

**IN THE COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Side**

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

BETWEEN:

BMLS LIMITED

Claimant/Applicant

AND

PHILIP PINDER

Defendant/First Respondent

AND

LIGHTHOUSE MARITIME AND LOGISTICS SERVICES LIMITED

Second Respondent

AND

KELDRA SHONTEA PINDER

Third Respondent

RULING

Before: The Honourable Madam Justice Constance Delancy

Appearances: Edwin Knowles for the Claimant
 Osman Johnson for the Defendant

Hearing Dates: 4 July 2025

DELANCY, J.

[1.] This is the Claimant’s Application seeking an order to commit the Defendant/First Respondent (“Defendant”) and Third Respondent (“*Mrs. Pinder*”) to prison and for leave to issue a writ of sequestration against the assets of Second Respondent (“*Lighthouse*”) for breach of the

extant interim injunction. The Court gave an oral ruling on 4 July, 2025 and indicated that the same would be reduced to writing.

Background

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

The Defendant, Mr Philip Pinder, Benefiting From Unlawful and or Illegal Acts

(i) *damages for breach of the Defendant's duty of fidelity and or damages for trespass by copying and deleting the Claimant's confidential commercial and financial information from the hard disks of the Claimant's Computers; Namely the data on the Computer of Michael Hall being copied, deleted and or destroyed by the Defendant and the data on the Company's Computer of Mr. Philip Pinder being copied, deleted and or destroyed by the Defendant.*

(ii) *damages for breach of the Defendant's duty of fidelity and or damages for trespass by copying and blocking and or deleting the Claimant's confidential commercial and financial information from the Claimant's business Cell Phones; Namely the data on the business Cell Phone of Michael Hall being copied, deleted and or destroyed by the Defendant and the data on the business Cell Phone of Mr Philip Pinder being copied, blocked and or deleted and or destroyed by the Defendant. This act is illegal.*

(iii) *damages for breach of the Defendant's duty of fidelity and or damages for trespass by taking the Claimant's confidential commercial and financial information from Michael Hall's backup hard drive; Namely the back-up hard drive was taken from Michael Hall's home by the Defendant.*

Prevent The Defendant, Mr Pinder, Benefiting From Unlawful and or Illegal Acts

(iv) *an order to restrain the Defendant from undertaking or assisting, in breach of his fiduciary duty to the Claimant, a shipping agency business which has the benefit of the contract for the Celebration Key port services described in the Statement of Claim, and or which has the benefit of any of the existing Claimant's contracts;*

(v) *an order to restrain the Defendant from using or causing or permitting any other person to use or disclosing to any other person the Claimant's confidential commercial and financial information;*

(vi) *alternatively, an account of profits arising from the Defendant's breach of his aforesaid fiduciary duty;*

(vii) *equitable compensation for loss sustained by the Claimant caused by the Defendant's breach of his aforesaid fiduciary duty;*

(viii) *interest;*

(ix) *further or other relief;*

(x) *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 was held before Justice Forbes on two separate applications:

- (i) the Claimant's application for an interim injunction pursuant to Part 17 of the Supreme Court Civil Procedure Rules (CPR) to prohibit the Defendant from engaging any further interference with the Claimant's company based on the claims for damages for certain conversions and sabotage contained in the Statement of Claim filed herein.
- (ii) the Defendant's application seeking to have the entire application set aside on the basis of improper service pursuant to Part 9.76(b), Parts 1.11 and 1.12 of the CPR and Part 8.14 of the CPR.

[7.] An interim injunction was granted to preserve the status quo with the usual undertakings and adjourned the matter to 26 November 2024. The interim injunction issued on following terms:

1. This is **an Interim Injunction made against the above-named Defendant** on 14 November 2024 by the Honourable Mr Justice Forbes ("the Judge") on the application of B M L S Limited ("the Applicant"). The Judge read the affidavits listed in Schedule A and accepted the undertakings set out in Schedule B at the end of this Order.
2. This Order was made at a hearing on notice to the Defendant, at which the Applicant was represented by Counsel, Edwin L. Knowles of Sessions House Chambers and the Defendant was represented by Counsel, Osman R. C. Johnson of Ayse Rengin Dengizer Johnson & Co.
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.

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;**
- (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;
- (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.**

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.

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.

8. Further the Defendant shall provide 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.

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;

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.

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*
- (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.*
- (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.*

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.*

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.*

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.*

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.*

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.

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.*

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

[9.] On 26 November 2024, the interim injunction was subsequently extended by this Court pending the hearing of the substantive hearing on the matter.

[10.] The Claimant filed a Notice of Application on 7 February 2025 against the Defendant, Lighthouse, and Mrs. Pinder for the following:

1. The Claimant makes **application pursuant to rule 50.3(1)(b)** of the Supreme Court Civil Procedure Rules **for an order of committal against the Defendant and against the Third Respondent**, and **for an order giving leave to issue a writ of sequestration against the assets of the Second Respondent**, for breach of the Injunction Order made herein by the Honourable Mr Justice Forbes on 14 November 2024 and continued by the Honourable Madam Justice Delancy on 26 November and 12 December 2024;

[11.] The Claimant's Application relied on the evidence contained in several affidavits:

- (i) the affidavit of Madison Hall sworn herein on 28 October 2024;
- (ii) the affidavits of P. Olivea Ingraham sworn on 12 November 2024 and 6 February 2025;

- (iii) the affidavit of Police Constable 3513 Marcian Scott sworn and filed herein on 26 November 2024;
- (iv) the affidavits of Philip Pinder sworn on 15 November 2024, 19 November 2024 (two affidavits), 22 November 2024, 25 November 2024, 27 November 2024 and 23 January 2025;
- (v) the affidavit of Felicia Pinder-Marshall sworn herein on 7 February 2025.

[12.] The Defendant filed a Notice of Preliminary Objections on 4 July, 2025 supported by the Fifth Affidavit of the Defendant.

Issues

[11.] The issues for the Court to determine are whether:

- (i) Mr. Pinder and Mrs. Pinder should be committed for breach of the terms of the interim injunction; and
- (ii) leave ought to be granted for the issuance of a writ of sequestration against the Lighthouse.

[12.] For the avoidance of doubt the Court considered the terms of the interim injunction, affidavit evidence, parties' submissions, authorities cited in support thereof and oral arguments.

Law and Discussion

[13.] Notice of Preliminary Objection, filed by the Defendant in opposition to the Claimant's application, is not recognized form under the CPR. Part 11.6 sets out the form applications are to take in civil proceedings. The Court may waive or dispense with such requirements if permitted by a rule or Practice Direction (*Rule 11.6 (2)(a) and (b) of the CPR*). In the instant case the Court is reminded to view such noncompliance with form through the lens of the overriding objective and allow the Defendant to be heard.

[14.] Part 50 of the CPR provides the procedure for enforcement in relation to possession of land, delivery of goods and injunction. Part 50.3(1)(b) states:

- (b) a person disobeys a judgment or order requiring him to abstain from doing an act; then, subject to the provisions of these Rules, the judgment or order may be enforced by one or more of the following means —
 - (i) with the leave of the Court, a writ of sequestration against the property of that person;
 - (ii) **where that person is a body corporate, with the leave of the Court, a writ of sequestration against the property of any director or other officer of the body;**
 - (iii) **subject to the provisions of the Debtors Act (Ch. 70) an order of committal against that person or, where that person is a body corporate, against any such officer.**

[15.] Part 50.3(5) and 50.3(6) further states that:

- (5) Where **an application to commit or for sequestration under paragraph (4) is made against a person who is not an existing party to the proceedings, then the committal application is made against that person by an application under Part 11.**
- (6) The application must —
 - (a) set out in **full the grounds on which the application is made and must identify, separately and numerically, each alleged act of contempt including, if known, the date of each of the alleged acts;** and
 - (b) be **supported by one or more affidavits containing all the evidence relied upon**

[16.] The power of the Court to commit a party to prison for contempt of court and for breach of an order of court in civil proceedings is governed by Part 51.1(2)(a)(i) of the CPR:

- (1) The power of the Court to punish for contempt of court may be exercised by an order of committal.
- (2) Where contempt of court –
 - (a) is committed in connection with-
 - (i) **any proceedings before the Court including but not limited to the making of a false statement of truth in a witness statement or breach of duty of a party or his attorney in relation to disclosure;**
- (3) Where contempt of court is committed in connection with any proceedings in the Court, then, subject to paragraph (2), **an order of committal may be made by a judge of the Court.**
- (5) **An application for committal under rule 51.1(2)(a)(i) may be made only with the permission of the court dealing with the claim.**

[17.] The power to commit a person who disobeys a judgment or order requiring him to abstain from doing an act under Part 50.3(1)(b)(iii) is subject to the provisions of the Debtors Act Chapter 70. The provisions of Part 50.3(1)(b)(iii) applies to instances when there is a debt involved and committal is a vehicle employed to enforce payment or compliance with an order as a consequence of a debt. Sections 3 and 4 of the Debtors Act states:

- 3. With the exceptions hereinafter mentioned, no person shall be arrested or imprisoned for making default in payment of a sum of money.
There shall be excepted from the operation of the above enactment —
 - (a) default in payment of a penalty or sum in the nature of a penalty, or other than a penalty in respect of any contract;
 - (b) default in payment of any sum recoverable summarily before a justice or justices of the peace;
 - (c) default by a trustee or person acting in a fiduciary capacity and ordered to pay to the court any sum in his possession or under his control;

(d) default by an attorney or solicitor in payment of costs, when ordered to pay costs for misconduct as such, or in payment of a sum of money when ordered to pay the same in his character of an officer of the court making the order;

(e) default in payment for the benefit of creditors of any portion of a salary or other income in respect of the payment of which any court having jurisdiction in bankruptcy is authorised to make an order;

(f) default in payment of sums in respect of the payment of which orders are in this Act authorised to be made:

Provided that no person shall be imprisoned in any case excepted from the operation of this section for a longer period than one year:

Provided also that nothing in this section shall alter the effect of any judgment or order of any court for payment of money, except as regards the arrest and imprisonment of the person making default in paying such money.

4. Subject to the provisions hereinafter mentioned, and to the rules, any court may commit to prison for a term of six weeks, or until payment of the sum due, any person who makes default in payment of any debt or instalment of any debt due from him in pursuance of any order or judgment of that or any other competent court:

Provided —

(a) that the jurisdiction by this section given of committing a person to prison shall, in the case of any court other than the court, be exercised only by an order made in open court, and showing on its face the ground on which it is issued;

(b) that such jurisdiction shall only be exercised where it is proved to the satisfaction of the court that the person making default either has, or has had since the date of the order of judgment, the means to pay the sum in respect of which he has made default, and has refused or neglected, or refuses or neglects to pay the same.

Proof of the means of the person making default may be given in such manner as the court thinks just; and for the purposes of such proof the debtor and any witnesses may be summoned and examined on oath, according to the rules.

Any jurisdiction by this section given to the court may be exercised by a judge sitting in chambers or otherwise in the prescribed manner.

For the purposes of this section, any court may direct any debt due from any person in pursuance of any order or judgment, of that, or any other competent court, to be paid by instalments, and may, from time to time, rescind or vary such order.

Persons committed under this section by the court, may be committed to the prison in which they would have been confined, if arrested on a writ of *capias ad satisfaciendum*, and every order of committal by the court shall, subject to the rules, be issued, obeyed and executed in the like manner as such writ.

No imprisonment under this section shall operate as a satisfaction or extinguishment of any debt or demand, or cause of action, or deprive any person of any right to take out execution against the lands, goods or chattels of the person imprisoned, in the same manner as if such imprisonment had not taken place.

Any person imprisoned under this section shall be discharged out of custody upon a certificate signed in the prescribed manner to the effect that he has satisfied the debt, or instalment of a debt, in respect of which he was imprisoned, together with the prescribed costs (if any).

[18.] The Court finds that the Claimant reliance on Part 50.3 is therefore misconceived as the interim injunction in this instance is not for the payment of a debt.

[19.] The Claimant seeks to have an order of committal against Mrs. Pinder and leave to issue a writ of sequestration against Lighthouse who are not parties to the proceedings. Part 50.3(5) and 50.3(6) of the CPR requires that where an application for an order of committal or for sequestration is made against a person who is not an existing party to the proceedings, then the committal application is made against that person by an application under Part 11. The application must set out full the grounds on which the application is made, identify separately and numerically, each alleged act of contempt including, if known, the date of each of the alleged acts; and be supported by one or more affidavits containing all the evidence relied upon.

[20.] The Court finds that the Claimant's Notice of Application and the Affidavits relied upon falls short of the requirements of Part 50.3(5) and 50.3(6) as it does not provide any specific instances of breaches of the injunction by Lighthouse or Mrs. Pinder.

[21.] The Claimant also seeks committal of the Defendant alleging that he made false statements in Affidavit in contravention of paragraph 13 of the injunction which are issues to be investigated at trial.

[22.] Part 51 of the CPR which governs contempt of court provides that a party must have permission to commence committal proceedings. The Claimant did not apply for nor was granted permission to commence committal proceedings against the Defendant or Mrs. Pinder.

[23.] Counsel for the Claimant drew the Court attention to the case of **William Lamar Chester v Darby Shores Ltd. and others** 2023/CLE/gen/00670. In that case *Fraser, Snr. J.* (as she then was) re-stated the view of the Court of Appeal with reference to the standard of proof to be applied in contempt proceedings at para.31:

[31.] In the Court of Appeal decision of **The Confederation of North, Central America and Caribbean Association Football v. Lisle B Austin ("CONCACAF")** - Civil Appeal 90 of 2011; CAIS 90 of 2011, *John* and *Conteh JJA* made the following pronouncements at paragraph 44, 58 and 60, 79, 80:

"[44] Contempt of Court is, a grave matter with serious consequences for the contemnor; but the law requires that proof of it be established by clear evidence beyond reasonable doubt. Other than a manifest and clear contempt in the face of the Court, contempt of Court is not to be inferred or assumed. It must be established by

clear evidence so as to make the court feel sure that there has been an irrefutable disobedience of its Orders...

[58] In our view, to ground any allegation or finding of contempt in the circumstances of the case, it was important also to analyze the language of the Order itself alongside the acts of the appellant claimed to be a contumelious disobedience of that Order. Nothing short will suffice...

[60] The contempt which had to be established legally, we think, lies in the disobedience of the ex parte Order by the appellant. This has to be proved to the criminal standard; that is, to make the judge feel sure...

[79] THE POSITION OF A CONTEMNOR WHO IS A PARTY TO PROCEEDINGS BEFORE A COURT

It is unarguable that contempt of court is insidious and ultimately destructive of the rule of law, pernicious of the due process of law and a very grave threat to the proper administration of justice. It is a phenomenon courts are familiar with, and it takes many forms and manifestations. This has caused it to be aptly described as the Proteus of the legal world: See J Moskovitz, Contempt of Injunctions, Civil and Criminal” (1943) 43 CoI LR, 780, cited in Contempt of Court, 31d Ed. by C.) Miller at para. 1.01

[80] Because of the effect of contempt of court on the administration of justice generally, superior courts have for a long time been imbued with the power to deal with it, sometimes peremptorily. This power is inherent in the jurisdiction of superior courts and by virtue of this jurisdiction they have the widest power to deal with contempt of court, and to administer condign punishment as the circumstances warrant. This may range from fines, imprisonment, and sequestration of assets, and in appropriate cases, a refusal of audience to a contemnor, especially one who seeks some benefit or relief from the court while in contempt.

[Emphasis Added]”

12 November 2024 Order

[24.] The Court has examined the terms of the interim injunction order (“First Order”) granted by Forbes, J. the terms of which the Claimant now seeks to enforce against the Defendant and the First and Second Respondent. However, the Court reiterates that no leave was granted for committal proceedings and to now examine the Order, as it was, would be a futile exercise as there were no specific breaches mentioned that was proven beyond a reasonable doubt to which the Court would be minded to consider.

[25.] The Court adopts the view posited by *Fraser, Snr. J. William Lamar Chester v Darby Shores Ltd* (supra) at para.41:

In contempt proceedings, there needs to be compelling and cogent evidence proving the alleged contempt of an alleged contemnor. In exercising its powers to punish parties in contempt, the Court must do so carefully in appropriate circumstances, in the interest of justice and based on public policy. It cannot be based on unsubstantiated allegations. It requires strong evidence that makes it abundantly clear that an alleged contemnor is guilty of contempt of court.

[26.] The Court having examined the injunction order, the Claimant's Notice of Application and the affidavits in support thereof is not satisfied beyond reasonable doubt that the Defendant and Mrs. Pinder committed any contempt of court. Further, the Court finds no basis to grant leave to issue a writ of sequestration against Lighthouse.

[27.] The Claimant/Applicant's Committal application is hereby dismissed. The Claimant shall pay the costs of the Respondents, to be assessed by this Court if not agreed

Dated: 12 August 2025

[Original signed and Sealed]

Constance Delancy
Justice