

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Claim No: 2024/CLE/GEN/FP/00198

Common Law and Equity Side

BETWEEN:

BMLS LIMITED

Claimant

and

PHILIP PINDER

Defendant

RULING

Appearances: Gail Lockhart-Charles, KC with Edwin Knowles for the Claimant
Osman Johnson with Mark Flowers for the Defendant

Hearing Date: 8 July 2025

DELANCY, J.

[1.] This is the Defendant's Application for an order to vary or discharge the interim injunction granted by Forbes, J. on 14 November 2024.

Background

[2.] The Claimant filed a Standard Claim Form and a Statement of Claim on 24 October, 2024 against the Defendant seeking:

- (i) damages for conversion of the Claimant's aforementioned external hard drive;
- (ii) damages for breach of the Defendant's duty of fidelity and or damages for trespass by deleting the Claimant's confidential commercial and financial information from the hard disks of the Claimant's computers;
- (iii) interest as aforesaid;

- (iv) an order to restrain the Defendant from acting in breach of his fiduciary duty to the Claimant by undertaking a shipping agency business which has the benefit of the contract for the aforementioned Celebration Key port services; and or as the benefit of any of the existing Claimant's contract.
- (v) alternatively, an account of profits arising from the Defendant's breach of his aforesaid fiduciary duty;
- (vi) further or other relief;
- (vii) Any other Order deem appropriate by the Honourable Court from the Court inherent jurisdiction.
- (viii) provision for costs

[3.] On 24 October, 2024 the Claimant filed a Without Notice Application seeking an interim injunction. The Application was supported by two Affidavits of Madison Hall and an Affidavit of P. Olivea Ingraham filed 29 October 2024. The Claimant also filed a Certificate of Urgency on 6 November 2024.

[4.] On 7 November, 2024, the Defendant filed an Acknowledgment of Service and Notice of Application supported by an Affidavit of the Defendant seeking to set aside service of the Claim. The Defendant also filed a Notice of Preliminary Objections on 11 November 2024.

[5.] The Claimant filed a second and third Affidavit of P. Olivea Ingraham on 13 November 2024.

[6.] On 14 November 2024 an inter parties hearing and *Forbes, J.* granted an interim injunction to preserve the status quo and adjourned the matter to 26 November 2024.

[7.] The Defendant filed 15 November 2024 filed a Notice of Application for leave to appeal; 19 November 2024 Notice of Application to Strike out Claim and second Notice of Preliminary Objections.

[8.] The Defendant filed a Defence and Counterclaim on 22 November, 2024.

[9.] On 26 June 2025 the Defendant filed a Notice of Application supported by the Fifth Affidavit of the Defendant and prior Affidavits sworn by the Defendant filed herein seeking paras. 1(c) to (f) which may be summarized below:

- a. (c)(d) to vary or discharge the interim injunction of 14 November 2024 (file 19 November 2024) to remove paras. 4 to 15 on the grounds that the transcript and records discloses that the Claimant was not granted the reliefs set out therein;

[10.] For the avoidance of doubt the Court considered the parties' submissions, authorities cited in support thereof and oral arguments.

Issue

[11.] The issue for the Court to determine is whether the injunction ought to be varied, stayed or set aside.

Law and Discussion

[12.] The Court has the power to vary its order under Rule 2.4 (2) of the CPR:

(2) An order made in chambers shall have the same force and effect as an order made in open court, and the Court sitting in chambers shall have the same power to enforce, vary, or deal with any such order, as if sitting in open court.

[13.] Further Part 43.12 states:

Without prejudice to rule 48.1, a party against whom a judgment has been given or an order made may apply to the Court for a stay of execution of the judgment or order or other relief on the ground of matters which have occurred since the date of the judgment or order, and the Court may by order grant such relief, and on such terms, as it thinks just.

[Emphasis added]

[14.] Counsel for the Claimant argues that this section would fail as the Defendant has not provided any information since the granting of the interim order to substantiate a change in circumstances. The Court notes the letter made by Frederick Smith, KC exhibited by the Defendant in his fifth affidavit. The letter does note a change in the status quo as a result of the interim injunction being made and served on a third party.

[15.] Counsel for the Claimant also submits that the Defendants made application to set aside the order, that the application was heard and dismissed on the return date of 26 November, 2024. Further, that the application now made amounts to a "second bite of the cherry." The record of the Court was that the Application with reference to service of the Claim was heard and granted. However, the Court will note that nothing precludes any party from varying an injunction where there is a change in circumstances "since the date of the order".

[16.] The Court also has the power under its Inherent jurisdiction to vary or alter its order. In **Lawrie v. Less** (1881) 7 App. Cas. 19 *Lord Penzance* held that:

...every Court has the power to vary its own orders...in such a way as to carry out its meaning and where language has been used which is doubtful, to make it plain.

[17.] In the Court of Appeal case of **Johann D. Swart and others v Apollon Metaxides** and others SCCivApp No. 78 of 2012 *Allan, P.* at para.16 stated:

In the case of **In Re Swire** (1885) 30 Ch. D. 239, 246, 247, *Lord Justice Lindley* following *Lord Penzance* in **Lawrie v Lees** said as follows: "It appears to me, therefore, that if it is once made out that the order, whether passed and entered or not, does not express the order actually made, the court has ample jurisdiction to set that right, whether it arises or not". *Bowen L.J.* in the same case, also expressed a view as to the extent of that inherent power, he said: "An order, as it seems to me even when passed and entered, may be amended by the court so as to carry out the intention and express the meaning of the court at the time when the order was made, provided the amendment be made without injustice or on terms which preclude injustice."

[18.] The Court further notes that para.18 of the interim injunction made provision for variation of the Order:

Variation or Discharge of This Order

18. Anyone served with or notified of this Order may apply to the court at any time to vary or discharge this order (or so much of it as affects that person), but they must first inform the Applicant's attorneys. If any evidence is to be relied upon in support of the application, the substance of it must be communicated in writing to the Applicant's attorneys in advance

[19.] The law on injunctive relief is well established as is governed by Section 21(1) of the Supreme Court Act, Part 17 of the CPR and oft cited dicta of *Lord Diplock* in the case of **American Cyanamid Co v Ethicon Ltd** [1975] A.C. 396 (H.L.). In the case of **Gladstone Adderley and others v Dion Bethel and others** 2021/CLE/gen/1556 *Klein, J.* summarized requirements at paras.13 and 14 thereof:

[13] It is common ground between the parties that the application is to be resolved according to the principles governing interlocutory injunctions, as most famously set out in **American Cyanamid Co. Ltd. v. Ethicon** [1975] AC 396 by *Lord Diplock*. These require the court to apply a four-part structured test to determine whether:

- (i) there is a serious issue to be tried (i.e., a triable claim that is not "frivolous or vexatious");
- (ii) whether either party could be adequately compensated in damages for any loss sustained pending the outcome of the hearing (and if so, this normally militates against the grant);
- (iii) whether the 'balance of convenience' favours one or the other party if the loss is not compensable or if there is doubt as to the adequacy of damages;
- (iv) any other special factors that affect the court's consideration of the matter.

[14] While the **Cyanamid** principles remain the locus classicus on the grant of an interlocutory injunction, there are no fixed rules that can be ticked off in any given case. In fact, subsequent cases remind us that the guidelines are not to be treated as though they were statutory. In **National Commercial Bank of Jamaica Ltd. v Olint Corp. Ltd.**

[2009] UKPC 16, the Privy Council deprecated a “box-ticking approach”, which it said “does not do justice to the complexity of a decision as to whether or not to grant an interlocutory injunction”. In delivering the advice of the Board, Lord Hoffman stated:

“[16]...It is often said that the purpose of an interlocutory injunction is to preserve the status quo, but it is of course impossible to stop the world pending trial. The court may order a defendant to do something or not to do something else, but such restrictions on the defendant’s freedoms of action will have consequences for him and for others, which a court has to take into consideration. The purpose of such an injunction is to improve the chances of the court being able to do justice after a determination of the merits at the trial. At the interlocutory stage, the court must therefore assess whether granting or withholding an injunction is more likely to produce a just result. [...]”

[17] In practice, however, it is often hard to tell whether either damages or the cross undertaking will be an adequate remedy and the court has to engage in trying to predict whether granting or withholding an injunction is more or less likely to cause irremediable prejudice (and to what extent) if it turns out that the injunction should not have been granted or withheld, as the case may be. The basic principle is that the court should take whichever course seems likely to cause the least irremediable prejudice to one party or the other.”

[Emphasis added]

[20.] The Court accepts Counsel for the Defendant’s submission that “the balance of convenience therefore favors varying or discharging the injunction because it is now apparent that the Defendant is being restrained from executing rights and obligations under a commercial contract vital to his enterprise, and this is being done in the face of the Court on 14 November 2024 admitting that the status quo was to maintain the operation of his contracts. The Claimant has provided no evidence of any prejudice it would suffer in the absence of an injunction and has refused to secure its undertaking in damages by way of Affidavit and verifiable evidence (which a point now before the Court of Appeal on appeal as a point of law).”

[21.] The case of **Sail Rock Limited v Old Fort Bay Property Owners Association Limited** 2023/CLE/gen/00547 affirms this view *Fraser, Snr. J.* considered the point at para.57:

Furthermore, in the case of **Fellowes v Fisher** [1976] Q.B. 122, Sir John Pennycuik considered the balance of convenience. He made the following pronouncements on the subject:

“It is where there is doubt to the adequacy of the respective remedies in damages... that the question of balance of convenience arises.... The extent to which the disadvantage to each party would be incapable of being compensated in damages in the event of his succeeding at the trial is always a significant factor in assessing where the balance of convenience lies.”

[22.] The Defendant submitted that he would suffer irreparable harm or be ruined if the interim injunction is allowed to stand in its present iteration. The Defendant relies on the letter from Mr. Frederick Smith, KC exhibited to the Defendant's Fifth Affidavit in support of this assertion.

[23.] In the case of **Linotype-Hell Finance Ltd v Baker** [1993] 1 WLR 321 *Staughton LJ*, p. 323:

It seems to me that, if the Defendant can say without a stay of execution he will be ruined and that he has an appeal which has some prospect of success that is a legitimate ground for a stay of execution.

[24.] Counsel for the Defendant raised the issue of fortification of the undertakings and relied upon the dicta of **Harley Street Capital Ltd v Tchigirinski** [2005] EWHC 2471 (Ch) at 17 to 19; and **Bannister & Giesbrecht v Matvieshen** (24 July 2014). The Court accepts the law relied upon and the submissions made; however, as the variation of the injunction (see below) removed the restrictive clauses complained of, there is no requirement for fortification.

Disposition

[25.] The Court hereby varies the terms of the Order made of 14 November, 2024 (extended by the Order made 26 November, 2024), for the following reasons:

- a. There has been a change in the circumstances since the granting of the order made on the 14 November, 2024;
- b. That in the interest of justice and in keeping with the Overriding Objectives of the CPR the Court exercises its inherent jurisdiction to vary and amend the terms of the extant interim injunction;
- c. That on the balance of convenience now lies with the Defendant; and
- d. To ensure that the intent of the Court on the date of the hearing of 14 November, 2024 is in keeping with the record and intent of the Court.

[26.] Costs generally follows the event. Costs to the Defendant to be assessed by this Court on the papers. The Defendant to forward to the Court and Counsel opposite a *pro forma* bill of costs together with submissions on the same within 21 days of this ruling. Claimants response to the submissions are to be forwarded to the Court and Counsel opposite within 14 days of receipt of the same.

[27.] Finally, to further delay, the Order is to have the following wording. Required amendments to the numeration of paragraphs are allowed. Reasons for the removal and insertions are noted in the footnotes and are not to be included in the final order.

"1. ~~This is an Interim Injunction is made against the above named Defendant on 14 November 2024~~ 15 July, 2025 by the Honourable ~~Mr Justice Forbes~~ Madam Justice Constance Delancy (~~"the Judge"~~) on the application of ~~BMLS Limited~~ Phillip Pinder ("the Applicant"). The ~~Judge~~ Court

read the affidavits filed by Madison Hall, P. Olivea Ingraham, P. Rodnae Monestime, Felicia Pinder-Marshall and Phillip Pinder ~~Schedule A~~ and accepted the undertakings set out in ~~Schedule A B at the end of this Order.~~¹

2. This Order was made at a hearing on notice to the Claimant ~~Defendant~~, at which the Applicant was represented by Counsel, Osman R. C. Johnson of Ayse Rengin Dengizer Johnson & Co. and Mark Flowers and the Claimant was represented by Counsel, Gail Lockhart Charles, KC and Edwin L. Knowles of Sessions House Chambers.

~~3. There will be a further hearing in respect of this order on 26 November 2024 ("the Return Date").~~

~~4. In this Order~~

~~(i) the expression "the Claimant's Confidential Information" means information about the Claimant's commercial and financial information and the Claimant's business practice and connections which he had acquired as an employee of the Claimant including but not limited to information concerning the business opportunity to tender for the provision of port services and concerning the Claimant's tender for the same.~~

~~(ii) the expression "the Celebration Key Port Services" means the aforementioned port services to be provided to Carnival Cruise Line at the aforesaid new cruise port and holiday destination on the island of Grand Bahama.~~²

5. Subject to paragraph 11 below, until the Return Date or further order of the Court, the **Defendant must not**

(i) use or cause ~~or permit any other person~~ to use any part of the Claimant's Confidential Information;³

(ii) publish or communicate or disclose to any other person any part of the Claimant's Confidential Information;

(iii) destroy, delete or in any way dispose of ~~or deal with~~ the Claimant's confidential information;⁴

(iv) assist any other shipping agency business which has the benefit of the ~~contract for the Celebration Key port services or other existing contracts~~ of the Claimant.⁵

Restraint The Defendant Benefiting From Unlawful and or Illegal Acts

~~6. Further the Defendant shall return to the Claimant forthwith all the commercial and financial information of the Claimant that was deleted from the company/Claimant's computers, namely Michael Hall's computer and Philip Pinder's computer, and stolen by the Defendant.~~⁶

¹ The amendment made to paragraph 1 and 2 are made as a result of the application being made by the Defendant for the 14 November, 2024 Order to be varied, stayed or set aside.

² The strike of para. 3 is due to the hearing date already being passed and para. 4 is struck as a result of interpretation, the court did not define these terms on the hearing date.

³ Not within the control of the Defendant.

⁴ The wording was ambiguous.

⁵ Issue to be investigated at trial, and can be cured with damages.

⁶ The task in para 6 is an impossibility.

7. Further the Defendant shall return to the Claimant forthwith Michael Hall's back-up hard drive ~~stolen~~ from Michael Hall's home in and around 14 June 2024.⁷

8. Further the Defendant shall provide to the Claimant forthwith the password to unlock the Defendant's company's cell phone. ~~and provide the Defendant with any commercial and financial information that were deleted from the cell phone.~~⁸

~~9. alternatively, An Order for the appointment of a receiver to ensure the preservation of all profits accruing to the Defendant and to any person acting in concert with the Defendant by reason of the Defendant's breach of his aforesaid fiduciary duty.~~⁹

~~Restraint Defendant from Benefiting From Unlawful And or Illegal Act~~

~~10. Further the Defendant:~~

~~(i) is restrained from receiving the benefit of the contract for the Celebration Key port services and or any other existing contract of the Claimant as he acquired confidential information in breach of his fiduciary duty to his employer, the Claimant. The Defendant should not receive the benefit of his unlawful and or illegal act.~~

~~(ii) Alternatively, that the Defendant pays to the Claimant any profits he receives from the contract for the Celebration Key port services and or any other contract obtained as a result of using the Claimant's confidential information and or as a result of the Defendant's breach of fiduciary duty to the Claimant.~~¹⁰

11. The Defendant may disclose the Claimants' confidential information to the attorneys instructed in relation to these proceedings (~~"the Defendant's attorneys"~~) for the purpose of obtaining legal advice in relation to these proceedings ~~but not otherwise~~.

Provision of Information

12. The Defendant must within **48 hours** of service of this order and to the best of his ability inform the Applicant's attorneys of

(i) all information in his possession or control which comprises or is derived from the Claimant's confidential information; and

(ii) particulars of where and in what form the said information is held;

(iii) all computer equipment and media of any description together with the identifying serial numbers thereof, to which he has copied or transferred any part of the Claimant's confidential information; and

(iv) particulars of any cloud account or other virtual storage to which he has copied or transferred any part of the Claimants' confidential information; and

⁷ "stolen" is a finding of fact to be determined at trial.

⁸ Para. contained prolix verbiage, and an impossible term.

⁹ This was never ordered, not does it go to the intention of the court as pronounced on the hearing date.

¹⁰ Does not conform with the intention of the Court, at the time of the hearing the "status quo" was that the Defendant held a contract with Celebration Key Port Services. Further, assertions made are to be determined at trial.

~~(v) particulars of all dealings since 14 June 2024 between the Defendant and any other person concerning the business of the Claimant, including but not limited to the Claimant's business activity, its contracts, its vendors and its clients.¹¹~~

~~(vi) particulars of all dealings since 14 June 2024 between the Defendant and any other person concerning the business opportunity to tender for the provision the Celebration Key Port Services and concerning the Claimant's tender for the same.¹²~~

13. Within 5 working days after being served with this order, the Defendant must swear and serve on the Applicant's attorneys an affidavit setting out the above information.

14. That the Court allows the confiscation of all confidential commercial and financial information and property of the Claimant, and for the same to be seized from the Defendant. This includes but not limited to all statutory financial information such as all tax returns and business licences, all information relating to the financial statements of the company/the Claimant, balance sheets, profit and loss accounts, actuals, budgets, forecasts, all information relating to the vendors of the Claimant, all information relating to the contracts of the Claimant, all information relating to the clients of the Claimant, and all information relating to any tender submitted by the Claimant.

~~15. All of this confidential information was contained on the Defendant's company laptop computer which information the Defendant has copied, removed, deleted and or in any other way disposed of and or used for his personal gain.¹³~~

Other Provisions

~~16. The application of the Defendant to set aside service of the Claim Form and the Statement of Claim made by Application Notice dated 7 November 2024 ("the Defendant's Application") is adjourned to the Return Date.¹⁴~~

Costs

17. The costs of the Applicant's application are reserved to the Judge on the Return Date.

Variation or Discharge of This Order

18. Anyone served with or notified of this Order may apply to the court at any time to vary or discharge this order (or so much of it as affects that person), but they must first inform the Applicant's attorneys. If any evidence is to be relied upon in support of the application, the substance of it must be communicated in writing to the Applicant's attorneys in advance.

Interpretation of This Order

~~19. A Defendant who is an individual who is ordered not to do something must not do it themselves or in any other way. They must not do it through others acting on their behalf or on their instructions or with their encouragement.¹⁵~~

¹¹ Para 12 (4) does not conform with the relief granted by the Court at the hearing date. All other Parts of 12 were complied with.

¹² Relief not sought in the application. This is an issue for discovery.

¹³ Para 16 is prolix in that it is a narrative.

¹⁴ Hearing date has passed.

¹⁵ Para 19 is prolix, the instructions to the parties, as concerned are clear and concise.

~~20. A Defendant which is not an individual which is ordered not to do something must not do it itself or by its directors, officers, partners, employees or agents or in any other way.¹⁶~~

~~Parties Other Than The Applicant And Defendant~~

~~21. Effect of this order~~

~~It is a contempt of court for any person notified of this order knowingly to assist in or permit a breach of this order. Any person doing so may be imprisoned, fined or have their assets seized.¹⁷~~

~~22. Persons outside The Bahamas~~

~~Except as provided in paragraph 23(ii) below, the terms of this order do not affect or concern anyone outside the jurisdiction of this court.~~

~~23. The terms of this order will affect the following persons in a country or state outside the jurisdiction of this Court —~~

~~(i) the Defendant or any officer or agent of the Defendant appointed by power of attorney;~~

~~(ii) any person who~~

~~(a) is subject to the jurisdiction of this Court;~~

~~(b) has been given written notice of this order at his residence or place of business within the jurisdiction of this Court; and~~

~~(c) is able to prevent acts or omissions outside the jurisdiction of this Court which constitute or assist in a breach of the terms of this order; and~~

~~(iii) any other person, only to the extent that this order is declared enforceable by or is enforced by a court in that country or state.¹⁸~~

~~NAME AND ADDRESS OF APPLICANT'S ATTORNEYS~~

~~Sessions House Chambers, 2 Pyfrom Corporate Centre, West Mall Drive, P.O. Box F42823, Freeport, Grand Bahama, The Bahamas~~

~~e mail: info@sessionslawyers.com~~

~~phone: +1 (242) 352-2542~~

~~SCHEDULE A AFFIDAVITS~~

~~The Judge read the following affidavits and witness statements~~

¹⁶ Para 20 the Defendant in this matter is a person, not a company nor entity therefore this does not apply.

¹⁷ Para 21 is not required as it is a rule and does not need to be stated in the order.

¹⁸ There was no order made in this regard, as the Court stressed that the person with whom the order concerned was the Defendant.

(1) Madison Hall	1st	29 October 2024	Applicant
(2) Madison Hall	2nd	29 October 2024	Applicant
(3) P. Olivea Ingraham	1st	29 October 2024	Applicant
(4) P. Olivea Ingraham	2nd	13 November 2024	Applicant
(5) P. Olivea Ingraham	3rd	13 November 2024	Applicant
(6) Philip Pinder	1st	7 November 2024	Defendant

~~SCHEDULE B UNDERTAKINGS GIVEN TO THE COURT BY THE APPLICANT~~

~~(1) As soon as practicable the Applicant will issue and serve a Claim Form and Particulars of Claim in the form of the draft produced to the Court.¹⁹~~

~~(2) The Applicant will serve a copy of this Order on the ~~Defendant~~ Claimant.~~

~~(3) The Applicant will serve upon the Defendant together with this Order~~

~~(i) copies of the witness statements affidavits and exhibits containing the evidence relied upon by the Applicant, and any other documents provided to the court on the making of the application;~~

~~(ii) the Claim Form and Statement of Claim; and~~

~~(iii) an Application Notice for continuation of the order.~~

~~(4) Anyone notified of this Order will be given a copy of it by the Applicant's attorneys.~~

(5) If this Order ceases to have effect, the Applicant will immediately take all reasonable steps to inform in writing anyone to whom the Applicant has given notice of this order, or who it has reasonable grounds for supposing may act upon this order, that it has ceased to have effect.²⁰

¹⁹ Already complied with.

²⁰ This must be complied with. The Order of 14 November is amended and is no longer in effect.

(6) *The Applicant will not without the permission of the Court use any information obtained as a result of this Order for the purpose of any civil or criminal proceedings, either in The Bahamas or in any other jurisdiction, other than this claim.*

(7) *If the Court later finds that this Order has caused loss to the Applicant, and decides that the Applicant should be compensated for that loss, the Claimant will comply with any order the Court may make.*

(8) If the Court later finds that this Order has caused loss to the Claimant, and decides that the Claimant should be compensated for that loss, the Applicant will comply with any order the Court may make.

(9) The Claimant is to discontinue the inclusion of individuals or companies not party to these proceedings without leave of the Court. ²¹ ”

Dated: 15 July 2025

[Original, signed and sealed]

Constance Delancy
Justice

²¹ Para 8 of Schedule B is inserted to prevent further hardship to the Defendant.