

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT

Common Law & Equity Division

2025/CLE/gen/00380

BETWEEN:

JASON WATSON, HAROLD L. WATSON AND GERALD MORTIMER
in their capacity as
The Trustees of The Automotive & Industrial Distributors Limited Staff Retirement
Fund
Claimant

AND

MILLER ENTERPRISES LTD.

First Defendant

EARL MILLER

Second Defendant

Before: The Hon. Madam Justice Carla D. Card-Stubbs
Appearances: Ms. Michelle Deveau and Ms. Adrienne Bellot for the Claimant
Mr. Moses Reginald Bain and Mrs. Rose Green Thompson for the
First and Second Defendants

Hearing Date: July 21, 2025

*Interlocutory Injunction - American Cyanamid Principles – Claim in Trespass -Considerations
for the Court in determining whether to grant interlocutory injunction*

RULING

CARD-STUBBS, J

Introduction

[1.] This is the Claimants' application for an interlocutory injunction pending suit. For the reasons that follow, the injunction is granted on the terms given below.

Background

[2.] On May 15, 2025, the Claimants filed a Fixed Date Claim Form with Statement of Case. The Claimants, Jason Watson, Harold L. Watson and Gerald Mortimer are described as the Trustees of The Automotive & Industrial Distributors Limited Staff Retirement Fund, Claimant and the purchasers of property bought by public auction. That property is described as

ALL THAT piece or parcel of land situate at the junction of Harrold Road and Knowles Drive in the Western District of the Island of New Providence aforesaid containing by ad measurement 2.370 acres which said piece or parcel of land has such position shape marks boundaries and dimensions as are set on the diagram or plan attached annexed hereto and is thereon edged in "PINK" and designated "A" and located at Harold Road/Bozine Hill Road Nassau, Bahamas (*"the Property"*).

[3.] The First Defendant is described as "the former owner of record of the Property". The Second Defendant is described as "the sole shareholder and sole director of the First Defendant, but is not the owner of the Property".

[4.] The claim is one in trespass and the Claimants seek various relief, including vacant possession of land. The Claimants plead:

6. The Claimants became interested in purchasing property for an on behalf of the Fund as an investment property having regard to several income generating business opportunities which could be derived from the use of the property. The Claimants selected the Property for this purpose having seen the Property advertised for sale.

7. On or about 20th June 2024 by notice of public auction sale published in the both local newspaper the Property was advertised for sale by the Vendor for recovery of outstanding real property taxes by reason of outstanding and unpaid real property tax. The Claimants submitted a bid for the property and succeeded.

8. The Claimants entered into an Agreement for Sale and Purchase dated 20th November 2024 (*"the Agreement for Sale"*) with the Treasurer of The Bahamas which provided for payment of a purchase price of One Million One Hundred Ninety-Eight Thousand Four Hundred Ninety-one and 25/100 dollars (\$1,198,491.25) (*"the Purchase Price"*).

9. Pursuant to Clause 13.1 of the Agreement for Sale the Claimant was entitled to vacant possession of the Property upon payment of

the Purchase Price to the Treasurer in completion of the sale the Purchaser.

10. The Claimants made payment of the Purchase Price to the Treasurer on 27th January 2025.

11. The Treasurer transferred title to the Property by way of Conveyance executed and dated 22nd January 2025 and delivered in escrow to the Claimants' attorneys in consideration for the receipt of the Purchase Price. Upon release of the escrow the said conveyance was stamped on 10th February 2025 upon the Claimants' payment of the stamp duty and the conveyance was submitted for recording in the Registry of Records.

12. Despite payment of the Purchase Price, completion of the Sale and transfer of title by the Treasurer upon execution stamping and recording of the Conveyance, the Claimants have been unable to obtain vacant possession of the Property as the Defendants continue to unlawfully occupy the Property to date.

...

17. While the Defendants continue to trespass and remain in unlawful possession and occupation of the Property the Defendants are unjustly enriched by continuing to operate business and derive benefits and profits from commercial enterprise by unlawfully remaining in possession.

18. As a result of the aforementioned the Defendants' continued trespass and unlawful occupation of the Property, the Claimants have incurred loss and damage to the Claimants' reputation and business interests ...

[5.]The First and Second Defendants filed a Notice of Appointment of Attorney on June 24, 2025. No acknowledgement of service has been filed to date.

THE APPLICATION FOR INTERIM RELIEF

[6.]On May 15, 2025 the Claimants filed a Notice of Application seeking interlocutory relief. An Affidavit of Jason Watson in support of the Application was also filed on May 16, 2025. The Application was accompanied by a Certificate of Urgency filed on May 15, 2025.

[7.]Having determined that the application was to be heard *inter partes*, the Court fixed this matter to be heard on June 5, 2025. On that occasion, the Second Defendant appeared in person and sought an adjournment to retain counsel. The Second Defendant also represented that a matter concerning the sale of the property was to be heard in the Court of Appeal. The court acquiesced to the request for an adjournment. On the adjourned date, the Second Defendant was present with Counsel. Counsel had not yet come on record for the Defendants and represented to the court that they had

only been retained that morning. Counsel was given time to make the requisite filings and the court set a time table for the Defendants to respond to the application. On the adjourned date, counsel for the Defendants indicated that they wished to make a certain application. Counsel for the Claimant was out of the jurisdiction and the matter was further adjourned. When the matter was called for hearing on July 21, 2025, Counsel for the Defendants indicated that they had been instructed by the Defendants and would continue to represent the Defendants.

[8.] It is against that background that, in the absence of an acknowledgement of service, Counsel for the Defendants were heard with leave of the court.

[9.] The Claimants' Application is made pursuant to Section 21 of the Supreme Court Act, Rules 17.1(b) and 17.1(3) and (4) of the Supreme Court Civil Procedure Rules, 2022, as amended ('CPR') and the inherent jurisdiction of the Court for:

(a) An Injunction Order restraining the Defendants their directors, servants, employees and/or agents from further occupying the land and appurtenances identified in Real Property Tax Assessment No.72874, described as ALL THAT piece or parcel of land situate at the junction of Harrold Road and Knowles Drive in the Western District of the Island of New Providence aforesaid containing by ad measurement 2.370 acres which said piece or parcel of land has such position shape marks boundaries and dimensions as are set on the diagram or plan attached annexed hereto and is thereon edged in "PINK" and designated "A" and located at Harold Road/Bozine Hill Road Nassau, Bahamas (*"the Property"*), until further Order of this Court.

b) An Injunction Order pursuant to CPR 17.1(b) and 17.1(3) and (4) directing that the Defendants do forthwith deliver up possession of the Property to the Claimants, until further order of this Court.

(c) Provision be made for the Costs of this Application.

[10.] The grounds of the Application are listed as:

(a) The Claimants are the lawful bona fide purchasers for value of the Property by way of public auction conducted by the Chief Valuation Officer on behalf of the Treasurer of The Commonwealth of The Bahamas ("the Treasurer") pursuant to section 25A.

(b) The Claimants paid the full purchase price for the Property on public auction by payment received by attorneys for the Treasurer on 28th January 2025.

(c) The Treasurer conveyed the Property to the Claimants by way of Conveyance dated 22nd January 2025, stamped and recorded on 10th February 2025.

(d) The Claimants are the legal and beneficial owners of the Property having obtained indefeasible title and interests in the Property as bona fide purchasers for value.

(e)The Claimants are entitled to vacant possession of the Property by virtue of the terms of the Agreement for Sale and by virtue of the terms of the conveyance pursuant to section 25B of the Real Property Tax Act.

(f) By implication of law pursuant to section 7 of the Conveyancing and Law of Property Act, Ch. 138, the Claimants are entitled to enter onto and have quiet possession of the Property so conveyed by the Treasurer.

(g)It is in the interests of justice to grant the interim relief sought to prevent the Defendants continuing to unlawfully occupy the Property and continuing to be unjustly enriched by profiting from their conduct of business and commercial enterprise on the Property to the detriment of the Claimants' rights.

(h)It is in the interests of justice to grant the interim relief sought to prevent the Claimants continuing to suffer irremediable loss and prejudice including loss of business reputation and business opportunities which cannot be compensated in damages by the Defendants.

Allegations of the Parties - Affidavit Evidence

[11.] The allegations of the parties as to their rights of ownership and occupation of the property are set out in the respective affidavits.

[12.] By Affidavit of Jason Watson filed May 16, 2025, the Claimants' evidence includes evidence of the purchase of the property in question, the occupation of the property by the Defendants and the loss said to be suffered by the Claimants.

[13.] On July 18, 2025, the Defendants filed an affidavit of Earl Miller in response to the affidavit of Jason Watson. Earl Miller avers, inter alia, that he is the owner of the property, that he resides at the property and that the sale of the property by the Treasurer is wrong in law.

Cases of the Parties in summary

[14.] Both the Claimants and Defendants lodged written submissions and supplemental submissions.

[15.] The Claimant claims to be the owner of the property, subsequent to a statutory sale of the subject property, as evidenced by a recorded conveyance. The case of the Claimants is that they purchased the property by public auction, that they are bona fide purchasers for value, that the Defendants were aware of the purchase, that the Defendants continue to occupy the property, that the Defendants are trespassers and that the Claimants suffer loss as a result.

[16.] The First and Second Defendants claim that the statutory sale was invalid. The case of the Defendants is that the purported purchase of the property by public auction is contrary to law, that the second Defendant owns the property and is entitled to reside and conduct business there.

ISSUE

[17.] The issue for determination is whether this Court ought to exercise its discretion in favour of the Claimant by granting the interim relief sought.

THE LAW

[18.] The Claimant makes its application pursuant to Section 21 of the Supreme Court Act, the inherent jurisdiction of the Court and Part 17, Rules 17.1(b) and 17.1(3) and (4) The Supreme Court Civil Procedure Rules, 2022, as amended ('CPR').

[19.] The Court derives its power to grant an interlocutory injunction from **Section 21 of the Supreme Court Act** which provides:

21. (1) 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*.

(2) Any such order may be made either unconditionally or on such terms and conditions as the Court thinks fit.

(3) If, whether before, or at, or after the hearing of any cause or matter, an application is made for an injunction to prevent any threatened or apprehended waste or trespass, the injunction may be granted, if the Court thinks fit, whether the person against whom the injunction is sought is or is not in possession under claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title, and whether the estates claimed by both or either of the parties are legal or equitable.

[Emphasis supplied].

[20.] **Part 17 of The Supreme Court Civil Procedure Rules, 2022, as amended ('CPR')** govern the applicable procedure and practice. **Rules 17.1(1)(b) and 17.1(3) and (4)** provide in part:

17.1 Orders for interim remedies: relief which may be granted.

(1) The Court may grant interim remedies including —

(a)

(b) an interim injunction;

...

- (2) ...
- (3) The fact that a particular type of interim remedy is not listed in paragraph (1) does not affect any power that the Court may have to grant that remedy.
- (4) The Court may grant an interim remedy *whether or not there has been a claim for a final remedy of that kind*.

[21.] By section 21 of the Supreme Court Act, a court may grant an interlocutory injunction as an interim remedy if it appears to the court to *be just and convenient to do so*. This vests a wide discretion in the court. Part 17 CPR makes it clear that a court may grant an interim remedy even where that type of remedy is the kind of remedy being sought as a final remedy in the instituted suit.

[22.] In the instant matter, the parties are agreed that the guidelines as set out in the case of **American Cyanamid Co. v Ethicon Limited [1975] AC 396**, ought to govern the exercise of this court's discretion in this case. The process and governing principles are captured by Lord Diplock where he opined at pages 407 – 408 of that judgement:

“The court no doubt must be satisfied that the claim is not frivolous or vexatious, in other words, that there is a serious question to be tried.

It is no part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial. One of the reasons for the introduction of the practice of requiring an undertaking as to damages upon the grant of an interlocutory injunction was that "it aided the court in doing that which was its great object, viz. abstaining from expressing any opinion upon the merits of the case until the hearing": *Wakefield v. Duke of Buccleugh* (1865) 12 L.T. 628, 629. So unless the material available to the court at the hearing of the application for an interlocutory injunction fails to disclose that the plaintiff has any real prospect of succeeding in his claim for a permanent injunction at the trial, the court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought.

As to 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 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 loss 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.

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. It would be unwise to attempt even to list all the various matters which may need to be taken into consideration in deciding where the balance lies, let alone to suggest the relative weight to be attached to them. These will vary from case to case.

Where other factors appear to be evenly balanced it is a counsel of prudence to take such measures as are calculated to preserve the status quo. If the defendant is enjoined temporarily from doing something that he has not done before, the only effect of the interlocutory injunction in the event of his succeeding at the trial is to postpone the date at which he is able to embark upon a course of action which he has not previously found it necessary to undertake; whereas to interrupt him in the conduct of an established enterprise would cause much greater inconvenience to him since he would have to start again to establish it in the event of his succeeding at the trial.

Save in the simplest cases, the decision to grant or to refuse an interlocutory injunction will cause to whichever party is unsuccessful on the application some disadvantages which his ultimate success at the trial may show he ought to have been spared and the disadvantages may be such that the recovery of damages to which he would then be entitled either in the action or under the plaintiff's undertaking would not be sufficient to compensate him fully for all of them. *The extent to which the disadvantages 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, and if the extent of the uncompensatable disadvantage to each party would not differ widely, it may not be improper to take into account in tipping the balance the relative strength of each party's case as revealed by the affidavit evidence adduced on the hearing of the application.* This, however, should be done only where it is apparent upon the facts disclosed by evidence as to which there is no credible dispute that the strength of one party's case is disproportionate to that of the other party. The court is not justified in embarking upon anything resembling a trial of the action upon conflicting affidavits in order to evaluate the strength of either party's case.

[Emphasis supplied]

[23.] The guidelines laid down by Lord Diplock are captured in a 4-prong test which may be summarized as follows.

1. Whether there is a serious question to be tried.
2. Whether damages would provide an adequate remedy for the Claimants if the application for interim injunction were to be refused and they were to succeed in their claim at trial and, if not, whether damages would provide an adequate remedy for the Defendants if their actions were to be curtailed by the interim injunction and they were to be found at trial as having a right to carry out the actions complained of by the Claimants.
3. Where there is doubt as to the adequacy of the respective remedies in damages, where does the balance of convenience lie?
4. Where other factors appear to be evenly balanced, it is a counsel of prudence to take such measures as are calculated to preserve the status quo.

[24.] In determining whether an interim injunction should be granted, a court must consider “*whether granting or withholding an injunction is more likely to produce a just result*”. The Privy Council in **National Commercial Bank Jamaica Ltd v Olint Corp Ltd**. [2009] UKPC 16 considered the factors that a court may take into account in the exercise of its discretion. Lord Hoffman at paragraphs 16 to 19 opined:

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 freedom of action will have consequences, for him and for others, which a court has to take into account. 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.** As the House of Lords pointed out in *American Cyanamid Co v Ethicon Ltd* [1975] AC 396, that means that if damages will be an adequate remedy for the plaintiff, there are no grounds for interference with the defendant’s freedom of action by the grant of an injunction. Likewise, if there is a serious issue to be tried and the plaintiff could be prejudiced by the acts or omissions of the defendant pending trial and the cross-undertaking in damages would provide the defendant with an adequate remedy if it turns out that his freedom of action should not have been restrained, then an injunction should ordinarily be granted.

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 irreparable 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 irreparable prejudice to one party or the other.** This is an assessment in which, as Lord Diplock said in the *American Cyanamid* case [1975] AC 396, 408:

“It would be unwise to attempt even to list all the various matters which may need to be taken into consideration in deciding where the balance lies, let alone to suggest the relative weight to be attached to them.”

18 Among the matters which the court may take into account are the prejudice which the plaintiff may suffer if no injunction is granted or the defendant may suffer if it is; the likelihood of such prejudice actually occurring; the extent to which it may be compensated by an award of damages or enforcement of the cross-undertaking; the likelihood of either party being able to satisfy such an award; and the likelihood that the injunction will turn out to have been wrongly granted or withheld, that is to say, the court’s opinion of the relative strength of the parties’ cases.

19 There is however no reason to suppose that, in stating these principles, Lord Diplock was intending to confine them to injunctions which could be described as prohibitory rather than mandatory. In both cases, the underlying principle is the same, namely, that the court should take whichever course seems likely to cause the least irreparable prejudice to one party or the other: see Lord Jauncey in *R v Secretary of State for Transport, Ex p Factortame Ltd (No 2)* (Case C-213/89) [1991] 1 AC 603, 682–683. What is true is that the features which ordinarily justify describing an injunction as mandatory are often more likely to cause irreparable prejudice than in cases in which a defendant is merely prevented from taking or continuing with some course of action: see *Films Rover International Ltd v Cannon Film Sales Ltd* [1987] 1 WLR 670, 680. But this is no more than a generalisation. What is required in each case is to examine what on the particular facts of the case the consequences of granting or withholding of the injunction is likely to be. If it appears that the injunction is likely to cause irreparable prejudice to the defendant, a court may be reluctant to grant it unless satisfied that the chances that it will turn out to have been wrongly granted are low; that is to say, that the court will feel, as Megarry J said in *Shepherd Homes Ltd v Sandham* [1971] Ch 340, 351, “a high degree of assurance that at the trial it will appear that the injunction was rightly granted”.

[25.] In cases of interim remedies, it is important that the court seeks to exercise its discretion in such a way that will not irreparably prejudice the substantive rights of the parties before trial. This is a paramount consideration of the court in taking into account the factors that will determine the exercise of its discretion.

[26.] Both **American Cyanamid** and **National Commercial Bank Jamaica Ltd v Olint Corp Ltd.** were endorsed and considered in this jurisdiction in **Dyphany Mortimer and another v Darnette Weir and another [2020] 1 BHS J. No. 110**, a case relied upon by the Claimants.

A SERIOUS QUESTION TO BE TRIED

[27.] The Claimants in this case must show that there is a serious question to be tried. The Claimants must show a threatened or continuous breach of its legal right. The claim must not be “frivolous or vexatious”. This is to be determined by having resort to the pleadings and affidavit evidence filed although a court must refrain from attempting to resolve conflicts of evidence on the affidavits and from attempting to determine difficult questions of law. A court must be wary of concluding on matters of evidence that have not been subject to the rigors of trial. However, in order to determine whether there is a serious issue to be tried, a court must have regard to the claim of the Claimants and to any filed response by the Defendants in opposition thereto.

[28.] In **Elisha B. Miller v Paulina Martha Simone Glington and another [2022] 2 BHS J. No. 167**, the Court of Appeal endorsed this approach and the “limits of enquiry” to be made at the interlocutory stage. Justice of Appeal Crane-Scott in delivering the decision of the appellate court, observed:

33. We agree with Mr. Wallace-Whitfield that (as Lord Diplock clearly explained in delivering the decision of the House of Lords in **American Cyanamid**) it is no part of the court’s function at the interlocutory stage of the litigation “...to try to resolve conflicts of evidence on affidavit 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. These are matters to be dealt with at the trial...”

34. However, we do not agree that the judge’s references to the pleadings and the evidence means that she conducted a “mini-trial” or that she had thereby committed an error of law as Mr. Wallace-Whitfield contends. Based on the Board’s decision in **American Cyanamid**, it is obvious that while refraining from deciding the underlying claim, any court which is hearing an application for interlocutory relief, must nonetheless seek to obtain a broad appreciation of the claim as well as nature of the dispute which is to be ultimately determined at the substantive trial. Indeed, as Lord Diplock himself observed, “the court no doubt must be satisfied that the claim is not frivolous or vexatious; in other words, that there is a serious question to be tried.”

35. It seems to us that on an application for interlocutory relief, some resort to the pleadings and to the evidence will be required. Mere references by the judge to the pleadings and to the affidavit

evidence on the Court file without more will not automatically mean that the judge has taken account of irrelevant material or that a “mini-trial” has been held.

36. Having read the Ruling, we are satisfied that it clearly demonstrates that the learned judge was keenly aware of the limits of her inquiry on the hearing of the Respondent’s Summons for interlocutory relief. The Ruling shows that after considering the contending submissions and examining the pleadings and the evidence, the judge satisfied herself (as required) regarding the nature of the dispute and the parties’ respective contentions which were to be determined before her at trial.

37. At paragraphs 15 and 16 of the Ruling the judge stated:

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

16. Having considered both parties’ submissions and the evidence before the Court I am satisfied that there is a dispute as to the beneficial ownership of the house by the Plaintiffs which can only be determined at trial.” [Emphasis added]

38. Furthermore, after expressly adverting to *American Cyanamid* and to Lord Diplock’s exhortations against courts attempting at the interlocutory stage, to resolve “*conflicts of evidence*” on the affidavits or to decide “*difficult questions of law*”, the learned judge made the following finding:

“18. In the circumstances, on an application for injunctive relief the Court needs to be satisfied ONLY (emphasis mine) that there is a serious issue to be tried on the merits. So, I therefore conclude that there are triable issues to be determined by the Court.” [Emphasis added]

39. In short, in exercising her discretion on the application for interlocutory relief, the judge was entitled to examine the pleadings and the evidence before her for the purpose of satisfying herself that the underlying claim was not frivolous or vexatious and that there was indeed a serious issue to be determined at trial. We are satisfied that she dutifully did so and that she committed no error of law....

[29.] In this matter, the Claimants submit that there is a serious issue to be tried. The Claimants’ claim is that they are *bona fide* purchasers for value for property which they cannot enjoy because of the occupation of the property of the Defendants. The Claimants claim that the occupation is illegal and that the Defendants are trespassers.

[30.] The Claimants submit that

The underlying claims in this Action are premised on the Claimants' indefeasible title to the Property acquired by virtue of the sale of the Property by the Treasurer of The Commonwealth of The Bahamas in exercise of the power of sale pursuant to ss.25A and 25B of the Real Property Tax Act Ch. 376 as amended 2022.

The exercise of the section 25A power of sale was valid, having complied with and been conducted in accordance with the provisions of the Act. The transfer of title by the Treasurer by conveyance to the Claimants was done in accordance with and complied with the provisions of section 25B of the Act. The relevant portions of **s.25B of the Act**

In the instant case the Claimants are bona fide purchasers for value having expended \$1,198,491.25 on payment of the full purchase price following the bid. The Purchase price paid was more than reserved price set by the Treasurer i.e. more than 70% of the assessed value of the Property – (see page 105/181 of the Watson Affidavit para.20 of the Affidavit of Shaunda Strachan).

The Claimants have a more than realistic prospect of succeeding on the claims for their declaration of ownership of the Property and declaration of entitlement to vacant possession of the Property. It also follows that the Defendant's unlawful occupation, contrary to the rights of the Claimants constitutes trespass for which the Claimants are also claiming final relief.

The Defendants have continued to unlawfully occupy the Property notwithstanding they are aware of the documentary title having been transferred to the Claimants. The Defendants have continued to be unjustly enriched by reason of that unlawful occupation as there is evidence that the Defendants conduct business and/or derive profit or benefit from commercial enterprise conducted on the Property.

Moreover, it is also the Claimant's position that in addition to the reasons argued below the Defendants have no defence to the claim for Declaration in the Action which has more than a realistic prospect of success and is not a frivolous and vexatious claim by the Claimants having regard to what we say below.

[31.] The Claimants rely on the facts deponed to by Jason Watson. By his affidavit, the deponent avers:

3. The Claimants successfully bid in the public auction to purchase property identified by Real Property Tax Assessment No.72874 and located at Harold Road/Bozine Hill Road Nassau, Bahamas (***"the Property"***).

4. The Property was sold on public auction by the Chief Valuation Officer, Ministry of Finance acting for and on behalf of the Treasurer of The Bahamas (***"the Vendor"***).

5. The First Defendant was the former owner of record of the Property. I am informed and verily believe that company registry records show that the Second Defendant is the sole shareholder and sole director of the First Defendant company.

6. On 20th November 2024, the Claimants entered into an Agreement for Sale and Purchase with the Treasurer of The Bahamas, a copy of which is attached at **Tab 1** herein...

7. On 22nd January 2025 the Claimants completed the sale and purchase of the Property by paying to the Treasurer the full purchase price ... A copy of the wire transfer of the purchase price is attached at **Tab 2** herein.

8. On 22nd January 2025, the Treasurer transferred title to the Property by way of Conveyance executed and dated 22nd January 2025, which I signed on behalf of the Purchaser and which was held in escrow by McKinney Bancroft & Hughes as attorneys for the Claimants as Purchaser. I am informed by the Claimants' attorneys that upon payment of stamp tax the Conveyance stamped and submitted for recording on 10th February 2025 A copy of the executed and stamped Conveyance is attached at **Tab 3** herein.

9. I am informed by the Vendor and do verily believe that the Defendants received a Notice of Sale dated 23rd January 2025 notifying them of the sale of the Property to the Claimants.

10. I am also informed by the Vendor and do verily believe that the Defendants also received the Vendor's Notice to Vacate dated 6th February 2025 which Notice to Vacate required the Defendants to give vacant possession of the Property within 14 days of the date of that Notice and notified the Defendants that the Claimants and the Vendor would inspect the Property on 7th February 2025. A copy of the Notice to Vacate is attached at **Tab 4** herein.

11. On 7th February 2025, I attended to the Property for the inspection, together with representatives of the Vendor employed with the Chief Valuation Officer and the Department of Inland Revenue. We met the Second Defendant on the Property and he refused to give vacant possession of the Property. The Defendants have to date remained in unlawful occupation of the Property and continue to prejudice the Claimants' rights and interests acquired by payment of consideration on completion of the sale as bona fide purchasers for value of the Property.

...

[32.] The Affidavit of Jason Watson exhibits an agreement of sale executed by the parties as well as a Conveyance between the parties dated January 22, 2025.

[33.] The Defendants also submit that there is a serious issue to be tried although the submission appears based on what the Defendants say is a valid defence to the claim. The Defendants posit that the ownership of the property is in dispute and submit:

In the instant case both the Defendants and the Claimants assert that there is a serious question to be tried and that is, "who is the legal owner of the property in dispute". The issue to be tried is not *frivolous or vexatious*. The underlying claim to ownership will determine the right to the said property. It is also critical for the Defendant, whether he has a right to remain on the property he calls home along

with his businesses, or whether he must give up vacant possession. Additionally, and equally important is the question of who has the right to sell and convey property pursuant to Section 25A and 25B of the Real Property Tax Act.

[34.] The Defendants advance that the purported sale of the subject property to the Claimants was invalid. The Defendants have put forward the following as issues before the court:

- (i) Whether the Acting Chief Valuation Officer had power of Sale over the Defendants' property to auction and convey the same to the Claimants and
- (ii) Whether the Defendants are the legal and beneficial owners of the said Property described in the Supreme Court Consent Order dated 21st November, 2011, and Conveyance of the property dated, 31st January, 2006.

[35.] The Second Defendant claims to be the beneficial owner of the property.

[36.] The Defendants submit that:

In 2020, the Second Defendant became ill. The nature of his illness made it difficult for him to focus on the payments of overdue taxes. The Second Defendant never denied that he owed taxes, he disputed the amount that the Department of Inland Revenue stated that he owed and, asked to meet with the Acting Chief Valuation Officer on several occasions, to query the amount owed. The Acting Chief Valuation Officer never arranged a meeting, neither did the Second Defendant receive the quantification of the taxes from the department.

The Second Defendant acknowledged the letters from the Department of Inland Revenue, and stated that at the time, his illness prevented him from paying the taxes in full, but desired to enter into an agreement with the department to make interim payments. The Acting Chief Valuation Officer did not respond to his objection in writing nor by telephone conversation. The Second Defendant made attempts to stop the sale of the property. Without compassion for the Second Defendant she executed the sale of his property, when, she had sufficient time to stop the sale.

The protocols according to Section 25A and Section 25B and the Amendments of 2022 and 2024 were not followed, thus it renders the sale void ab initio: only the Treasurer is vested with the power to sell a property for outstanding and unpaid taxes. The said property was sold by the Chief Valuation Officer and not the Treasurer.

The property is beneficially owned by a Bahamian which is improved with all the amenities and utilities in place and was not to be subject to sale under Section 25A and 25B. The Second Defendant is a Bahamian by birth and conducts two businesses on the improved property where all of the amenities and utilities are a part thereof. Section 25A, specifically speaks to property that are beneficially owned by a Bahamian. Where the property is not beneficially owned by Bahamian

and is in arrears and unpaid, then, the Treasures may sell the said property in respect of such taxes that are due and payable

Although the purported payments were made in full, the Second Defendant is guided by the Act, at Section 25A(15) (aa), (bb) and (cc) which states... “(1) shall not apply where the Chief Valuation Officer is satisfied that the property — (aa) is owner-occupied; (bb) is occupied by the owner for not less than eleven consecutive months in a calendar year; and (cc) does not comprise a multi-purpose building”.

The Vendor in instant case is the Treasurer whose name must be affixed to the document, according to the Third Schedule, Real Property Tax. In the purported Sale Agreement, the Treasurer’s signature was not affixed, someone signed for and on behalf of the Treasurer. The Act does not give the Acting Chief Valuation Officer power to execute the sale of the Second Defendant’s property.

Thus, although a purported title to the property was transferred by Conveyance between the First Defendant (Millers Enterprises Limited as Owner), and the Treasurer of The Commonwealth of The Bahamas (as Treasurer) and to the Claimants (as the purported purchaser) dated 22nd January 2025. The title is deemed to be unlawful because the sale was not pursuant to the Act because of many irregularities in the execution of the sale of the Defendant’s property.

[37.] The Affidavit of Earl Miller asserts ownership of the property said to be subject of the trespass. By his affidavit, the deponent avers:

3. That I am single, a senior citizen and resides alone upstairs over my business establishment since 2022.

4. That I am the legal owner of the said property in dispute; having purchased **ALL THAT** piece or parcel of land situate at the junction of Harold Road and Knowles Drive in the Western District of the Island of New Providence aforesaid containing by ad measurement 2.370 acres which said piece or parcel of land has such position shape marks boundaries and dimensions as are set on the diagram or plan attached annexed hereto and is thereon edged in "PINK" and designated "A" and located at Harold Road/Bozine Hill Road, Nassau, Bahamas. Assessment No. 0072874 (the property in dispute).

5. That I live at and reside on and operate multiple businesses on this improved property, which have all the necessary utilities since 1986.

6. That the said property which is the subject of the Power of Sale by the then Acting Chief Valuation Officer (Ms. Shundra Strachan), January 2025 and the contention of ownership, consist of two separate businesses namely: Oil Max, also known as “Rons Auto,” which is located at parcel “A” and “Nassau Industrial Gass” which is located at parcel “B”. Parcel “C”, is presently vacant land, awaiting development. **Attached hereto and shown is a copy of a Supreme Court Consent Order dated 21st day of November, A.D., 2011, showing that Earl Miller is the legal owner of the property and Exhibit as “E.M.2.”** (this info is attached to the Affidavit of Charles Watson- Fourth Affidavit at para #7 and 8)

and Exhibit “E.M. 3”, Conveyance of the property dated, 31st, day of January A.D., 2006, within that same document.

7. That the property in dispute is also the subject of an appeal action SSCiv Appeal 00121/2024, before the Court of Appeal. The Record for Appeal was settled on 1st July, 2025.

....

10. That instant matter commencement on 28th May, 2025, at that time, I was not legally represented. The relevant documents pertaining to instant matter were email to the attention of Attorney Halson Moultrie who is not Counsel for me in this matter.

11. That at the second hearing which was 5th June, 2025, I appeared *pro se*, for and on behalf of myself and the First Defendant (**Miller Enterprise Limited**). The matter was adjourned to allow me to retain Counsel.

12. That on Monday, 30th June, 2025, Country Talk Law Chambers filed a Notice of Appointment of Attorneys and appeared before Her Ladyship Justice Card-Stubbs as Attorneys for the Defendants.

13. That while CLE/gen/ 00380/2025 is a separate matter from CLE/gen/ 00121/2024 the issues interface with each other and the information from the Affidavits of the Acting Chief Evaluation Officer and Jason Watson, Trustee, A.I.D, filed respectively on 6th May, 2025 and 16th May, 2025 are critical in determining whether Section 25A of the Real Property Tax Act and it's protocols were adhered to when the Power of Sale over my property was executed.

14. That at para. 3, of Jason Watson's Affidavit, filed 16th May, 2025, the Claimants assert that they successfully bid in the public auction by the Acting Chief Valuation Officer, to purchase property identified by Real Property Tax Assessment No.72874, located at Harold Road/Bozine Hill Road, Nassau, The Bahamas. (Affidavit of Shundra Strachan, at para 20, confirmed that the Claimants were the only bid.

15. That the Claimants also assert that on 20th [sic] November 2024, the Claimants entered into an Agreement for Sale and Purchase with the Treasurer of The Bahamas. **Attached hereto shown and Exhibited as “E.M. 4”**

16. That the Claimants assert (Jason Watson's Affidavit), that on 22th [sic] January, 2025 they completed the sale and purchase of the Property by paying to the Treasurer the full amount of One Million One Hundred Ninety-Eight Thousand Four Hundred Ninety-One and 25/100 dollars (1,198,491.25), This is incorreced based on the wire transfer, which showed that on the 28th January 2025, the sum of One Million Seventy Eight Thousand Six Hundred and Thirty six dollars and fifty cents (\$1,078,636.50) was the actual price paid according to the wire transfer. **Attached hereto shown and Exhibited as “E.M.5.”** a copy of the wire transfer of the purchase price as stated before.

17. That I made every effort with the intention to settle the full payments of the Real Property taxes due and owing to the Departments. At all times, I beg to know the true quantum that was indeed due and owing but unfortunately, the Acting Chief Valuation Officer never responded positively to my request.

18. That shortly after being diagnosed with cancer in January 2022, I received a letter from the Department of Inland Revenue, informing me of outstanding property taxes which they claimed to be due and owing to the Department of Inland Revenue. **Attached hereto shown and exhibited is the letter as “E.M.6.”**

19. That the amount quoted appeared to be erroneous and not a true and correct statement of what ought to have been owed to the Department of Inland Revenue.

...

29. That further to my letter of 2nd March 2022, and after the posting of the Advertisement for my property, I telephoned the Acting Chief Valuation Officer in an effort to discuss what appear to be a discrepancy with my taxes but was informed by her Assistant that she was out of office.

...

32. That no returned telephone call, nor a follow-up letter was ever received from Ms. Strachan, nor from her Assistant, or from the Department of Inland Revenue.

33. That on January, 12, 2025 (before the conveyance) a further attempt was made to arrange a meeting with the Acting Chief Valuation Officer, who informed me (personally), that she was unavailable for a scheduled meeting; however, she did speak with me (via telephone).

34. That during that conversation (with Ms. Strachan) she informed me that no payment arrangements were possible at that time. however, if I wanted to stop the sale, I would have to pay the full amount on or before the, forty five (45) days in accordance with the said notice of Sale, dated 23 January, 2025. **Attached hereto and exhibited as “E.M.14 is a copy of the said Notice of Sale.**

35. That due to my illness and treatments I was unable to divert the needed financial attention with respect to settling the full payment of the debt before the deadline but strongly expressed a willingness to work out a payment plan.

36. That in good faith, I further demonstrated my willingness to make payments toward settling the outstanding balance by offering a personal cheque in the amount of Two Hundred Thousand (\$200,000.00) dollars. I was told that the Department would only accept a Managers Cheque.

37. That a Manager's Cheque in the amounts of Two Hundred Thousand (\$200,000.00) Dollars, was withdrawn from my Scotia Bank account, Carmichael Road Branch, which was delivered to the Department of Inland Revenue on the 13th, January, 2025. **Attached hereto shown and exhibited as “E.M.15”,**

38. That I was further informed by the Department of Inland Revenue that only the Minister of Finance, (The Prime Minister), had the authority to stop the Power of Sale of my property, notwithstanding having paid two hundred thousand, (\$200,000.00) dollars, which was returned to me three weeks later. **Attached hereto and shown as exhibit “E.M.16”,**

...

41. That I received the Notice of Sale, dated 23rd, January, 2025, and on the 6th of February, 2025, 15 days later I received a letter to vacate the said property, notwithstanding my expressed commitment and desperate attempts to stop the purported sale of my property.

42. That the Acting Chief Valuation Officer executed the said sale of the property to an only bidder (A.I.D) one of my competitors, my former tenant who had been evicted from my property in 2022.

43. That I am advised by my attorneys and verily believe that the purported sale of the said property did not comply with Section 25A, Section 24 nor 23, nor per the Amendments 2022 nor 2024 of the Real Property Tax Act, Statute Laws of the Commonwealth of the Bahamas, thus rendering the purported sale *void ab initio*.

44. That at all material times, I am the legal owner of the said property by documentary recorded evidence: (i). By Consent Order of the Supreme Court dated

21st day of November, A.D., 2011, and (ii) By Conveyance in the Registry of Records, Volume 13577, pages 460-472, Registrar General's Department.

45. That the Claimants assert (Jason Watson's Affidavit) that on 7th February 2025, they attended the Property for the inspection, together with other representatives and the Chief Valuation Officer and the Department of Inland Revenue. The Claimants further assert that they acquired by payment of consideration on completion of the sale as bona fide purchasers for value of the Property.

46. That on that same date, family member of the owners of (A.I.D), along with other persons from the Department of Inland Revenue accompanied by an Attorney and two, (2), police officer, trespassed on my property and while I was inside my home, changed the locks to my door with me inside the building. **Attached hereto and shown as exhibit "E.M. 18A" thru E.M. 18D", (pictures of persons, including members of the "Watson", family, owners of AID, and others.**

47. That the hostile attitude of the purported owners of the said property is based on the decision taken by the Acting Chief Evaluation Officer.

48. That I make this Affidavit in support of my objections to the Acting Chief Valuation Officer (as she was then), exercising her Power of Sale over my property; and any request by the Claimants by way of their Notice of Application *for inter parties* Injunctive Relief and their Fixed Date Claim over my property and prohibits any further injunctive relief (Interim Injunction), and any other relief that was requested and, or filed by the Claimants in instant matter.

[38.] The parties are *ad idem* that there is a serious issue to be tried.

[39.] The suit brought is in relation to an allegation of trespass. Trespass concerns the wrongful interference with property rights. The Claimant is alleging an ongoing wrongful interference with its rights to the subject property. The Defendant acknowledges a purported sale. The Defendants have confirmed their continued occupation of the property. The defences put forward lie in the question of title and ownership of the property. I find that there is a serious issue to be tried.

THE ADEQUACY OF DAMAGES AS REMEDY

[40.] The second limb of the *American Cyanamid test*, as per the guidelines is the consideration of the adequacy of damages as a remedy. If this Court were to exercise its discretion against the Claimants, and refuse to grant the injunction, this court must consider whether the Claimants can be compensated in damages if the Claimants were to prevail at trial. If this Court were to exercise its discretion in favour of the Claimants, and grant the injunction, this court must consider whether the Defendants could be compensated in damages, if the Defendants were to prevail at trial.

[41.] In other words, this Court must consider the position of the parties, in the event they were to prevail at trial, and the relative impact of the grant of the injunction or the refusal of the interim remedy as well as whether the parties are in a financial position to pay such damages as an alternative remedy.

[42.] In this case, if the Claimants were to be successful at trial, would damages would be an adequate remedy for the Claimant if the interim remedy sought is refused and if the acts complained of were to continue? If the answer to that, is “no”, I must also consider the following question. If the Defendants were to be successful at trial, could the Defendants be adequately compensated in damages if they were to be required to vacate the subject property?

[43.] This is an assessment exercise that the court undertakes on the material before it. The factors that a court will take into account depends on the nature of the case before it. The Court is engaged in making its best prediction of “whether granting or withholding an injunction is more or less likely to cause irreparable prejudice (and to what extent) if it turns out that the injunction should not have been granted or withheld, as the case may be.” (per Lord Hoffman in **National Commercial Bank Jamaica Ltd v Olint Corp Ltd. [2009] UKPC 16**)

[44.] The Claimants submit that damages will not be an adequate remedy for the Claimants and that:

1. The Claimants purchased the Property as trustees of the AID Staff Retirement Fund, pursuant to their investment powers on behalf of the Fund. As Trustees the Claimants have duties to the employees who are members and the beneficiaries of the Fund.

2. The Defendants continued unlawful occupation of the Property which deprives the Claimants of the use and benefit of the Property which they now legally and beneficially own, has jeopardized the trustee- beneficiary relationship as members of the Fund now have to be concerned with the feasibility of the investment which has so far not earned the Fund any income as intended.

3. The Defendants’ continued unlawful occupation of the Property has also jeopardized the customer relationships which were expected to flourish as a result of the arranged commercial leases with Native Brands, Nassau Propane and AID Ltd. Quite apart from the income generating possibility and the loss of income resulting from the economic interference the Defendants’ continued occupation will cause irreparable prejudice and unquantifiable loss to the customer relationships, which cannot be compensated in money form.

4. As it is not necessary to prove actual damage to maintain an action in trespass the Courts will not usually require proof of compensation in damages as the primary concern is the violation of the right to exclusive possession. This principle ensures that the landowner's rights are upheld and discourages unlawful occupation.

5. The Defendants’ continued occupation of the Property also violates the Claimants’ statutory right to enter into quiet enjoyment (which also cannot be

compensated in damages) pursuant to **section.7 of the Conveyancing and Law of Property Act, Ch. 138.**

6. The Watson Affidavit illustrates the Claimants concern that the Defendants may not be able to meet an award of damages compensation in any event.

[45.] In the Affidavit of Jason Watson, the affiant swears to the following at paragraphs 26 to 28:

Claimants' Unquantifiable losses

26. As a result of the Defendants' continued trespass and unlawful occupation of the Property, the Claimants have incurred loss and damage to the Claimants business interests and reputation which cannot be compensated in damages including loss of customer relationships which would have been serviced and consolidated by the new business opportunities pursued by the Claimants for the benefit of the Fund and doubt and uncertainty experienced by the Employees and members in the Fund having regard to the interference with the Fund's investment by reason of the Claimants being unable to be given vacant possession of the Property by the Vendor.

27. Based on the Defendants' evidence in the JR Action and the Defendants' non-payment of real property taxes on the Property which led to the sale by public Auction, the Claimants reasonably believe that the Defendants may be unable to satisfy any payment of damages or compensation to the Claimants.

Trespass, Unlawful interference with and loss of Business Opportunity

28. In addition to the unquantifiable losses the Claimants have suffered actual loss of income as a result of the inability to being occupation of the Property directly following the completion of the purchase which has resulted in a loss of revenue as set out in the Claimant's letter and summarized as follows...

...

[46.] The loss of revenue is said to amount to a "total monthly loss of income of \$22,500."

[47.] The affiant, Jason Watson, also avers at paragraph 34:

Undertaking in Damages

34. The Claimants have been advised by Counsel and do verily believe that upon the granting of the interim injunctive relief, the Court will require the Claimants to give an undertaking to the Court to be responsible for any loss and damage sustained as a consequence of the injunction orders, in the event that the Court is of the view that the injunction orders should not have been granted and damages for such losses should be paid by the Claimants. Accordingly, the Claimants are prepared to and do hereby give the usual undertakings in damages and I confirm that the Claimants are willing and able to comply with any order this Honourable Court may make for compensation payable pursuant to that undertaking.

[48.] In response, the Defendants posit that damages would be an adequate remedy for the Claimants but not for the Defendants. The Defendants submit:

1. In [the] instant case, damages would not be an adequate remedy. Should the court rules [sic] in favour of the Defendant, the Claimants will suffer pecuniary loss but will recover. However, should the court rules in favour of the Claimants, the Second Defendant, based on his age, his challenging health and his ability to earn wealth, will not recover.

2. Additionally, for the Defendant to gives [sic] up vacant possession after desperately trying to keep his property and his businesses, he will lose everything, suffer hardship and be severely prejudiced. He would have no financial income to continue is [sic] treatment or survive.

[49.] The Affidavit of Earl Miller, as set out above, shows that the affiant is a senior who resides in the property and has suffered illness. The Affidavit also shows that the Affiant has had some financial difficulties and continues to do so.

[50.] In summary, the parties agree that the Claimants will suffer pecuniary loss. The Defendants' position is that the Claimants will recover. The Defendants' position is that an injunction would so displace the Second Defendant that he would "lose everything".

[51.] There appears to be no doubt that should the injunction be refused, the Claimants will suffer continuing pecuniary losses which the Defendants, by inference, will not in a position to satisfy. These are pecuniary losses resulting from the loss of business dealings. The Claimants also submit that there is likely to be reputational damage if the Claimants cannot honour obligations to the intended tenants listed in the affidavit of Jason Watson (paragraph 29 and exhibits at Tabs 15, 16 and 17).

[52.] I consider the submissions of the Defendants which, at its essence, is that the Second Defendant is an ill senior who would have to find somewhere else to live and to conduct his businesses. It appears that damages that would flow should the Defendants prevail at trial would include housing costs and lost profits. No evidence of the business dealings of the Defendants was submitted. The Claimants have given the necessary undertaking in damages and there is no suggestion that they will not be able to satisfy an award in damages if they fail to prevail in the action that they have instituted. The Claimants are trustees of the Automotive & Industrial Distributors Limited Staff Retirement Fund, and the purchasers of property who advanced the sum of \$1, 198, 491.25 to the Treasurer for same.

[53.] In considering whether damages will be an adequate remedy, the court is not merely to consider whether damages can be quantified. A court must consider "whether

granting or withholding an injunction is more or less likely to cause irremediable prejudice (and to what extent)....” This necessarily includes a consideration as to whether the failure to grant an injunction would cause the Claimants losses that it would not be able to recoup if the Claimants were to succeed at trial. It also includes a consideration as to whether the grant of an injunction would cause the Defendants losses that they would not be able to recoup if the Defendants were to succeed at trial.

[54.] It is apparent that were the Claimants to succeed at trial, without the interim injunction that they seek, they would not be adequately compensated in damages. The Defendants do not appear to be in a position to satisfy an award of damages should the Claimants prove their case. The ongoing loss, if proven, could be substantial. It is also apparent that if the Defendants were to be successful at trial, the losses would be quantifiable and damages would be an adequate remedy. In this case, the Claimants have indicated their position to provide the usual undertaking in damages. There has been no objection or response to this and it appears, in the evidence, that the Claimants are in a financial position to satisfy their undertaking.

[55.] I will examine the submission of the Defendants that the Second Defendant “will lose everything, suffer hardship and be severely prejudiced” under the balance of Convenience.

THE BALANCE OF CONVENIENCE

[56.] A court must determine where the balance of convenience lies on case by case basis, bearing in mind the goal of taking a course that “seems likely to cause the least irremediable prejudice to one party or the other.”

[57.] In this case, I have already determined that should the Claimants succeed, the Defendants would be unlikely to compensate the Claimants in damages. I have also already determined that should the Defendants succeed, the Claimants would likely be able to compensate the Defendants in damages.

[58.] I now consider, on the material before me, the strength of the parties’ cases in an effort to make a reasoned forecast as to the likelihood that the injunction, if granted, would have been wrongly granted OR the likelihood that the injunction, if refused, would have been wrongly withheld.

[59.] The Claimants submit:

1. Having regard to their statutory and legal rights obtained pursuant to the sale by public auction, their acquired rights title and interest in the Property the balance of convenience lies in favour of the grant of an interim injunction pending the final determination of the Action.

2. Having regard to the Claimants' rights to the Property, having regard to the possible defences which the Defendants can raise, it is highly likely that the injunction will eventually at trial have been rightly granted.

[60.] In the Affidavit of Jason Watson, the affiant swears to the following at paragraphs 32 to 33:

Balance of Convenience

31. Unless the Claimants obtain urgent interim remedies in support of this Action for Declarations and vacant possession, the Defendants' pursuit of any extension of time to appeal and if leave be granted the pursuit of an onward appeal in the Court of Appeal, will result in the Claimants' continued reputational damage with the members of the AID Staff Retirement Fund.

32. The continued loss of income, will be exacerbated by the protracted period of time it will take for the Defendants to pursue an extension of time to appeal and any hearing of the appeal and in any event in the continuation of the JR Action without any prospect of an order of vacant possession being made therein.

33. The Defendants are no longer owners and continue to unlawfully occupy the Property and continue to be unjustly enriched by continuing income generating commercial business on the Property of which they are no longer owners and have no right to occupy.

[61.] The Defendants submit that there would be prejudice to the Defendants given the nature of the Second Defendant and that he would likely not "recover" from an injunction if one is given in favour of the Claimants.

[62.] The Defendants further submit:

1. The balance of convenience lies in favour of the Defendants because it is *prima facie* that the law was not followed by the Chief Valuation Officer thus making the transactions unlawful, and the conveyance voidable.

2. The Defendants assert that they should not be held responsible for any loss accrued by the Claimants. And should not compensate for any damages between now and the final determination of this Action. They remain in possession of the said property as they are still the legal owners.

[63.] The parties agreed that there is a serious issue to be tried. I also find that the parties agreed the following facts:

1. The Defendants owed Real Property taxes.
2. The Defendants had notice of the Real Property taxes.
3. The property was advertised for sale by public auction.

4. A Conveyance was executed purporting to convey the property to the Claimants pursuant to the statutory sale.
5. The Defendants received notice to vacate the property.
6. The Defendants remain in occupation of the property.

[64.] On my perusal of the evidence given by way of affidavit, I make the following observations:

1. The Defendants' claim is that the tax assessments were incorrect. However, the Defendants, on the evidence before me, have failed to give evidence of any statutory objections to the amount of Real Property taxes assessed. The Defendants rely on letters and statements of phone calls and attempts to engage the Chief Valuation Officer in conversation but there appears to be no evidence of filed objections to the assessments.

2. The documented legally-mounted challenges to the sale, as appears from the parties, arose subsequent to the statutory sale and subsequent to the attempt by the Vendor to secure vacant possession.

3. The Defendants assert a claim to ownership, and rely on "a copy of a Supreme Court Consent Order dated 21st day of November, A.D., 2011, showing that Earl Miller is the legal owner of the property and Exhibit as "E.M.2 ." (this info is attached to the Affidavit of Charles Watson- Fourth Affidavit at para #7 and 8) and Exhibit "E.M. 3", Conveyance of the property dated, 31st, day of January A.D., 2006." This assertion is made in paragraph 6 of the Affidavit of Earl Miller. Curiously, Exhibits E.M. 2 and E.M. 3 are missing from the Affidavit of Earl Miller. Therefore this statement must be treated as a statement without basis.

4. Paragraph 44 of the Affidavit of Earl Miller reads:

44. That at all material times, I am the legal owner of the said property by documentary recorded evidence: (i). By Consent Order of the Supreme Court dated 21st day of November, A.D., 2011, and (ii) By Conveyance in the Registry of Records, Volume 13577, pages 460-472, Registrar General's Department.

I note that there appears to be 2 exhibits marked "EM1". The second "EM1" appears to be a copy of a Conveyance to 2 parties, including the First Defendant, and appears to be dated January 31, 2006 and recorded on May 22, 2006 at Volume 9624 page 592. ... This is prior to the Conveyance relied on by the Claimants. The Conveyance relied on by the Claimants is later in time.

5. Exhibited at Tab 3 of the Affidavit of Jason Watson is a copy of the executed and stamped Conveyance in favour of the Claimants which records the Claimants as the purchasers (and legal owner) as Harold L. Watson, Gerard F. Mortimer and

Jason A. Watson, the Trustees of Automotive & Industrial Distributors Limited Staff Retirement Fund”. The evidence is that the Conveyance was submitted for recording on February 10, 2025.

6. The Defendants have in their possession, and have exhibited, evidence of the Agreement of sale between the Treasurer and the Claimants, paragraph 15, Exhibit EM 4 of the Affidavit of Earl Miller. The Defendants submit that the Treasurer is the only possible Vendor and functionary authorized to exercise the power of sale. From the face of the Agreement of Sale and the Conveyance exhibited, the Vendor is described as the Treasurer and the documents are purported to be executed by the Treasurer.

7. The Defendants have raised, by way of response, that the statutory sale was plagued with irregularities thus rendering the sale void *ab initio*. They sought to rely on various sections of the Real Property Tax Act, as amended, including sections 20, 25A and 25B. The Claimants also sought to rely on sections of the Real Property Tax Act to demonstrate that the procedure was complied with. What I will note, without resolution of that matter at this interlocutory juncture, is that it became apparent during the submissions of counsel for the Defendants that the Defendants rely on sections of the Real Property Tax Act that have since been amended.

[65.] There is no dispute that a process was undertaken to sell the disputed property to the Claimants. There is no allegation or evidence of a court-ordered stay in relation to the sale. My observations lead me to determine that to date, despite the submissions and evidence of the Defendants about the legal courses that they embarked on, there is no court determination or order or finding that the sale was invalid. The Defendants’ defence appear to be based, in part, on their interpretation of statutory provisions that have since been amended.

[66.] In considering the state of the evidence before me at this time, it is my assessment that the grant of an injunction will serve to enforce the current legal position. In the absence of a voided sale, the extant legal position is the demonstrated lawful ownership of the property and the entitlement of the lawful owner to possession of the property.

[67.] It is my determination that, given the relative strength of the parties’ cases on the filed documents before me at this interlocutory stage, it will likely be determined by the outcome of a trial that the injunction is rightly granted. It seems to me that the balance of convenience lies in favour of the Claimants and that the course of action that will cause the least prejudice would be to grant an injunction and stem the continued loss said to be suffered by the Claimants. My assessment is that there is a greater risk of irreparable harm if the injunction is not granted than if it is.

[68.] I bear in mind the personal hardship that the Second Defendant will undergo in the necessary displacement that the injunction will cause. While a court may be mindful of such circumstances, this Court is constrained to act in a way to ensure that its orders will serve to uphold and protect lawfully-demonstrated rights. The circumstances of the Defendants will be taken into account by giving the Second Defendant a definite time period within which to vacate the property in order to accommodate a relocation exercise.

STATUS QUO

[69.] This is an unnecessary consideration given the foregoing findings and determination.

Orders Sought by the Defendants

[70.] I note that, by way of submission, the Defendants seek certain relief in response to the Claimants' Application. This is submitted as:

The Defendants oppose any Application seeking injunctive relief and, or interim orders on behalf of the Claimants until the final determination of this Action.

In the alternative, the Defendants seek inter alia:

- A Declaration that the Defendants are presently the legal and beneficial owners of the said Property described as: ALL THAT piece or parcel of land situate at the junction of Harrold Road and Knowles Drive in the Western District of the Island of New Providence aforesaid containing by ad measurement 2.370 acres which said piece or parcel of land has such position shape marks boundaries and dimensions as are set on the diagram or plan attached annexed hereto and is thereon edged in "PINK" and designated "A" and located at Harold Road/Bozine Hill Road Nassau, Bahamas ("the Property").
- An Order that the Department of Inland Revenue meet with and provide the Second Defendant with a comprehensive quantification of his real property taxes along with surcharges and interest for the period due and owing, as well as any exemption for which he is entitled under the Real Property Tax Acts.
- An Order that the Second Defendant be allowed a schedule interim payment with the Department of Inland Revenue and a stipulated period of time to pay the taxes due and owing, along with the surcharges and interest.

- The Defendants also seek damages against the Claimants, the Department of Inland Revenue, the Attorney General and the Acting Chief Valuation Officer, and also claim:
 - i. Trespass on their property, Nuisance and a violation of his right to peaceful enjoyment of his property,
 - ii. Unlawful Interference with their Economic and Business Interests
 - iii. Damages in the amount of:\$100,000.00
 - iv. Court fees on issue:\$100.00
 - v. Legal Practitioners Fees on issue:.....\$20,000.00
 - vi. Interest on judgment sums from 22 November 2024 and continuing pursuant to section 3 of the Civil Procedure (Award of Interest) Act, Ch.80.
 - vii. Any further Order which the Court deems just.

[71.] There is no application from the Defendants before me. The Defendants have not filed any pleadings in response to the Claimants' claim. The filed affidavit of Earl Miller does not address the figures claimed as damages. In the circumstances, the Defendants' request for relief by way of submission is without foundation and is ill-conceived.

CONCLUSION

[72.] For the foregoing reasons, I have determined that granting the injunction is more likely to produce a just result. This Court will grant the injunction sought in the terms below. The Claimants shall provide to the court the diagram/plan described for annexure to the Order.

[73.] The order for possession shall take effect on the date shown.

COSTS

[74.] Exercising my discretion pursuant to Part 17, Rule 17.5, this court orders that the costs of this application will be costs in the cause.

ORDER

[75.] The order and direction of this Court is THAT:

1. The Defendants, their directors, servants, employees and/or agents be and are hereby restrained from occupying the property beyond October 20, 2025, such property being the land and appurtenances identified in Real Property Tax Assessment No.72874, described as

ALL THAT piece or parcel of land situate at the junction of Harrold Road and Knowles Drive in the Western District of the Island of New Providence aforesaid containing by ad measurement 2.370 acres which said piece or parcel of land has such position shape marks boundaries and dimensions as are set on the diagram or plan attached annexed hereto and is thereon edged in "PINK" and designated "A" and located at Harold Road/Bozine Hill Road Nassau, Bahamas (*"the Property"*),

subject to further order of this Court.

2. The Defendants do deliver up possession of the Property to the Claimants on or before October 20, 2025, subject to further order of this Court.

3. The Claimants undertake to, and shall, comply with any Order this Court may make in the event that this Court shall hereafter find that the Defendants, or any of them, shall have sustained any loss by reason of this Order and that such Defendants, or any of them, ought to be compensated for that loss by the Claimants.

4. Any party shall be at liberty to apply to the Court to discharge or vary the terms of this Order or to seek directions upon giving not less than 7 days' notice to the other parties herein.

5. Costs of this Application are to be costs in the cause.

Dated the 4th day of September, 2025



Carla D. Card-Stubbs

Justice