COMMONWEALTH OF THE BAHAMAS
2020/CLE/gen/00096
IN THE SUPREME COURT
Common Law and Equity Division
BETWEEN

BAHAMAS HOTEL MANAGERIAL ASSOCIATION
First Plaintiff
AND
KIRKLAND RUSSELL
(Vice President)
Second Plaintiff
AND
MICHAEL PINDER
(Secretary General)
Third Plaintiff
AND
SANDRA MILLER FERGUSON
(Trustee)
Fourth Plaintiff
AND
FAYE PICKSTOCK
(Trustee)
Fifth Plaintiff
AND
OLGA MAJOR
Sixth Plaintiff
AND
RENARDO SWEETING
Seventh Plaintiff
AND
LISA BAIN-KARAGEORGIOU
Eighth Plaintiff
AND
DENNIS FORBES
Ninth Plaintiff
KEVA MCINTOSH
Tenth Plaintiff
AND
KASHALA BOWE
Eleventh Plaintiff
AND
WILTON BROOKS
Twelfth Plaintiff
AND
YIU MAN LEUNG
Thirtieth Plaintiff
AND

BEATRICE LEVAUGHN DEAN
Fourteenth Plaintiff
AND
JERRY ALBURY
Fifteenth Plaintiff
AND
N. ADREA BURROWS
Sixteenth Plaintiff
AND
DEBBIE DELANCY-GREENE
Seventeenth Plaintiff
AND
MELISSHA ELLIS
Eighteenth Plaintiff
AND
BARBARA GLINTON-BARTLETT
Nineteenth Plaintiff
AND
TRUDY WILSON
Twentieth Plaintiff
AND
L. IAN BROWN
Twenty-first Plaintiff
AND
SCHERREAZ BULLARD
Twenty-second Plaintiff
AND
AZURE MAJOR
Twenty-third Plaintiff
AND
PRISCILLA POITIER-SAUNDERS
Twenty-fourth Plaintiff
AND
CLARETAROLLE
Twenty-fifth Plaintiff
AND
KENRICK RUSSELL
Twenty-sixth Plaintiff
AND
TANGERNIKA WILLIAMS
Twenty- seventh Plaintiff
AND
LUCILE COOPER
Twenty- eighth Plaintiff
AND
MARSHA COOPER
Twenty-ninth Plaintiff
AND

KYLE ROLLE
Thirtieth Plaintiff
AND
REGINALD HARVEY
Thirty-first Plaintiff
AND
VERONICA STRACHAN-MADER
Thirty-second Plaintiff
AND
EMMALINE RUSSELL
Thirty-third Plaintiff
AND
ESTELLA TAYLOR
Thirty-fourth Plaintiff
AND
DELCINE DORSETT
Thirty-fifth Plaintiff
AND
HENDERSON ROBERTS
Thirty-sixth Plaintiff
AND
DELORIS STUBBS
Thirty-seventh Plaintiff
AND
JENNIFER ELLIS
Thirty-eighth Plaintiff
AND
ALEXANDER WILLIAMS
Thirty-ninth Plaintiff

AND

LUCAYAN RENEWAL HOLDINGS LTD.

First Defendant
AND
ATTORNEY GENERAL OF THE COMMONWEALH OF THE BAHAMAS
Second Defendant

BEFORE: The Honourable Petra Hanna-Adderley

APPEARANCES: Mr. Obie Ferguson for the 1st – 40th Plaintiffs

Mr. Robert Adams and Edward Marshall for the 1st Defendant

HEARING DATE: 13th July, 2020

RULING

This is an application for an interlocutory injunction

Introduction

1. The Plaintiffs by way of an Ex-Parte Summons filed the 3rd July, 2020 make an application pursuant to Section 83 of the Industrial Relations Act ("**IRA**") and Order 9, Rule 1 of the Rules of the Supreme Court ("**RSC"**) 1978 and under the inherent jurisdiction of the Court for an injunction restraining the Defendant, whether by itself, its Servants or Agents howsoever, from terminating any of the members of the bargaining unit without reference to the procedures laid down in Section 26(a) of the Employment (Amendment) Act, 2017 ("**the Act**") and the relevant provisions of the Industrial Agreement pending the outcome and determination of the Originating Summons filed herein and other relief that the Court may deem just and costs.
2. It is not disputed between the parties that the number of employees to which this application relates are 23 employees of the First Defendant. It is also not disputed that 17 of the 40 named Plaintiffs (excluding the First Plaintiff) have been issued termination letters, with only 4 of the identified 17 employees having collected the termination letters and having signed Deeds of Release upon such collection.
3. In support of the Plaintiffs application, the Plaintiffs filed on the 2nd July, 2020 an Originating Summons, Certificate of Urgency and Affidavit of Mr. Kirkland Russell, Vice President of the First Plaintiff. The Plaintiffs subsequently filed an Amended Originating Summons on the 3rd July, 2020 to change the name of the First Defendant from Grand Lucayan Holdings Limited to Lucayan Renewal Holdings Ltd. and filed the Supplemental Affidavit of Mr. Kirkland Russell on the 13th July, 2020.
4. At the direction of the Court the First Defendant was served with the Ex-Parte Summons and accompanying documents and filed a Memorandum of Appearance on the 7th July, 2020. The First Defendant relies on the Affidavit of Mr. Michael Scott QC, Chairman of the First Defendant sworn on the 13th July, 2020. The Plaintiffs rely on Skeleton Arguments filed on the 2nd July, 2020 and Supplemental Skeleton Arguments dated the 12th July, 2020. The First Defendant relies on Skeleton Arguments laid over on the 13th July, 2020.

Statement of Facts

5. The Plaintiffs said Amended Originating Summons seeks the following:-

"1. A declaration that the defendant is legally bound to follow the redundancy procedures as outlined in section 26(a) of the Employment Amendment Act, 2017 (The Act) when an employer is contemplating the dismissal of employees as a result of redundancy and clause 13.1 of the contract of employment.
2. A declaration that the Defendant wrongfully and unfairly dismissed the plaintiffs by breach clause 17.8 of their contract of employment and 26A of the Act.
3. A declaration that the defendant breached the plaintiffs employment contract entitling them to damages and compensation pursuant to section 47 of the Employment Act;
4. A declaration that plaintiffs are entitled to be reinstated pursuant to section 43 of the Industrial Relations Act (IRA);
5. A declaration that the First Defendant is mandated to follow the redundancy procedures as outline in section 26A of the 2017 Act.
6. A declaration that the defendant's failure to pay wages to the plaintiffs for March, April, May, and June, 2020 is a fundamental breach of the plaintiffs' employment contract.
7. The plaintiffs seek an order from the court requiring the defendant to pay the plaintiffs for damages for wrongful dismissal and compensation for unfair dismissal and reinstatement as outlined in section 43 of the Employment Act;
8. An order that the defendant pay costs of associated with and incidental by the application to the plaintiffs;

INTERIM RELIEF SOUGHT

9. An injunction restraining the Defendant, whether by itself, its Servants or Agents howsoever, from terminating any of the members of the bargaining unit without reference to the procedures laid down in section 26(a) of the Act and the relevant provisions of the industrial agreement pending the outcome and determination of the Originating Summons filed herein;
10. And the Plaintiffs herein undertake to abide by any order that this Honourable Court may make as to damages in case the Court shall hereafter be of the opinion that any of the parties have sustained damages by reason of this Summons."

Injunctive Relief

6. The Court has the power to grant an interim injunction by virtue of Section 21 of the Supreme Court Act which states:-

   "The Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the Court to be just and convenient to do so."

7. Additionally, Order 29, Rule 1 of the RSC outlines the procedure by which the Court is to grant such an injunction. In particular it states:-

   "(1) An application for the grant of an injunction may be made by any party to a cause or matter before or after the trial of the cause or matter, whether or not a claim for the injunction was included in that party's writ, originating summons, counterclaim or third party notice, as the case may be.

   (2) Where the applicant is the plaintiff and the case is one of urgency such application may be made ex parte on affidavit but, except as aforesaid, such application must be made by motion or summons.

   (3) The plaintiff may not make such an application before the issue of the writ or originating summons by which the cause or matter is to be begun except where the case is one of urgency, and in that case the injunction applied for may be granted on terms providing for the issue of the writ or summons and such other terms, if any, as the Court thinks fit."

8. The Plaintiffs' application for injunctive relief is pursuant to Section 83 of the IRA which states:-

   " (1) Notwithstanding any other provision of this Act, and without prejudice to any remedy or relief to which any person may be entitled apart from this section, any person having a sufficient interest in the relief sought, shall be entitled, upon making application to the Supreme Court in accordance with rules made under section 76 of the Supreme Court Act, and upon satisfying the court that there are reasonable grounds for apprehending a contravention of this Act by any person or by any trade union, to an injunction restraining that person or union from so contravening this Act."

9. It is clear that the Court has the jurisdiction pursuant to Section 21(1) of the Supreme Court Act and Order 29, Rule 1 of the RSC to grant injunctive relief. I am also guided by the principles found in **American Cyanamid Co. v Ethicon Ltd. [1975] 1 All ER** an

authority which Counsel for the parties referred the Court to. **American Cyanamid** laid down guidelines as to how the Court's discretion to grant interim injunctions should be exercised thusly: (i) whether there is a serious issue to be tried; (ii) whether the applicant will be adequately compensated by an award of damages at trial; (iii) whether the applicant can provide an undertaking in damages to compensate the opposing party should it be later determined that the injunction was wrongly granted and; (iv) where the balance of convenience lies.

The Evidence

10. Mr. Russell's evidence is, in part, that the First Plaintiff is the bargaining agent for the supervisory and managerial employees of the Grand Lucayan. He further deposes that in or around 2007 it was determined that the First Plaintiff was the bargaining agent for the employees of Hutchinson Lucaya Limited (the previous owners of the First Defendant) and that an Industrial Agreement ("**the Industrial Agreement**") was executed between Hutchinson Lucaya Limited and the First Plaintiff on the 17th June, 2011. He maintains in his evidence that although the Industrial Agreement expired on the 17th June, 2014 the employees were advised via various letters that the pending sale of the hotel in 2018 would not change the terms and conditions of their employment. Moreover, he states that via a communication from the Prime Minister in 2018 they were reassured that the union agreement and current employee contracts would continue. He also asserts that in October 2018 the Chairman of the First Defendant by way of a Defence submitted at the Bahamas Industrial Tribunal that:

    "Respondent resist for the following reasons:

    1. Company ownership is in transition as it has been agreed/accepted that prevailing conditions will remain until circumstances dictate otherwise.
    2. Clause 34 of the honoured industrial agreement with BHMA stipulates that "if at expiration of this agreement (2011-20140 a new agreement is not consummated, the terms of this agreement (2011 2014) shall remain enforce until a new agreement is signed. Respondent continues to be guided by this language included in the last registered industrial agreement with the Association."

11. Mr. Russell deposes at paragraph 15 of the said Affidavit as follows:-

    "15. That the chairman failed to follow the redundancy procedure as outlined in section 26A of the 2017 Employment Amendment Act. He failed to consult the BHMA which is the recognized bargaining agent for the supervisory and managerial workers at Lucayan Renewal Holdings Limited when he released the 40 managers/supervisors of the bargaining unit. There is now produced and shown to me a copy of the list of managers/supervisors marked Exhibit "KR 9".

12. Mr. Russell states that the First Defendant is owned by the Government of the Bahamas and is the employer of the 2nd – 40th Plaintiffs who were advised by the Prime Minister during his budget debate on Monday, the 22nd June, 2020 "**that all public servants are to resume work duties on Monday the 29th June, 2020**." That the workers (including Mr. Russell) listed on the attendance list exhibited to his said Affidavit reported to work on June 29th, 2020. That there was a dialogue between himself and Ms. Veronica Clarke, Hotel Manager as follows:-

    "Kirk Russell: Good morning Ms Clarke we the employee of Grand Lucaya is here as instructed by the Most Honorable Prime Minister that all Government employees are to report to work at 9:00 a.m., Monday 29 June, 2020;

    Veronica Clarke: Okay I understand what you are saying, in the meantime the hotel is still not open for business, there is no guest in the hotel, the borders does not open until 1 July so therefore what are you to do;

    Kirk Russell: Ms. Clarke what are your instructions to the staff at Grand Lucayan this morning?

    Veronica Clarke: Kirk, the instructions are the hotel is still not operational, therefore, um, I recommend, um, I say to you um, we will call the staff at a later date.

    Kirk Russell: Ms. Are you asking us to leave?

    Veronica Clarke: I did not know who invited you here."

13. Mr. Scott, Q.C.'s evidence in his Affidavit is, in part, that following the purchase of the Grand Lucayan Hotel in September, 2018 the employees were advised via letter that there would be no change in the terms and conditions of their employment. He states that on the 2nd March, 2020 the First Defendant entered into an Agreement for Sale with Bahamas Port Investments Ltd. and that a condition of the agreement was that all of the contracts

relating to the operation, upkeep, repair and maintenance was to be terminated by the First Defendant.

14. He continues in his evidence that due to the COVID-19 Pandemic, the Government of the Bahamas declared a state of National Emergency and as a result the hotel closed and the 2nd – 40th Plaintiffs were deemed to be temporarily laid off. Mr. Scott, Q.C. further asserts that the parties of the Agreement for Sale intended to continue with the said sale and as a result of this re-commitment the First Defendant's decision to terminate the employment contracts of all existing employees inclusive of the 2nd – 40th Plaintiffs was done to comply with the obligations agreed upon in the Agreement for Sale.
15. Mr. Scott, Q.C. deposes that the termination exercise of the employees inclusive of the 2nd – 40th Plaintiffs began on the 24th June, 2020 and is expected to end on or before July, 2020. He also states that only 17 of the 40 named Plaintiffs (excluding the First Plaintiff) have been issued termination letters which he states have not been collected by those employees and only 4 of the 17 dismissed employees collected the same.
16. In addition to his evidence regarding the termination exercise, Mr. Scott, Q.C. refutes the claims and assertions as outlined in the first Affidavit of Mr. Kirkland Russell at paragraph 12. He states that the employees are not being dismissed as a result of redundancy but they are dismissed with notice in accordance with the provisions of Section 29 of the Employment Act or the past practice of the hotel; as the employees were dismissed with notice there was no need to consult with the First Plaintiff or its agents pursuant to Section 26A of the Employment Amendment Act, 2017 or under the terms of the expired industrial agreement and they have not breached clause 13.1 or 17.8 or any such term under the said agreement; that the decision to dismiss the employees was not a result of the COVID-19 Pandemic and the Government's mandated closure or temporary layoffs as a result of the pandemic; that 4 of the 17 employees who collected their termination letters executed Deeds of Release; that the loss sustained or to be sustained by the members of the First Plaintiff can be quantified in monetary terms for the First Defendant's failure to consult with the First Plaintiff and that the First Defendant is in a position to pay any damages that may be awarded to the 2nd – 40th Plaintiffs as the Government of The Bahamas has allocated a sum in excess of $3,300,000.00 for the termination exercise.
17. Although Mr. Russell's Supplemental Affidavit contains a considerable amount of legal arguments and raises issues that may relate to the substantive claims in this action, I

have gleaned the following as relates to the injunction application. Mr. Russell states in part that Mr. Scott, Q.C. did not disclose the letter from Ms. Veronica Clarke to Mr. Obie Ferguson President and a letter from Ms. P. C. Koh of Hutchinson Lucaya Limited both assuring the staff that there would be no changes in the terms and conditions of their employment as a result of the sale from Hutchinson Lucaya Limited to the First Defendant. That although the Industrial Agreement had expired the employees were assured by Mr. Scott, Q.C. that the First Defendant will continue to be guided by the Industrial Agreement.

18. He states that the expired terms of the Industrial Agreement were agreed to by Mr. Scott, Q.C. to be continued and binding on the parties. That Mr. Scott, Q.C. failed to acknowledge that the First Defendant is a Government entity and that the Prime Minister announced that all Government Employees were required to report to work on the 29 June 2020. That some of the workers reported to work but were denied employment and was told to leave because the hotel was closed.
19. Mr. Russell states that at no time did Mr. Scott, Q.C. consult with the Association about any changes resulting from an obligation that the First Defendant made with Bahamas Port Limited. He further deposes that the First Defendant failed to give the Association notice that it intended to temporarily lay-off employees even though there is no provision in the Industrial Agreement for lay-offs. That the First Defendant failed to recognize that the procedures which are mandatory (section 26A of the Employment (Amendment) Act, 2017) applied and the mere fact that he stated that the closing date of the sale of the hotel is the end of July 2020, is a compelling admission as to why the injunction should be granted. That Mr. Scott, Q.C. has declared and determined that the Association is not the Bargaining Agent. That this is a case of redundancy and in accordance with section 26A of the Employment (Amendment) Act, 2017 redundancy payment should be paid on or before the date of redundancy.
20. Mr. Russell invited the Court to grant the injunction on behalf of the Plaintiffs as he believes it is mandatory for the First Defendant to comply with, as the amendment was put into the Act to prevent employers from doing precisely what the First Defendant is attempting to do. He further states that the Bargaining Agent is the First Plaintiff and ought to have been notified and consulted in order to fulfil the mandatory requirement of the Act.

Analysis/Discussion

Serious Issue To Be Tried

21. The first consideration that must be given before granting an interim injunction is whether there is a serious issue to be tried.
22. Counsel for the Plaintiffs in his Supplemental Skeleton Submissions at paragraph 6 states that there is indeed a serious issue to be tried. He submits that the First Defendant's failure to recognize the First Plaintiff as the bargaining agent for the approved bargaining unit is a serious issue to be tried. More so as they failed to recognize the First Plaintiff as the bargaining agent they failed to meet the requirement to inform their agent in writing and provide a written statement as required by Section 26A of the Employment Amendment Act in regards to the redundancies of the 2nd – 40th Plaintiffs. Additionally, he submits that the failure to acknowledge the bargaining rights of the First Plaintiff goes to the root of the union's relationship with the members. Moreover, he submits (Transcript at page 25, lines 20-26) that the First Defendant's indication of the imminent sale of the hotel, the fact that the First Defendant indicated that there was no need for all of those persons to work because of the reduction in sales is a clear definition of redundancy. He further submits that it is for that reason the First Defendant should have followed the procedure as identified in Section 26A of the Employment (Amendment) Act, 2017 and the provisions of the Industrial Agreement.
23. In support of his application Counsel for the Plaintiffs referred the Court to the case of **Kayla Ward et. al and The Gaming Board for the Bahamas, 2017/CLE/gen/01506** and submits that the judgment of Justice Indra Charles is instructive on this application and the injunction sought. However, after a review of the case I cannot accept Counsel for the Plaintiffs submission that the case is instructive on this application as in that case the Plaintiffs were not seeking injunctive relief but were seeking damages for wrongful dismissal and/or unfair dismissal; reinstatement for their termination from their employment and exemplary damages. Moreover, the Judgment of Justice Charles may be applicable to the substantive matters if the Court determines there is indeed a serious issue to be tried.
24. Counsel for the First Defendant however submits, in part, that there is no serious issue to be tried on the face of the pleadings. Mr. Adams submits that the terms of the expired Industrial Agreement relating to redundancy do not impose on the First Defendant an

obligation to consult the First Plaintiff. Moreover he submits that even if there was a duty on the part of the First Defendant to consult with the First Plaintiff by virtue of article 13.1 of the agreement as the said agreement is expired it is no longer in force and such terms are not legally binding on the parties.

25. In addition, Mr. Adams submits that the termination exercise that has been carried out by the First Defendant is a dismissal exercise with notice to the Plaintiffs and as such they have been compensated in accordance with the provisions of Section 29 of the Employment Act, 2001. He further submits that the 2nd – 40th Plaintiffs are not being dismissed for redundancy as alleged. The Affidavit of Michael Scott, Q.C. at exhibit "MC. 3" contains copies of four termination letters whereby the employee was advised that the dismissal from employment was made with notice.
26. He further submits that the terminations should not come as a surprise to the Plaintiffs as the expired Industrial Agreement (which he asserts is not binding on the First Defendant) made provisions for dismissal of employees with the option of dismissal with notice (Transcript page 49, lines 25-29).
27. Lastly, he submits that the First Defendant could not have breached Article 17.8 of the expired Industrial Agreement as the terms are not binding on the parties and relies on the relevant authorities. See - **Cable Beach Resort Limited v Bahamas Hotel Catering Allied Workers Union [2015] 2 BHS J. No. 51 and Grand Bahama Telephone and Communications Workers Union v Grand Bahama Telephone Co. [1997] BHS J. No. 121.**
28. Having considered both parties submissions and the evidence before the Court I accept:-
    1. that there is clearly a dispute between the parties as to whether the terms and conditions of the Industrial Agreement are binding on the First Defendant;
    2. that there is a dispute as to the meaning and effect of Mr. Michael Scott's, QC notation found on the Form E-Defence submitted to the Industrial Tribunal;
    3. that there is a dispute as to the effect of the Court of Appeal decision in **Leon Cooper v G.B. Power Company** SCCivApp No. 178 of 2017 as to the continuation of the terms and conditions of an industrial agreement upon the expiration of such an agreement;
    4. that there is a dispute as to whether the facts surrounding the dismissal of the 2nd – 40th Plaintiffs amount to redundancy pursuant to the provisions of the

Employment (Amendment) Act, 2017 or if one agrees with Mr. Ferguson, the terms and conditions of the expired Industrial Agreement; and

5. that there is a dispute as to whether the employer has the option to terminate with notice according to the Employment Act or if one agrees with Mr. Ferguson, the terms and conditions of the expired Industrial Agreement.

29. I refer to Lord Diplock at paragraph 407 in **American Cyanamid** whereby he stated that "It is no part of the court's function at this stage of litigation to try to resolve conflicts of evidence on affidavits as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature consideration. These are matters to be dealt with at trial."
30. In the circumstances, on an application for injunctive relief the Court needs to be satisfied **ONLY (emphasis mine)** that there is a serious question to be tried on the merits. So, I therefore conclude that there are triable issues to be determined by the Court.
31. Although the Court may be satisfied that there are triable issues to be determined at trial, in keeping with the principles laid out in **American Cyanamid** the Court must then determine whether damages would be an adequate remedy for the Plaintiffs.

Adequacy of Damages

32. Counsel for the Plaintiffs submits that the First Defendant's assertion that the First Plaintiff has no standing as the bargaining agent would fundamentally deny the Plaintiffs their rights to be represented by a bargaining agent and the result of that denial would not be recoverable in damages. He further submits that such a right is not quantifiable as this right is given to the Plaintiffs by way of the Constitution of the Bahamas and the Industrial Relations Act.
33. Counsel for the First Defendant however submits that the Plaintiffs' claims against the First Defendant are entirely quantifiable and the First Defendant is in a financial position to pay them regardless of how strong the Plaintiffs' claims appear to be. In the Affidavit of Mr. Scott, Q.C. at paragraph 12(c) he deposes that the Government of the Bahamas has already allocated a sum in excess of $3,300,000.00 specifically for the termination exercise of the employees.
34. Mr. Adams also submits that the 17 employees who were already dismissed with notice would be entitled to payment of 30 days basic pay as damages pursuant to Section 26A

(4) of the Employment (Amendment) Act, 2017 and a maximum of an additional 2 weeks of time to be factored into their final pay calculation representing the omitted consultation process period. Additionally, the claims by those employees who have yet to be issued any dismissal letters would be quantifiable in monetary terms similar to the ones who were previously issued the same. Mr. Adams referred the Court to the decision of Justice Estelle Gray Evans of **Freeport Aggregates Limited v Freeport Harbour Company Limited 2015/CLE/gen/FP/00217** and as herein beforementioned **American Cyanamid**.

35. I refer to Lord Diplock at paragraph 408 of **American Cyanamid** whereby he stated that "**If damages in the measure recoverable at common law would be an adequate remedy and the defendant would be in a financial to pay them, no injunction should normally be granted, however strong the Plaintiff's claim appeared to be at that stage…"**
36. I accept Counsel for the First Defendant's submission that the Plaintiffs' claims are quantifiable in monetary terms and damages in the instant case would be an adequate remedy.
37. In the circumstances, I am satisfied that the First Defendant is in a position to compensate the Plaintiffs with an award of damages should they be successful at trial.

Plaintiffs Undertaking in Damages Being Adequate Protection

38. Counsel for the First Defendant submits that the 2nd – 40th Plaintiffs are not in a position to compensate the First Defendant by way of damages if it is later determined that the injunction should not have been granted.
39. The evidence of the First Defendant as found in the Affidavit of Michael Scott, QC is that the First Defendant temporarily laid-off the 2nd – 40th Plaintiffs due to the Government of the Bahamas' mandate to close the hotel due to the COVID-19 Pandemic; the termination exercise commenced on the 24th June, 2020 and expected to be completed on or before the end of July, 2020.
40. Moreover, Counsel for the First Defendant submits that the Plaintiffs have not adduced any evidence that they have the capacity to satisfy an award of damages.
41. I accept Counsel for the First Defendant's submission having regard to the Plaintiffs' claims that are before me.

42. Therefore, it is on this basis that I do not believe that the 2nd – 40th Plaintiffs would be able to pay the First Defendant by way of an award of damages.

Balance of Convenience

43. Counsel for the First Defendant submits that the balance of convenience does not lie in favor of the Plaintiffs as 17 of the 40 employees have already been dismissed and such injunctive relief would be of no assistance to them.
44. When determining where the balance of convenience lies whether to grant or refuse the injunction, the Court will see if doing so will cause irremediable prejudice and to what extent.
45. Counsel for the First Defendant submits that the granting of an injunction at the stage in which the sale of the hotel is near completion has the effect of producing a delay and possibly be a disadvantage to the overall economy of Grand Bahama whereas the Plaintiffs claim can be quantified (Transcript at page 57, lines 11-18).
46. I accept Counsel for the First Defendant's submissions that on the evidence the balance of convenience does not lie in favour of the Plaintiffs in the circumstances.
47. As the factors before the Court are not evenly balanced, and as the balance does not lie in favour of the Plaintiffs, it is not necessary to consider whether the status quo should be maintained as outlined by Lord Diplock in **American Cyanamid**.

Conclusion

48. Counsel for the parties addressed a number of issues arising from the facts of this case which are not strictly pertinent to the application for an injunction, for example, the execution of Deeds of Release by 4 of the dismissed employees. This is a matter, together with the other matters hereinbefore mentioned, which ought to be determined at trial.
49. Therefore, having considered all of the relevant facts, having accepted the submissions of Counsel for the First Defendant and having applied the principles laid out in **American Cyanamid** I have come to the determination that the Plaintiffs application for injunctive relief ought not to be granted and is hereby dismissed.
50. I will now entertain Counsel on the issue of costs.

Costs

51. Counsel for the First Defendant submits that costs should follow the event as no unusual circumstances or exceptions to justify the departure from that rule exist.

52. Counsel for the Plaintiffs submits that the First Plaintiff is an Agent of the Applicants and as such costs should be in the cause as their purpose for being present was to institute the said application.
53. Having considered the submissions of Counsel for both parties, I am not persuaded that the usual costs order should not be granted in favour of the First Defendant.
54. Therefore, the First Defendant is awarded its costs occasioned by the application to be taxed if not agreed.

This 15th day of July, 2020

Petra M. Hanna-Adderley
Justice