruling herein. However, failure by this court to mention those averments does not in any way mean that the court has not read and taken the various statements into account.

[17] The claimants contend that in July 2020 that they took a decision not to renew the Maintenance Agreement because of what was considered non-performance of the claimant's agent. That following this decision the claimants have been victimised by the Resort manager Ms Occioni who directed employees to spy on their Villa and to inform her of all those who come and go from their villa and how they, the claimants were maintaining their home. The claimants complain that this is a serious invasion of their privacy and the service principles of the resort Community that he bought into.

[18] It is noted that the first named claimant contends his account with the defendants is in credit as he made a payment of \$250,000.00 to Pignataro for the purchase of a share in the Canouan Estate Company ("CEC") which he Pignataro failed to issue the share purchased after 5 years and that there was a negotiated agreement with Ashley Woods who was as far as the second named claimant knows was Pignataro's previous attorney that the company would credit the first named claimant's account with the monies paid for the share in forbearance for the first name claimant taking them to court for the issuance of the share. It is the first named claimant's contention that his proposal was that the balance of the monies which he paid would be applied to any expenses of his villa including the payment of Utilities, Maintenance and Management Fees.

[19] It is the first named claimant's case that he has a substantial credit and that he does not owe the defendant companies as averred by the defendants and that he has evidence of the payment made by him.

[20] The first named claimant further averred that to avoid his utilities being cut off he paid the invoice presented on the January 2022. The first named claimant further said that he paid an additional sum of \$23,434 prepaying his Canouan Club dues up to 31st March 2022 even though there was a credit in his favour. That this payment was made to avoid a repeat of a previous unpleasant and embarrassing situation whereby his daughter the third named claimant was denied services at one of the restaurants.

[21] The first named claimant further averred that since making the payment in full of all club membership dues the defendants have continued to deny him entry to the Canouan Estate Restaurants and facilities.

[22] The first named claimant averred to instances where he and his family were invited by other club members to events and which they were unable to attend due to their exclusion by the defendants' servants and or agents. The first name claimant contends that the actions of the defendants' and their agents are being arbitrary, humiliating and in violation of the law particularly that he can have free access to beaches of St Vincent and the Grenadines. That the actions of the defendants and their agents have caused him to be isolated and to live in isolation denying him social contact with his friends and neighbours which is important to his mental health.

[23] The first named claimant further averred that any complaints or intended actions against him and the termination of the management agreement is unlawful and that he is entitled to 30 days notice and a hearing by the Board of Directors which has not occurred.

[24] The defendants in opposition to the application brought by the claimants filed affidavits in response to the affidavits in support filed by the claimants.

[25] The defendants filed answers to the various averments and accusations made against the defendants by the claimant. Affidavits were filed by Ian McGreal an account and director of the second named defendant (McGreal).

[26] The defendants deny that there has been a campaign of harassment and intimidation towards second named claimant and his family as claimed. It is contended by the defendants that the claimants have persistently failed to abide by the clear terms of the legally binding contracts which govern their ability to use and enjoy the services and facilities of the Canouan Resort at Carenage Bay.

[27] It was averred that the actions taken by the defendants' servants and or agents are those measures which they are legally entitled to take because of the claimant's multiple and persistent contractual breaches.

[28] The defendants contend that the privileges which have been withdrawn from the claimants is action which is necessary to their commercial interests and to the integrity of the resort community it runs for the benefit of all residents.

[29] The defendants contend that they are expected by the members of the community that they produce, achieve, and maintain exceptionally high standards of management, security, maintenance, and service delivery to the community at the Resort. That in doing so it is essential that they monitor to ensure that there is compliance with the By-Laws and various contractual obligations by the residents and members so as to maintain the integrity of the community scheme which has been set up on Canouan Island. The affiant averred that without this the entire brand and reputation of the Resort would be damaged, and success and survival of the Resort would be undermined.

[30] This court understand from McGreal's averments that the community scheme on Canouan is intended to provide their members (residents) with a desired experience of exceptional living on secure and pristine premises with high standards of management security, maintenance and service delivery provided at the Resort community.

[31] The defendants contend that there is no valid basis for the granting of the injunction sought or any other remedy by the claimants.

[32] This court pauses to note that some of the averments made by Mr McGreal in this court respective view amounts to opinion evidence and do not form part of this court's consideration in the application before the court at this time.

[33] It was further averred that the owners of villas on the resort are required to become members of the community association and are required to undertake

to abide by the various covenants contained in the By-Laws³ which includes subscription to various uniformed services for the maintenance and upkeep of the villas and properties provided by the defendants.

[34] It was further averred in defence of the claim made against them that the first named claimant owned Villa named Lot GV9. (the Villa). That there are a number of agreements and contracts that govern the relationship between the first named claimant and the various defendants including the shareholders agreement executed by the first claimant on the 7th May 2009, the By-Laws, the Villa Management Agreement between the fourth named defendant and the first named claimant and the Villa Maintenance Agreement between the first named claimant and the fifth named defendant dated 7th November 2016.

[35] The defendants contend that the claimant have failed to make the requisite payments under the agreements for certain services and are indebted to the defendants. McGreal averred that there are various amounts owed by the claimant to the defendants⁴ and the demands that were made to the claimants for payments of the amounts outstanding.⁵ The defendants further contend that as at the 31 December 2022 an amount of US\$120,630.40 remains outstanding.

[36] The defendants contend that the claimant's claim to have a credit of US\$250,000.00 does not exist as this sum was applied to an investment scheme in another property at Canouan. The defendants exhibited a "side letter" where the second named claimant directed that the said monies be applied as the "subscription price for one "A" ordinary share" in Canouan Estate Company Limited ("CEC") in furtherance of a consortium investment in a property in Canouan. It was averred that this money was therefore applied for the purchase of the second named claimant's purchase of the share in

³ The First Amended and Restated By-Laws of the Grenadines Estate Community Association Limited dated November 2011 was duly exhibited to the affidavit and marked "IM1"

⁴ See paragraph 14 of the McGreal affidavit of the February 2023

⁵ See exhibits AB2, IM5 and IM6

CEC and therefore the said sum is not available to be applied to the claimant's indebtedness to the defendants as claimed.

[37] That in all the circumstances of the case the claimants remain indebted to the defendants and failed to make payments in response to the various demands made to them and in the circumstances, it was decided that the claimant's access to the club properties would be restricted.

[38] The defendants maintain that in restricting the claimants they were exercising their rights under the By-Laws which authorised them to determine who shall use the Club properties including the Shell Beach and L'Ance Guyac.

[39] The defendants contend that the security team on the property are tasked with ensuring the security of all and to investigate the presence of unauthorised persons on the property. That in pursuit of their role they patrol the premises and make certain investigations and in doing so they have observed and noted that the claimants have been in persistent breach of several covenants regarding the use of their property. That the actions of the security team have been in the legitimate discharge of their functions on the property and do not amount to trespass or spying as alleged by the claimants.

[40] The defendants have denied that they have harassed or intimidated the claimants as claimed. The defendants contend through this witness that the claimants have been in breach of the By-Laws where in that they have sought to employ external persons to work as landscapers on their lot on the property.

[41] Regarding access to the resort restaurants and access to Soho and the Mandarin Oriental this witness averred that the claimants do not have a proprietary interest in the Resort Restaurants and facilities and that the defendants are entitled to restrict the claimants access pursuant to Section 18.1 of the By Laws and that the Villa Host Manager made a request of Soho and Mandarin Oriental that the claimants not be allowed to use those facilities.

[42] The defendants maintain that the maintenance agreement with the claimant was terminated on the 22 January 2022 pursuant to Clauses 11.1(a) and (b) of the management agreement because the first named claimant was in default of its obligation to pay the fees arising under the agreement.

[43] The defendants contend that the claimant assertion that there was an agreement with Mr Woods the former in-house counsel for the defendants regarding the credit of the \$250,000.00 in lieu of the issue of shares did not exist as firstly Mr Woods did not have the authority to make such an agreement and further there is no written evidence of such an agreement on the defendants' records. Secondly that Mr Woods was not authorised to take such a decision as such a proposal and agreement would have had to be presented to the Board for approval. The defendants contend that the variation of the side letter is not binding on the parties as it was not signed by the authorised parties.

[44] The defendants do not deny that they have received the payment of the \$250,000.00 as stated by the claimants but assert that that payment was for the payment in a share in CEC, which agreement has not been varied and the payment applied to the claimant's indebtedness to the defendants.

[45] The defendants also deny that there have been any actions against the claimants that was meant to personally victimise the claimants or which are meant to persecute, humiliate or in any way disrespect the claimants or any other villa owner as alleged.

[46] The defendants essentially in the affidavit of McGreal contend that at any time that the claimants were denied use of or access to the facilities on the Resort was solely as a result of the claimant's failure to made their required to the defendants has been referred to and that in doing so the claimants were at all material times in breach of the By Laws which empowered the defendants to deny them use and access to the resort facilities. Further that any activities by the defendant's security personnel was at all material times in pursuance of their duties to maintain a safe environment on the property and to ensure that

all persons comply with the rules and regulations so to speak of the property and there was no harassment or spying on the claimants as claimed.

The law

[47] There is no disagreement between the parties before the court in this case that the applicable considerations and tests for the application for the interim injunction in the case at bar is to be found in the Locus Classicus **American Cyanamid -v- Ethicon Ltd.**⁶

[48] The words of Lord Diplock offer great assistance and direction in applications such as the case at bar when he said

*"It is not part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed arguments and mature considerations. These are questions to be dealt with at trial... So unless the material available to the Court at the hearing of the application for an interlocutory injunction fails to disclose that the Plaintiff has any real prospect of succeeding in his claim for a permanent injunction at the trial, the court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory injunction relief that is sought."*⁷

[49] In essence the considerations as laid down by Lord Diplock to be considered before granting an interim injunction the court must be satisfied that:

- a. There is a serious issue to be tried.
- b. Damages are not an adequate remedy. and
- c. The balance of convenience lies in favour of granting or refusing the application.

[50] The authors of Blackstone's Civil Practice⁸ state that although these guidelines are of great authority they are not to be applied as though they are statutory provisions and the court's ought to apply some degree of flexibility. The authors also remind us judges that we must also be careful to apply the

⁶ [1975] AC 396, [1975], 1 ALL E. R 504 at page 510

⁷ 1 ALL E. R 504 at page 510

⁸ Blackstones's Civil Practice 2018,

overriding objective and to grant injunctions only where it is just and convenient to do so⁹.

[51] The application before the court is whether or not to grant an interlocutory injunction to remain in place until the hearing and outcome of the matter. In deciding at such a stage the basic principle is that the court should take which ever course which seems likely to cause the least irremediable prejudice to one party or the other.

[52] A court should consider the following matters:

- a. The prejudice which the claimants may suffer if the injunction sought is not granted or which the defendant may suffer if it is,
- b. The likelihood of such prejudice actually occurring, the extent to which it may be compensated by an award of damages or enforcement of a cross-undertaking
- c. The likelihood of either party being able to satisfy such an award
- d. The likelihood the injunction will turn out to have been wrongly granted or withheld
- e. The relative strength of the parties' cases,

[53] It is to be noted that one has to consider the practical consequences of the actual injunction are likely to be. It is to be remembered that an application for an interim injunction is for an equitable remedy for which the court has a wide discretion in determining whether or not to grant the injunction. Essentially it is well established if not trite law that the court has to ask itself whether or not the applicant has shown the court that there is a serious issue to be tried in that, the issue which has been brought before the court is not frivolous or vexatious. If the court finds that there is serious issue to be tried the court can then address the issue as to whether the balance of justice lies in favour of granting or refusing the interlocutory relief sought.

⁹ Chapter 37 at paragraph 37.20

Is there a serious issue to be tried?

[54] It is not necessary for the purposes of this ruling to go into any further analysis of the potential arguments proffered by the parties at this time. In the case at bar the pertinent issue to be decided is whether or not there is a serious issue to be tried.

[55] In delivering the opinion of the Privy Council in the often-quoted **National Commercial Bank Jamaica Limited -v- Olint Corp. Limited**¹⁰ Lord Hoffman said

“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 trial. At the interlocutory stage, the court must therefore assess whether granting or withholding an injunction is more likely to produce a just result.”

[56] Counsel on behalf of the defendants cited and relied on the case of **Series 5 Software -v- Clarke**¹¹ to say that the law does not exclude consideration of the merits; it only seeks to avoid the courts entering into a mini trial of complex factual issues that are in dispute. Counsel for the defendants submitted that in the case at bar, the evidence as adduced by the applicants do not disclose any claim or cause of action that gives rise to a serious issue which this court is to try. This court is not in agreement with the defendant's submission in this regard.

[57] On the information that is available to the court that is garnered from the affidavits filed by both sides in this case it appears that there is a serious issue to be tried as to whether or not the proposed termination of the management agreement by the defendants is wrongful and ineffective:

- 1) The basic ground of termination is the alleged failure by the claimants to comply with the By-Laws in that they have failed to make the necessary payments required of them to assure their continued membership of the “community” and their continued ability to access the Resort's amenities and facilities. It is the claimant's contention that they are not in breach

¹⁰ Privy Council Appeal No 61 of 2008

¹¹ [1996] 1 ALL E R 853

and in fact they have made all payments and are in fact in credit based on their understanding that the \$250,000.00 payment they made for a purchase in a share in "CEC" which share was not granted they expected that the monies would have been diverted to their accounts with the defendant companies as requested and directed by them. The defendants' contention is diametrically opposed to this in that they have said to the court yes, the first named claimant has paid the \$250,000.00 but that was for the purchase of the share in "CEC". And even if the claimant wants to say that the money was diverted to the defendant company's accounts to its credit based on the arrangement entered into with the lawyers for the defendant and the second named claimant contends that, that cannot be on the ground that:

- a. Mr Woods, the lawyer was not authorised to enter into any such arrangement with the second named claimant, that for such an arrangement to have been entered into it would have had to have the Board's approval which it does not; and
- b. Secondly that there is no paperwork in the defendant's books or any other paperwork to support the arrangement as averred by the second named claimant.

- 2) That the claimants owe the defendant a sum of money for various fees due and owing and that there has been numerous demands which have been paid and which have not been met and in the circumstances as authorised by the By-Laws, the defendants are empowered to and quite correctly disentitle the claimants from enjoying the privileges associated with fully paid up membership and that the maintenance agreement has been duly terminated as provided for by the terms of the maintenance agreements.

[58] It would appear to the court that based on the affidavit evidence which has been thus far adduced which evidence has not been tested by cross examination or a proper inquiry into the matter as the court is not at this stage required to give an in-depth investigation to the matters before the court.

[59] This court has taken a number of issues and factors into consideration as garnered from the authorities on the granting of interlocutory injunctions which are not only persuasive on this court but are also binding on this court. This court has considered the dicta of Lord Hoffman in the **Olint Case**¹²:

- a. Prejudice which the claimants will suffer if no injunction is granted or the defendant may suffer if it is;
- b. The likelihood of such prejudice actually occurring.
- c. The extent to which it may be compensated by an award of damages or enforcement of a cross undertaking.
- d. The likelihood of either party being able to satisfy such an award;
- e. And the likelihood that the injunction will turn out to have been wrongly granted or withheld, that is to say, the court's opinion of the relative strength of the claim of the parties in the case at bar.

[60] The question to be considered is whether the monies which have been paid by the claimants have been applied to the share subscription to "CEC" or has it been credited or should it have been credited to the claimant's account in the defendant companies interests? What is the nature of the agreement between the parties? The claimant has to establish to the court at trial of the matter on the balance of probabilities that the defendants failed to perform in their management agreement as averred and failed to issue the share certificates in "CEC" and that he (the second named claimant) requested and or directed that the monies which have been paid should be applied to his financial responsibilities to the defendant companies.

[61] Likewise the defendants would have to establish on the balance of probabilities the claimant's indebtedness to them as alleged.

[62] This court having reviewed the affidavits and the speaking notes and arguments made by counsel on both sides of this case is not convinced in the arguments mounted by Learned Senior Counsel that the interlocutory

¹² Supra at paragraph 18 of the judgment

injunction should not be granted. This court notes that unless the parties herein broadcast and speak of the situation regarding the supposed indebtedness of the claimants which is at the root of the allegations of breach of the agreements the other residents really would not necessarily know of the terms of the interlocutory injunction which this court proposes to grant.

[63] This court is of the view that to refuse to grant the interlocutory injunction is likely to cause irreparable prejudice to the claimants in that they are being denied the use and enjoyment of property which they have paid substantial sums to enjoy and this court is of the view that if it is found that they are indebted to the defendants they will have to make good on their indebtedness or their undertaking for damages as given in their application for the interlocutory injunction herein.

[64] This court notes the statement of Lord Diplock which is regarded as settled law that:

“The governing principle is that the court should first consider whether if the plaintiff were to succeed at 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 in the measure recoverable at common law 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 plaintiff’s claim appears 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 trial, the court should consider whether, on the contrary hypothesis that the defendant were to succeed at 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 the application and the time of the trial.”

[65] In considering the question of whether damages can be an adequate remedy prima facie all the parties’ contentions are arguable. In the event that the claimants’ arguments are valid and they are able to prevail at trial the issue to be considered is whether or not damages can be an adequate remedy. Given

the unique nature of the claimants' claim which is enjoyment of facilities and lifestyle experience this court is of the view that damages would not be adequate compensation for the opportunities lost.

[66] In considering the balance of convenience and determining where it lies it is incumbent on the court at this stage to assess whether granting or withholding an injunction is more likely to produce a just result. Having found that there is a serious issue to be tried and that damages would not be an adequate remedy for the claimants were they to succeed in their claim that the undertaking for damages given by the claimants in their application for the interim injunction would provide the defendants with an adequate remedy if it turned out that the injunction is improperly granted.

[67] Nothing has been in this court's respectful view been advanced to satisfy the court that the defendants would suffer irreparable prejudice if the injunction is granted and in this court's view the balance of convenience lies in favour of granting the interlocutory injunction to the claimant.

[68] When considering the matter in its entirety this court in exercising its discretion and case management powers is of the view that this matter would best be dealt with on an urgent basis ¹³as the issue at hand is basically whether or not the claimants owe the sums of money as claimed by the defendants and if so how much and for what? Or on the other hand whether or not the shares which the defendants claim were purchased by the claimants in "CEC" has been completed and if not whether the monies paid by the claimants to the defendants should be applied to the claimants' indebtedness to the defendant entities. Uppermost in the court's mind is the overriding objective of dealing with cases justly and in a timely manner.

[69] Further this court notes the provisions of parts 27.6 of CPR 2000 where the court has the power to dispense with Case Management upon the court being satisfied that pursuant to the Overriding Objective it can give directions for an

¹³ Pursuant to Part 17.8 of CPR 2000 the court has the power to exercise its case management powers under parts 26 and 27 of the CPR to give directions for an early trial of the claim or any part of a claim

early trial of the claim herein. So therefore, in all of the circumstances of the case and taking into account the arguments mounted by all the parties herein this court's order is as follows:

- a. That the interim injunction sought by the claimants herein is granted until further or other order of court;
- b. That there shall be no case management conference in this matter and the matter will be dealt with as a matter of urgency therefore there shall be an urgent hearing of this matter at trial;
- c. The parties shall file a list of documents agreed and documents not agreed on which they intend to rely on in the trial of the matter herein within **21 days hereof**;
- d. That the affidavits filed in the application in this matter will be considered as the evidence in chief to be adduced in the matter that the deponents must be available for cross examination at the trial herein;
- e. The parties are at liberty to file further affidavits which they may seek to rely on in support of their respective cases within 28 days of today's date.
- f. That the matter is fixed for trial for maximum two days on the **3rd and 4th August 2023**.
- g. The claimants shall file the following trial bundles:
 - i. Bundle number 1 comprising the affidavits filed with the exhibits relied on there in
 - ii. Bundle number 2 comprising the statements of case filed in the matter
- h. Costs is reserved.
- i. Liberty to apply

[70] The court encourages the parties to seriously consider settlement of the issues herein should the assistance of the court be required a written request can be made to the Registrar.

[71] The court wishes to thank counsel for their helpful submissions in the matter.

M E Birnie Stephenson
Resident Judge

BY THE COURT

REGISTRAR