COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Division
2024/CLE/gen/00154

BETWEEN

COREY VALENTINO COOPER — **1st Claimant**

AND
LUCAYAN BEACH SPOT — **2nd Claimant**

AND
GOLD ROCK BEACH WATER SPORTS — **3rd Claimant**

AND
BAHAMAS NATIONAL TRUST — **1st Defendant**

AND
LAKESHIA ANDERSON-ROLLE — **2nd Defendant**

AND
ELLSWORTH WEIR — **3rd Defendant**

AND
JOANNA PARKER — **4th Defendant**

AND
BRADLEY PINDER — **5th Defendant**

BEFORE: The Honourable Petra Hanna-Adderley

APPEARANCES: Miss Pleasant Bridgewater for the Plaintiffs

Miss Berchel Wilson for the Defendants

HEARING DATES: September 25, October 29, December 30, 2024

RULING

Hanna-Adderley, J

This is an application for an interlocutory injunction by the Plaintiffs

Introduction

[1.] The Plaintiffs by way of a Notice of Motion filed September 10, 2024 make an application pursuant to Part 17.1 of the Supreme Court (Civil Procedure) Rules ("**CPR**") for an Order that the Defendant, his agents, servants or employees cease from interfering with the Claimant's quiet enjoyment as a Vendor on the premises known as Gold Rock Beach at Lucayan National Park, until the matter herein is determined by the Court; from blocking up or obstructing or permitting to be blocked up or obstructed the Claimants' access to the Gold Rock Beach at Lucayan National Park; from making threatening telephone calls to the 1st Claimant; from harassing and attempting to intimidate the Claimants by having police officers by telephone calls and visitation threaten the 1st Claimant of being arrested and imprisoned; from further publishing letters or other memos or any documents whatsoever containing misrepresentations and malicious statements against the Claimants; and inter alia from interfering with the Claimants' operation of their business.

[2.] The Claimants filed a Standard Claim Form on 11 September 2024, the particulars of which are as follows:

1. That the 1st Claimant is a 37 year old Bahamian male resident of East Grand Bahama and at all material times was and remains the Proprietor, sole owner and operator of the 2nd and 3rd Claimants.
2. That at all material times the Claimants were duly licensed and doing business mainly from premises known as Gold Rock Beach at Lucayan National Park (hereinafter called "the Premises") located in East Grand Bahama District.
3. The 1st Defendant at all material times managed the premises.
4. The 2nd Defendant was at all material times the Executive Director of the 1st Defendant.
5. The 3rd Defendant was at all material times Director of Parks on behalf of the 1st Defendant.
6. The 4th Defendant was at all material times Grand Bahama Parks Manager on behalf of the 1st Defendant.
7. The 5th Defendant was at all material times Deputy Warden assigned to the Lucayan National Park which included the premises by and on behalf of the 1st Defendant.

8. That in 2022 the Claimants were granted permission to operate the business on the Premises, which said business includes offering a combination of water sports activities, rental of beach items such chairs and umbrellas together with the sale of freshly barked Bahamian style coconut water and an assortment of juices. The business offers to tourists and visiting natives the added flavour and flair of The Bahamas' unique and authentic cultural experience.
9. That in reliance on the permission granted and being excited about the prospect of becoming a well-established entrepreneur, the 1st Claimant, in order to enhance the business invested all of his savings together with obtaining a loan from Fidelity Bank Bahamas Ltd. in the sum of almost $20,000.00.
10. Having confidence in his ability to generate income and promote the success of the business, the 1st Claimant relied on and committed the anticipated proceeds of the business store pay the loan, maintain the business, his infant child and himself.
11. That on August 8, 2024, much to the Claimants' dismay and surprise without prior warning or notice, a letter was received from the Defendants and each of them through their directors, officers, servants, workmen, contractors or agents under the signature of Mr. Ellsworth Weir, demanding that within 5 days the Claimants vacate the premises failing which the 1st Claimant would be considered trespassing and forcibly removed from the premises.
12. That subsequent to receiving the said letter from the Defendants the 1st Claimant on behalf of himself and the other Claimants on the same date sought legal advice whereupon a letter addressed to the 4th Defendant, Mr. Ellsworth Weir, Director of Parks of the 1st Defendant, was sent to the Defendants requesting reconsideration.
13. That on the 5th September, 2025, the 1st Claimant was again shocked and devastated when he received a copy of a letter dated September 4, 2024 from the Defendants addressed to Bridgewater & Co. and signed by the 4th Defendant, the said Ellsworth Weir stating that their decision remained unchanged and that the 1st Claimant was to vacate the premises by Sunday, which would have been within 4 days.
14. That the letter dated September 4, 2024 stated 3 reasons why the Claimants were to vacate the premises.

15. That the 3 reasons listed require further explanation, however, the Claimants were not given an opportunity to be heard.
16. The Claimants deny that the facts are as stated in the letter. They are a misrepresentation of what happened.
17. The Claimants are of the opinion that the 3rd, 4th and 5th Defendants seem to have a personal vendetta against their business as they seem to be doing everything that they can to get rid of the Claimants from the premises notwithstanding that the business offers much enhancement to the visitors' Park experience and is uniquely and authentically100% Bahamian.
18. That in the circumstances the Claimants seem that they are being unfairly removed from the premises on unsubstantiated and which even if they were (which are denied) can be easily remedied.

AND THE CLAIMANTS claim:

(1)Damages

(2)Reinstatement of their permission to operate on the premises

(3)An injunction restraining the Defendants from removing the Claimants from the premises

(4)Costs; and

(5)Such further or other relief as deem just to the Court.

[3.] The Lease Agreement states as follow:

AGREEMENT BETWEEN

THE BAHAMAS NATIONAL TRUST

LUCAYN BEACH SPORT COMPANY

Parties

This agreement between the Bahamas National Trust (BNT) and Lucayan Beach Spot (LBS) made as of May 5th, 2023, is by and between Cory Valentino Cooper, proprietor of Lucayan Beach Spot company and The Bahamas National Trust.

Recitals

Whereas this agreement is made to establish the terms between The BNT and LBS for the sales of coconuts, soft drinks, chairs and umbrellas, grilled food and non-motorized water sports.

TERMS AND CONDITIONS

TERMS

The term of this agreement begins 1 business day after signing.

1) ***BNT will construct a structure on Gold Rock Beach of which a portion will be utilized for LBS to conduct business from and to store and secure items. It is anticipated that construction of this structure will be completed by August 2023.***
2) ***LBS has 1 year lease to operate and conduct such said business at Goad Rock Beach, Lucayan National Park, Grand Bahama Highway, Grand Bahama. It is foreseen that this lease will be renewed annually.***
3) ***It is expected that LBS will keep all relevant government issued licenses and permits up to date and will present same upon renewal to be BNT for record keeping.***
4) ***After the first year of operations an evaluation of profits will be conducted by the BNT to determine what adjustments to the leaseholder fee may be necessary. Additionally, the construction of the aforementioned infrastructure will likely result in an increase in the leaseholder fee. During the first year an annual membership fee will be paid for every employee of LBS in addition to a monthly lease fee of $200.00 to the BNT due on the 30th of each month.***

The Lease Agreement was signed by Mr. Cooper and Mr. Ellsworth Weir, Director of Parks.

[4.] The letter dated 8 August, 2024 from Mr. Weir to Mr. Cooper states:

Termination of Business Agreement

Dear Mr. Cooper,

Upon reviewing the renewal of our business agreement, which expired on May 1st, 2024 upper management has decided not to extend your contract. You are granted a period of 5 days from the delivery of this letter to remove your personal belongings and clean the area you occupied.

Please be advised that failure to remove your personal items within this timeframe will be considered trespassing and may result in legal consequences.

We wish you the best in your future endeavours.

[5.] The letter dated 4 September, 2024 from Mr. Weir to Ms. Shavanya Roberts states:

Re: Corey Valentino Cooper

Dear Ms. Roberts,

Please be advised that BNT's Executive Leadership Team and legal advisors have reviewed the matter concerning Mr. Valentino Cooper's operation at Lucayan National Park, located within the port area of Freeport, Grand Bahama. Our decision to not extend a contract to Mr. Cooper remains unchanged considering the following reasons:

1. ***Illegal Fishing. Mr. Cooper was observed fishing in a designated no fishing area of the park, an action that directly violates park regulations. The presence of clear no fishing signage further underscores the violation of the law.***
2. ***Littering and Waste Disposal: Mr. Cooper has repeatedly discarded trash and garbage in restricted areas of the park, despite the presence of signage indicating that the area is restricted for sand dune restoration. This not only detracts from the park's natural beauty, but it also poses a risk to the environment and park wildlife.***
3. ***Interference with Enforcement: On at least 2 occasions, Mr. Cooper brought an uncontrolled dog into the park, which in one instance resulted in the dog biting a visitor. When the Park Warden attempted to investigate the incident as part of his duties, Mr. Cooper disrespected his authority, interrupted his inquiries, and displayed combative behavior. His continued disregard for proper dog control not only endangers park guests but also threatens the safety of protected wildlife.***

Mr. Cooper's actions have demonstrated a pattern of disregard for park rules and the law, which raises serious concerns about his suitability to continue his operations within a protected national park. These factors were taken into account when considering the renewal of his 1- year contract. Mr. Cooper has until Sunday, September 7th, 2024 by 4:00 PM to vacate the park premises, after which he will be considered to be trespassing. The BNT will seek police assistance as the next course of action.

[6.] The Claimants rely on the Affidavits of Corey Valentino Cooper, Joseph Darville and Supplemental Affidavit of Corey Valentino Cooper all filed on 11 September 2024 and Mr. Copper's Affidavit filed 27 September 2024. The Claimants also rely on the Skeleton Arguments filed on the 16 September and 11 November 2024.

[7.] The Defendants rely on the Affidavit of Lakeisha Anderson-Rolle filed on 9 October 2024 and the Skeleton Arguments submitted on 28 October 2024 in opposition to the Claimants' application.

Plaintiffs' Injunction Application

The Evidence

[8.] The Plaintiff in his Affidavit filed on 11 September 2024, stated, in part, that he is a 37 year old Bahamian male who is the Proprietor, sole owner and operator of Lucayan Beach Spot and Gold Rock Beach Water Sports ("**the Business**") two businesses duly licensed and doing business from the premises known as Gold Rock Beach at Lucayan National Park ("**the Premises**") located in East Grand Bahama; that as far as he was aware the Premises is owned by the Bahamas Government but managed by the 1st Defendant; that in 2022 he was granted permission to operate the Business on the Premises; that he was operating this business since 2022 and it is his sole source of income; that in reliance on the permission he invested his savings together with the proceeds of a loan in order to enhance the Business and that he relies on the proceeds of the Business to repay the loan; that on August 8, 2024 he received a letter from the Defendants demanding that he vacate the Premises within 5 days failing which he would be considered as trespassing and be forcibly removed from the Premises; that 5 September, 2024 he received a copy of a letter dated 4 September 2024 stating three reasons why the Business ought to cease, that the decision remained unchanged and the Claimant was to vacate the property within 4 days; that he requires further explanation of the 3 reasons and denies the facts as stated in the letter; that he believes the 3rd, 4th and 5th Defendants have a vendetta against him; that he was never given an opportunity to be heard and explain his position before an independent panel.

[9.] Mr. Joseph Darville in his Affidavit filed on 24 September 2024, state, in part, that he is Chairman of the Waterkeeper Bahamas and Save the Bays Bahamas; that he knows the 1st Claimant and has visited the setup of the Claimants and on occasion partook in his clean and proper offerings; that it is his understanding from the 1st Claimant that he is in possession of a valid government license or certificate to operate his amenities; that the organization in which he represents visits the area to help reestablish and maintain the beach, tests the beach waters in that

area and that there is no indication that the Claimants are a hazard to the area; and that he recommends that the Claimants be allowed to continue his operation.

[10.] In the Supplemental Affidavit filed on 27 September 2024 Mr. Corey Cooper stated that the Claimant made the Affidavit to annex documents that were not attached to the Affidavit filed on 25 September 2024 and that the Claimants are of the view that they had a legitimate expectation in relation to the lease agreement being renewed.

[11.] In her Affidavit Lakeisha Anderson-Rolle stated, in part, that she is the Executive Director of the First Defendant and named as 2nd Defendant in the action. That the 3rd and 4th Defendants are employees of the 1st Defendant and acted on its behalf. That the Affidavit is made in response to the Claimants' Notice of Motion filed on 10 September 2024. That by an agreement dated 5 May 2024 between the BNT and Lucayan Beach Spot (**"the Lease Agreement"**), the Claimant was granted permission to conduct his business at the Lucayan National Park for a lease fee of $200.00 per month. That the lease to operate was for one year and was subject to renewal annually.

[12.] That a number of incidents occurred; namely, the Claimants were in breach of the byelaws of the First Defendant and would dispose of trash in a restricted area.

[13.] Further, that Mr. Cooper is in breach of the lease as he failed to pay the monthly lease fees and he has never acquired the necessary business licenses from the Grand Bahama Port Authority as stipulated in Clause 3 of the Lease Agreement. That the Lease Agreement expired on 5 May 2024 and the 1st Defendant communicated that the lease would not be renewed in a letter dated 8 August 2024. That in a letter dated 4 September 2024 the Defendants informed the Claimants Counsel of the 1st Defendant's decision to not extend the contract. That the letter indicated that the 1st Claimant was to vacate the premises by September 7, 2024. That in direct defiance of this demand letter the 1st Defendant continued to carry out his business. That because the Lease Agreement expired there is no legal or equitable right to remain on the Premises and the Claimants are currently trespassing. Exhibited to the Affidavit were pictures of what appears to be trash and discarded dry coconuts scattered about on the site.

Submissions

[14.] Miss. Bridgewater submits, in part, that the Court has jurisdiction to grant an interim injunction under Rule 17 of the CPR, considering the principles in **American Cyanamid Co.** v Ethicon [1975] 1 All ER 504. That the applicant must show a good arguable claim and a serious question to be tried; the Court then weighs the balance of convenience. That refusal of this application would cause irreparable harm to the Claimants, while the Defendant's claims are easily remedied.

[15.] Ms. Bridgewater submits that to refuse the injunction at this juncture would result in irreparable damages to the Plaintiffs. The business would be ruined, Mr. Cooper would lose his livelihood and his life's savings, his opportunity with Celebration Cay, his creditability with the financial institution and the means to support his family. That there existed a legitimate expectation that the contract would be renewed. That this legal doctrine arises where there is some established practice or procedure adopted by a government agency or by its prior conduct, representations, or promises, which gives rise to an individual developing an expectation (**Jono Developments Ltd. v. North End Community Health Association,** 2014 NSCA 92 (CanLII)). That the facts speak for themselves in relation to legitimate (reasonable) expectation arising. That a stronger party's use of power against a reliant party, knowing of that reliance, creates a duty. (See **Hodgkinson v. Simms, 1994** CanLII 70 (SCC),[1994] 3 SCR 377 at pages 412-414) The specific legal duties depend on the relationship's details, requiring a thorough factual examination.

[16.] That fairness in public body decisions depends on five factors: the decision's nature and process, the statutory scheme, the decision's importance, legitimate expectations, and deference to the body. (**Congrégation des témoins de Jéhovah deSt-Jérôme-Lafontaine v. Lafontaine (Village)**, 2004 SCC 48 (CanLII), [2004] 2 SCR 650). That public authorities are bound by their procedural undertakings unless conflicting with statutory duties; promises of fair consideration create legitimate expectations. That the Defendants verbally agreed to allow the Claimant to perform his business and reasonably made the Claimants believe that the contract would be renewed.

[17.] That a written contract promised the Claimants a one-year lease, renewable annually, to operate a business, with a structure to be built by August 2023. The contract also stipulated license

maintenance and a post-year-one profit evaluation affecting lease fees. That continued operations after the initial lease, ongoing payments, and positive media coverage all supported the Claimants' assertion of a legitimate expectation of lease renewal. If the Defendants had no intention of maintaining business relations with the Claimants they would not have outlined their specific and clear intention to construct the storge structure including a timeline for the such construction. Clause 2 of the Lease Agreement states that "it is foreseen that this lease will be renewed annually." Clause 2 clearly outlines a legitimate expectation. Clause 3 speaks to the obligation to keep all government licenses and permits up to date and to present them upon renewal. The Lease Agreement states that after the first year of operation the leaseholder fee might be increased. Miss Bridgewater submits that this alludes to there being more years to follow. That not only were the Claimants allowed to continue operating after May 2024 but they were told that the agreement was being reviewed and would be provided to the Claimants. That the Claimants had garnered international and local support and acclaim in articles in the Nassau Guardian in July and then October 2023.

[18.] That the Defendants' actions are a surprise given the Claimants' positive reputation and significant contributions. The Claimants request the Court to consider their legitimate expectations and the potential harm of denying their application. Therefore, an interim injunction is requested to prevent the Claimant's forcible removal.

[19.] Miss Wilson, Counsel for the Defendants, submits, in part, that the Defendants are embarrassed to contend that it is unclear the specific jurisdiction of the Court that the Claimants seek to invoke as the Notice of Motion is devoid of any legislative provision. The Defendants presume that the claimants seek to exercise the court's discretionary jurisdiction pursuant to part 17.1 B of the CPR.

[20.] That the granting of an injunction is a discretionary measure employed by the court in which regard must be given to the overriding objective to deal justly with a case (See the judgment of Lord Hoffman in **National Commercial Bank Jamaica Ltd. v Olint Corpn Ltd.** (Privy Council No. 61 of 2008). That justice in these cases is the course of action which presents the lowest risk of irremediable prejudice to either party.

[21.] Miss Wilson submits that the law is settled on the tests which the courts must apply when considering granting a prohibitory injunction, the test being the three pronged questions set out in the classicus **American Cyanamid** (supra): (1) Is there a serious question to be tried? (2) Would damages being adequate remedy? (3) Where does the balance of convenience lie?

[22.] That the burden rests on the Claimants to satisfy the Court that there is a serious issue to be tried. The Claimants have failed to discharge that burden. Moreover, the Claimants have failed to provide evidence of (1) the Defendants blocking access to Gold Rock Beach; (2) any threatening phone calls being made by the Defendants; (3) any harassment or intimidation on the part of the Defendants; and (4) any misrepresentations made by the Defendants.

Serious issue to be tried.

[23.] Miss Wilson submits that the Court should not grant an injunction unless it is satisfied that there's a free standing substantive course of action (See the dicta of Lord Diplock in Siskina (Cargo Owners) v Distos Compania Naviera S.A. [1977] 3 WLR 818 at 825). That the Claimants cannot satisfy the requirement of a serious issue to be tried on its pleadings. That the Standard Claim Form filed herein seeks inter alia damages and a permanent injunction against the Defendants but fails to plead the cause of action from which this relief should flow (**Dyphany Mortier and Another v Darnette Weir and another** [2020] 1 BHS J. No. 110). That at best the Claimants pleading set out a meritless and frivolous action by which they seek to force the BNT to continue a business relationship with them. The nature of the relationship between the Claimants and the Defendants is a purely contractual arrangement. Any course of action therefore should flow from that contract. The Claimants rightfully do not plead any contractual breach on the part of the Defendants as there is no evidence to support any breach on the part of BNT during the tenure of the agreement. The deficiencies in the Claimants pleadings should be considered when the Court is being asked to exercise its discretion (see **SportsDirect.com Retail Ltd v Newcastle United Football Club Ltd** [2024] EWCA Civ 532).

[24.] Miss Wilson submits that moreover, the Lease Agreement which allowed the claimants to operate on BNT's premises for one year expired on 5th May 2024 and was required to be renewed on a yearly basis. That, as noted in the Rolle affidavit, once the contractual tenure of the agreement

expired BNT declined to renew the agreement and gave Mr. Cooper notice of its decision. With the end of the agreement, the Claimants have no legal right to operate their business on BNT's premises.

[25.] Miss Wilson's further submits that the Claimants position that the Defendants are interfering with their quiet use and enjoyment of the premises at the Lucayan National Park is misconceived. Even if it was accepted that there existed an implied covenant for quiet use and enjoyment, any such covenant would only exist during the tenure of the lease. That it is a well established principle that if a tenant is still in possession after expiration of the lease the tenant would be treated as a trespasser (see **Halsbury's Laws of England** Vol 97A (2021) para 164). That the agreement between the parties expired in May. In August, BNT indicated that it would not renew the agreement and demanded that the claimant vacate the premises. Since that date and time the Claimants have been trespassers on BNT's property. It is submitted that BNT did not interfere with the Claimants right to quiet enjoyment during the valid tenure of the lease. As the lease has now expired, the Claimants are not owed any covenant on the property either expressed or implied. In the circumstances, the Defendants submit that there is no serious issue to be tried and the court should decline to exercise its jurisdiction to grant the Claimants an injunction.

Adequacy of Damages

[26.] Miss Wilson contends that if the Court however, is satisfied that there is a serious issue to be tried, it must proceed to consider whether damages would be an adequate remedy if the Claimants were to be successful (see the dicta of Lord Diplock in **American Cyanamid** (supra). Lord Diplock noted this element of the test. That 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, then no interlocutory injunction should normally be granted however strong the Plaintiff's claim appeared to be at that stage. That at this stage the Court employs the balance of convenience exercise to determine whether an injunction would be granted or refused. The Court also considers whether the Plaintiff would be unable to compensate the Defendant for damages (**Supreme Court Practice "White Book" (1979) 29/1/11A**).

[27.] That it is submitted by the Defendants that the First Defendant can readily meet any award of damages which the claimants could receive if successful at trial. On the other hand, the Defendants could not be adequately compensated by any undertaking in damages which the Claimants could give. Nor is there any evidence before this court that the Claimants could meet any undertaking in damages if damages were considered an adequate remedy for the Defendants, which it is not.

[28.] That in the current circumstances, on the balance of convenience, damages would be an appropriate measure for the Claimant for any loss associated with a refusal to grant the injunction. The only expected loss which the Claimants could suffer is a loss in earnings if this Court refused to grant the injunction which is a loss that can be easily quantified, which BNT is able to pay. If it is simply a question of money, the Court should not grant an injunction.

[29.] That if the injunction was granted and the Claimants were permitted to continue to operate their business on BNT's premises, they would be operating as trespasser on private property. Such continued occupancy of the premises by the Claimants would result in BNT's loss of use of its premises and loss of potential revenue. These losses are unquantifiable given the multi-purpose use of BNT's premises and thus no undertaking can be sufficient. Alternatively, it is submitted that even if these losses could be reasonably quantified there is no evidence that the claimants have the financial standing to meet any costs order. Accordingly, it is submitted that no basis exists to grant an injunction in this instance where damages would be inadequate remedy which DNT is readily able to satisfy.

Balance of Convenience

[30.] Miss Wilson submits that the balance of convenience lies in the Defendants favor. On the balance of convenience the defendant would be severely prejudiced by the granting of the injunction by being constrained to continuation ship to continue a business relationship with the complainants. When condo doing this balancing exercise the court is expected to take into account all circumstances of fact and any special circumstances which may weigh in a party's favor. In the instant case, the court should have regard to the terms of the lease and the breaches of the lease

outlined in the Rolle affidavit by the Claimants (See **Claridge v Caribbean Fuel Services Ltd.** [2011] 3 BHS J. No. 101).

[31.] Miss Wilson also made the point that the Claimants were allowed to hold over from May to August 2024 because the BNT was conducting a review to determine whether to renew the Lease Agreement. That the Claimants were also in breach of the payments due under the Lease Agreement to the BNT.

Legitimate Expectation

[32.] Miss Wilson referred the Court to and relied heavily on the Court of Appeal case of Phillippa Michelle Finlayson et al v The Bahamas Pharmacy Council SCCivApp & CAIS **No.** 104 of 2019 discussed hereunder and which the Court found most instructive and she asserted that the BNTmade no statement to Mr. Cooper that could rise to the level of a legitimate expectation.

Issues

[33.] The issues to be determined by the Court are whether:

a. There is a serious issue to be tried;
b. The Plaintiffs can be compensated by damages;
c. The Plaintiffs can provide an undertaking in damages to compensate the opposing party should it be later determined that the injunction was wrongly granted;
d. The balance of convenience lies in maintaining the status quo.
e. Any statements or conduct by the BNT created a legitimate expectation for the Claimants that the Lease Agreement would be renewed.

Analysis/Discussion

The Law

[34.] 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.**

[35.] Part 17.1 of the CPR provides that "The Court may grant interim remedies .." and further 17.1 (4) states "The Court may grant an interim remedy whether or not there has been a claim for a final remedy of that kind."

[36.] Further, pursuant to Part 17.3 a Claimant may seek an interim remedy even before a claim is filed:

> (1) **An order for an interim remedy may be made at any time**, including —
> (a) after judgment has been given; and
> (b) **before a claim has been filed**.
> (2) Paragraph (1) is subject to any rule which provides otherwise.
> (3) The **Court may grant an interim remedy before a claim has been made only if** —
> (a) **the matter is urgent**; or
> (b) **it is otherwise necessary to do so in the interests of justice.**

[37.] It is clear that the Court has jurisdiction pursuant to Section 21(1) of the Supreme Court Act and Part 17.1 of the CPR to grant injunctive relief. The Court is 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.

Serious Issue To Be Tried

[38.] The first consideration that must be given before granting an interim injunction is whether there is a serious issue to be tried.

[39.] The Claimants' action stems from the demand to leave the property subsequent to the expiration of a lease that is subject to a renewal. The Claimant argues that there was a legitimate expectation that the lease would be renewed.

[40.] 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."

[41.] In the circumstances, on an application for injunctive relief the Court needs to be satisfied that there is prima facie evidence a serious question to be tried on the merits. Having considered both parties Submissions and the evidence before the Court I am not satisfied that there is prima facie evidence that there is a serious issue to be tried. I am in agreement with Defence Counsel that on the face of the Standard Claim no clear cause of action has been pleaded. There is no dispute between the parties that the Lease Agreement was for a fixed term of one year and that it had expired on the 5 May 2024. There is no other pleaded allegation of breach of the Lease Agreement. The Defendants have decided not to renew the contract, again this is not disputed, therefore, the prima facie evidence before the Court is that the rights of the Claimants to occupy and use the property, that is right to quiet enjoyment, has ceased. And the Claimants seemingly occupy the Premises as tenants at will.

[42.] Further, when examining whether the Claimants could reasonably have formed a legitimate expectation of the lease Agreement being renewed guidance is found in the Court of Appeal decision of **Phillippa Michelle Finlayson et al v The Bahamas Pharmacy Council** (supra), a case put forward by Miss Wilson, where Isaacs, JA, as he then was, set out the definition of Legitimate Expectations found in Halsbury's Laws of England Volume 61A (2018) which I have set out below:

50. Legitimate expectations. A person may have a legitimate expectation of being treated in a certain way by an administrative authority even though there is no other legal basis upon which he could claim such treatment. 13 The expectation may arise either from a representation or promise made by the authority, including an implied representation, or from consistent past practice or policy...

[43.] Here is what the trial judge, Charles, J, said at paragraph 167 of her judgment:

[167] It is therefore appropriate to summarise briefly the law relating to legitimate expectation. In United Policyholders Group and others v The Attorney General of Trinidad and Tobago [2016] UKPC 17, Lord Neuberger, (with whom the other members of the Board agree), in dealing broadly with the principle of legitimate expectation, said at paragraphs [37] to [39]:

> *'37. In the broadest of terms the principle of legitimate expectation is based on the proposition that, where a public body states that it will do (or not do) something, a person who has reasonably relied on the statement should, in the absence of good reasons, be entitled to rely on the statement and enforce it through the courts. Some points are plain. First, in order to found a claim based on the principle, it is clear that the statement in question must be "clear, unambiguous and devoid of relevant qualification", according to Bingham LJ in R v Inland Revenue Comrs, Ex p MFK Underwriting Agents Ltd [1990] 1 WLR 1545, 1569, cited with approval by Lord Hoffmann in R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs (No 2) [2009] AC 453, para 60.*
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> *38. Secondly, the principle cannot be invoked if or to the extent that it would interfere with the public body's statutory duty - see eg Attorney-General of Hong Kong v Ng Yuen Shin [1983] 2 AC 629, 636, per Lord Fraser of Tullybelton. Thirdly, however much a person is entitled to say that a statement by a public body gave rise to a legitimate expectation on his part, circumstances may 14 arise where it becomes inappropriate to permit that arise where it becomes inappropriate to permit that person to invoke the principle to enforce the public body to comply with the statement. This third point can often be elided with the second point, but it can go wider: for instance, if, taking into account the fact that the principle applies and all other relevant circumstances, a public body could, or a fortiori should, reasonably decide not to comply with the statement.*
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> *39. Quite apart from these points, like most widely expressed propositions, the broad statement set out at the beginning of para 37 above is subject to exceptions and qualifications. It is, for instance, clear that legitimate expectation can be invoked in relation to most, if not all, statements as to the procedure to be adopted in a particular context (see again Ng Yuen Shiu [1983] 2 AC 629, 636). However, it is unclear quite how far it can be applied in relation to statements as to substantive matters, for instance statements in relation to what Laws LJ called "the macro-political field" (in R v Secretary of State for Education and Employment, Ex p Begbie [2000] 1 WLR 1115, 1131), or indeed the macro-economic field. As the cases discussed by Lord Carnwath show, such issues have been considered by the Court of Appeal of England and Wales, perhaps most notably, in addition to Begbie, in R v North and East Devon Health Authority, Ex p Coughlan [2001] QB 213, R (Nadarajah) v Secretary of State for the Home Department [2005]*

EWCA Civ 1363, and R (Niazi) v Secretary of State for the Home Department [2008] EWCA Civ 755, and also by the Board in Paponette v Attorney General of Trinidad and Tobago [2012] 1 AC 1.'" 30. We agree with the judge that there was no evidence that the respondent made any representation to the appellants that was "clear, unambiguous and devoid of relevant qualification," nor in our opinion did the respondent's actions amount to such. The appellants also fail on this issue.

[44.] There is no prima facie evidence from the evidence adduced that the Defendants made any statement to the 1st Claimant, or the other Claimants upon which he or they could rely, that would amount to a representation that the Lease Agreement would be extended or renewed. A statement in the Lease Agreement that *"It is foreseen that this lease will be renewed annually"* is no "guarantee" that it would be renewed. Further this was the first anniversary of the contract and so it cannot be said that a pattern had evolved. A Statement that the renewal was "being considered" and the fact that the Claimants were allowed to hold over for 3 months after the expiration of the Lease Agreement does not amount to such representations or existing or past policy. There was no evidence that the Defendants made any representation to the Plaintiffs that was "clear, unambiguous and devoid of relevant qualification," from which the Plaintiffs could form a legitimate expectation that Lease Agreement would be renewed, nor in our opinion did the Defendants actions amount to such. Moreover, a claim of Legitimate Expectation was not pleaded. Finally, it would be a violation of the rights of the first Defendant for this Court to in essence force the Defendants to maintain a contractual relationship which has already come to an end. So, I therefore conclude that, prima facie, there are no triable issues to be determined by the Court.

[45.] Although the Court is not satisfied that there is prima facie a triable issue in keeping with **American Cyanamid** the Court must then determine whether damages would be an adequate remedy for the Plaintiffs.

Adequacy of Damages

[46.] I refer to Lord Diplock at paragraph 408 of **American Cyanamid** whereby he stated that **"...the governing principle is that the court should first consider whether, if the plaintiff were to succeed at the trial in establishing his right to a permanent injunction, he would be adequately compensated by an award of damages for the 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 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 appeared to be at that stage. If, on the other hand, damages would not provide an adequate remedy for the plaintiff in the event of his succeeding at the trial, the court should then consider whether, on the contrary hypothesis that the defendant were to succeed at the trial in establishing his right to do that which was sought to be enjoined, he would be adequately compensated under the plaintiff's undertaking as to damages for the lass he would have sustained by being prevented from doing so between the time of the application and the time of the trial. If damages in the measure recoverable under such an undertaking would be an adequate remedy and the plaintiff would be in a financial position to pay them, there would be no reason upon this ground to refuse an interlocutory injunction."

[47.] I think is permissible for the Court to take judicial notice of the fact that The Bahamas National Trust, is a private-public collaboration established by an act of Parliament in 1959. (Name of Act) According to information in the public domain, the Trust is the only such non-governmental entity in the world responsible for the management of a country's national park system, both terrestrial and marine areas. It is clear on the evidence of the parties that the Defendants are of substantial means and that damages can resolve the Claimants' action, should one be accurately defined and the should the Plaintiffs be successful at trial.

Undertaking in damages

[48.] The Court should also consider whether the Plaintiffs can provide an undertaking in damages to compensate the Defendants should it be later determined that an injunction was wrongly granted. Although being impecunious is not a bar to the grant of injunctive relief, the Claimants are not of great means and may not be in a position to compensate the Defendants in damages should their claim fail at trial.

Balance of Convenience

[49.] The Court ought to consider in whose favor the balance of convenience lies. Lord Diplock continues at page 408 of **American Cynamid** ***supra*** **"It is where there is doubt as to the adequacy of the respective remedies in damages available to either party or to both, that the question of balance of convenience arises."** [Emphasis mine.]

[50.] Having considered the evidence the Court is satisfied that there is no doubt to my mind that damages, payable by the Defendants should the Plaintiffs succeed at trial, would be an adequate remedy, therefore, the balance of convenience lies in favor of the Defendants.

Disposition

Plaintiff's application

[51.] Having considered all of the relevant facts, having accepted the submissions of Counsel for the Defendants for the most part and having applied the principles laid out in **American Cyanamid,** I have come to the determination that the Plaintiffs' application for injunctive relief ought to be denied. The Claimants are to vacate the Premises by 5:00 p.m, on or before January 12, 2024 by 5:00 pm.

Costs

[52.] Costs are always in the discretion of the Court and as such costs usually follow the event save for unusual circumstances or exceptions to justify the departure from that rule exist. I see no such unusual circumstances or exceptions.

[53.] Therefore, the Defendants are awarded their costs occasioned by this application to be taxed if not agreed. I am prepared to fix the costs now if the parties wish to make representations. Should there be no agreement on costs after discussions the Defendants are to file a draft Bill of Costs and Submissions within 14 days, the Claimants shall file and serve Responsive Submissions within 7 days of service and the Court shall determine the matter of costs on the papers.

This 30th day of December, 2024

Petra M. Hanna-Adderley

Petra M. Hanna-Adderley
Justice