

**IN THE COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMON LAW AND EQUITY DIVISION
Claim No. 2026/CLE/gen/00080**

BETWEEN

GERARDO CAPO

Claimant

And

RAFAEL REYES

First Defendant

And

BEATRIZ REYES

Second Defendant

And

CHRISTINA MIRANDA

Third Defendant

And

BIMINI BAY HOTEL VILLAGE LTD

Fourth Defendant

Before: The Honourable Madam Justice Gail Lockhart Charles, KC (Acting)

Appearances: Mrs. Krystal Rolle, KC and Mr. Darron Cash for the Claimant
Mr. Stephen Turnquest and Ms. Miquel L. Cleare for the First and Second
Defendants

Hearing Date: 6 March, 2026

JUDGMENT

(Continuation of Interim Injunction)

LOCKHART CHARLES KC, J (Acting)

Introduction

1. This is an *inter partes* hearing to determine whether the interim injunction that I granted on 17 February 2026 ("the Injunction") should be continued pending trial.
2. The Injunction was granted upon the Claimant's application by Notice of Application filed on 3 February 2026 seeking urgent interlocutory injunctive relief ("the Application") arising out

of a dispute concerning the ownership and control of the Fourth Defendant, Bimini Bay Hotel Village Ltd (“BBHV” or “the Company”).

3. The Application concerns disputed resolutions purportedly passed at an extraordinary general meeting of BBHV, purportedly held on 4 December 2025. The disputed resolutions purport to alter the composition of the board of directors of BBHV and place control of the Company in the hands of the First and Second Defendants, who are husband and wife, and their daughter, Camille Reyes. The validity of the December 2025 extraordinary general meeting (“the December EGM”) and the resolutions purportedly passed therein are central to the underlying dispute.
4. By the Injunction, the First and Second Defendants were restrained, among other things, from representing themselves as holders of 2,500 shares in the Company and from acting upon the resolutions purportedly passed at the December EGM. The Injunction is in the following terms:

"1. The First and Second Defendants and each of them whether by themselves, their servants and/or agents or otherwise are hereby restrained from acting, holding themselves out as and/or representing to third parties that they are the holders or owners of 2500 Shares of the issued Share Capital of Bimini Bay Hotel Village Ltd. ("BBHV") and/or that they represent the controlling and/or majority shareholding interest of BBHV until the final determination of this matter or until further Order.

2. The First and Second Defendants and each of them whether by themselves, their servants and/or agents or otherwise are hereby restrained from conducting any acts or dealings or business concerning BBHV, its corporate or shareholding structure, its assets or business transactions including but not limited to corporate dealings, meetings, banking business, real estate transactions whether on the basis that they are the holders or owners of 2500 Shares of the issued Share Capital of BBHV or on the basis that they are the sole Directors of BBHV AND it is ordered that Mr. Rafael Reyes and Mrs. Christine Capo-Hernandez SHALL act as the Court-Appointed Directors of BBHV until the final determination of this matter or until further Order.

3. The hearing of the Claimant's said application for interim injunctive relief shall be further considered by the Court at an inter partes hearing to be held on Friday the 6th day of March, A.D., 2026 at 10 a.m."

5. The Defendants seek discharge of the Injunction.
6. The Claimant seeks continuation of the Injunction until trial or further order.

The Underlying Dispute

7. The dispute between Mr. Capo and the Reyes concerns the ownership and control of BBHV, a company incorporated under the laws of the Commonwealth of The Bahamas which holds valuable real estate development land in North Bimini.
8. Mr. Capo asserts that he is the promoter and majority shareholder of RAV Bahamas Limited (RAV), a company which in 1998 acquired some 687 acres of land in North Bimini for development. He contends that he has been the developer and principal of that project, conducting it through RAV and various subsidiary and affiliate companies, including BBHV.
9. Mr. Capo asserts that at all material times he had the sole and exclusive authority to determine the shareholding structure of BBHV. He says that this authority is by reason of his multiple capacities including as the promoter and majority shareholder of RAV, BBHV's parent company, promoter and incorporator of BBHV, creditor and funder of BBHV's land acquisition from RAV and developer and principal of the North Bimini real estate development project.
10. The Statement of Claim sets out a series of intended shareholding structures for BBHV. The Claimant pleads that the 2022 Shareholding Structure, under which the First and Second Defendants were to receive 2,500 shares (50% of the issued share capital), was never implemented.
11. Paragraphs 45 to 47 of the Statement of Claim state:

"45 As pleaded above, there is no signed Shareholders Agreement whereby it has been agreed by the Claimant that the First & Second Defendants would hold or own 2500 Shares in BBHV ...

46 BBHV has not issued 2500 Shares to the First & Second Defendant, and the names of the First & Second Defendant do not appear in the Register of Members of BBHV as the holders or owners of 2500 Shares.

47 BBHV has not issued 50 Shares to the Third Defendant, and the name of the Third Defendant does not appear in the Register of Members of BBHV as the holder or owner of 50 Shares."

12. The relief sought by the Claimant in his Statement of Claim is pleaded as follows:

1. A Declaration that the First and Second Defendants do not hold or own 2500 Shares of the issued Share Capital of Bimini Bay Hotel Village Ltd ("BBHV").
2. A Declaration that the Third Defendant does not hold or own 50 Shares of the issued Share Capital of Bimini Bay Hotel Village Ltd ("BBHV")
3. A Declaration that the First and Second Defendants are not entitled to the issuance of 2500 Shares of the issued Share Capital of BBHV or Share Certificates reflective of such share ownership, from BBHV
4. A Declaration that the Third Defendant is not entitled to the issuance of 50 Shares of the issued Share Capital of BBHV or a Share Certificate reflective of such share ownership, from BBHV.
5. A Declaration that any and all actions undertaken by the First, Second and Third Defendants on the basis that they are the holders or owners respectively of 2500 Shares and 50 Shares of the issued Share Capital of BBHV are null, void and of no legal effect.
6. A Declaration that the Annual Statement of BBHV dated 20th March, 2022 (and filed with the Registrar General's Department on 2nd August, 2022), the Annual Statement of BBHV dated 20th March, 2023 (and filed with the Registrar General's Department on 19th October, 2023), the Annual Statement of BBHV dated 20th March, 2024 (and filed with the Registrar General's Department on 28th August, 2024), the Certificate of Incumbency dated the 17th day of October, A.D., 2023 and any other document (filed or otherwise) which states that the First and Second Defendants are the holders or owners of 2500 Shares of the issued Share Capital of BBHV are erroneous, have been issued in error and are of no legal effect.
7. An Order Setting Aside the said Annual Statements of BBHV for 2022, 2023 and 2024, the Certificate of Incumbency dated 17th October, 2023 and any other documents which purport to state or confirm that the First and Second Defendants are the holders or owners of 2500 Shares of the issued Share Capital of BBHV.
8. A Declaration that the letter dated 24th October, 2025 purportedly issued to the Secretary of BBHV pursuant to Article 48 of the Articles of Association of BBHV, the Notices of Extraordinary General Meeting dated 19th November, 2025 and 26th November, 2025, the purported Extraordinary General Meeting held on 4th

December, 2025, the purported Minutes of the Extraordinary General Meeting of 4th December, 2025, the purported Resolutions passed on 4th December, 2025 at the purported Extraordinary General Meeting, the appointments of the new Directors purported to have been made pursuant to such Resolutions as well as any and all acts undertaken by such purported newly appointed Directors are all null, void and of no legal effect.

9. An Order setting aside the aforesaid Notices of Extraordinary General Meeting, the purported Extraordinary General Meeting held on 4th December, 2025, the purported Minutes of the Extraordinary General Meeting of 4th December, 2025, the purported Resolutions passed on 4th December, 2025 at the purported Extraordinary General Meeting, the purported appointments of the new Directors and any and all acts undertaken by such purported newly appointed Directors.
10. A Permanent Injunction restraining the First and Second Defendants and each of them whether by themselves, their servants and/or agents or otherwise from acting, holding themselves out as and/or representing to third parties that they are the holders or owners of 2500 Shares of the issued Share Capital of BBHV and/or that they represent the controlling and/or majority shareholding interest of BBHV.
11. A Permanent Injunction restraining the First and Second Defendants and each of them whether by themselves their servants and/or agents or otherwise from conducting any acts or dealings or business concerning BBHV, its corporate or shareholding structure, its assets or business transactions including but not limited to corporate dealings, meetings, real estate transactions whether on the basis that they are the holders or owners of 2500 Shares of the issued Share Capital of BBHV or on the basis that they are the Directors of BBHV or otherwise.
12. A Permanent Injunction restraining the Third Defendant whether by herself her servants and or agents or otherwise from acting, holding herself out as and or representing to third parties that she is the holder or owner of 50 shares of the issued share capital of BBHV
13. ...
14. A Permanent Injunction restraining BBHV from (1) issuing 2500 shares of the issued Share Capital of BBHV and/or Share Certificates representing 2500 shares to the First and Second Defendants, (2) issuing 50 Shares of the issued Share Capital of BBHV and/or share certificates representing 50 Shares to the Third Defendant and from entering the First Second and Third Defendant in the Register of Members of BBHV as the holders or owners of 2500 shares of the issued share capital of BBHV and 50 Shares of the issued share capital of BBHV
15. A Permanent Injunction restraining BBHV from accepting and or recognizing the purported resolutions of 4th December, 2025 and the purported directorship appointments of 4th December, 2025.

13. The focal point of the dispute is the contention that the First and Second Defendants are not the holders of 2,500 validly issued shares in BBHV. Mr. Capo contends that no director's resolution authorized any such issuance, that no signed shareholders' agreement exists, that the original share certificate for those shares remains in the Company's share book unsigned, and that the Register of Members does not show the Defendants as holders of those shares.
14. The Defendants contend that they are the lawful holders of the 2,500 shares. They rely on annual statements filed with the Registrar General's Department for 2022, 2023 and 2024, and certificates of incumbency, which show them as 50% shareholders. They also rely on a copy of share certificate number 15, exhibited to their affidavit, which bears the signature of the First Defendant as President and the signature of their daughter, Camille Reyes, as Secretary, dated 8 December 2025. The share certificate purports on its face to have been given under the common seal of the Company on 1 March 2019.
15. On 24 October 2025, a letter was purportedly issued to the Secretary of BBHV pursuant to Article 48 of the Articles of Association. Notices of Extraordinary General Meeting dated 19 November and 26 November 2025 followed. The December EGM was held on 4 December 2025. The Claimant did not attend. He sent a letter stating that he did not recognize the First Defendant as the majority shareholder and considered the entire process improper and unlawful.
16. On 3 February 2026, Mr. Capo issued his claim form and filed an urgent notice of application seeking interlocutory injunctive relief. The application was supported by his lengthy affidavit.

Governing Legal Principles

17. The principles governing the Court's power to grant interlocutory injunctive relief have been frequently stated and are not in dispute.
18. The Court has a discretion to grant interlocutory injunctions whenever it is just or convenient to do so. See 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.

19. *American Cyanamid Co v Ethicon Ltd* [1975] AC 396 remains the leading authority.

20. The *Cyanamid* principles require the Court to consider: (i) whether there is a serious question to be tried; (ii) whether damages would be an adequate remedy for the claimant; (iii) whether the cross-undertaking would adequately protect the defendant; and (iv) where the balance of convenience lies, including preservation of the status quo.

21. As Lord Diplock stated in *Cyanamid* at p. 407:

"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."

22. And at p. 408:

"...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. ... 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."

23. In practical terms, as stated by Hoffmann J in *Films Rover International Ltd v Cannon Film Sales Ltd* [1987] 1 WLR 670 at p. 680:

"The fundamental principle is that the court should take whichever course appears to carry the lower risk of injustice if it should turn out to have been 'wrong'."

24. Preventing injustice, or, put another way, improving the chances of achieving justice, is the overarching goal of these applications, as affirmed by the Privy Council in *National Commercial Bank Jamaica Ltd v Olint Corp Ltd* [2009] 1 WLR 1405 where Lord Hoffmann stated at [16]:

"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."

25. This is not an exact science. The Court must do the best that it can to prevent injustice; however, it is vitally important that the information provided to the Court by the Applicant is full and frank. There is a duty on the applicant to ensure, to the best of their ability, that all relevant information is brought to the Court's attention.

26. However, the Court retains the discretion to continue the injunction even where non-disclosure is established. See *Brink's Mat Ltd v Elcombe* [1988] 1 WLR 1350 where Ralph Gibson LJ stated at pp. 1356 1357:

“In considering whether there has been relevant non-disclosure and what consequence the court should attach to any failure to comply with the duty to make full and frank disclosure, the principles relevant to the issues in these appeals appear to me to include the following.

(1) The duty of the applicant is to make “a full and fair disclosure of all the material facts:” see *Rex v. Kensington Income Tax Commissioners, Ex parte Princess Edmond de Polignac* [1917] 1 K.B. 486, 514, per Scrutton L.J.

(2) The material facts are those which it is material for the judge to know in dealing with the application as made: materiality is to be decided by the court and not by the assessment of the applicant or his legal advisers: see *Rex v. Kensington Income Tax Commissioners*, per Lord Cozens-Hardy M.R., at p. 504, citing *Dalglisch v. Jarvie* (1850) 2 Mac. & G. 231, 238, and *Browne-Wilkinson J. in Thermax Ltd. v. Schott Industrial Glass Ltd.* [1981] F.S.R. 289, 295.

(3) The applicant must make proper inquiries before making the application: see *Bank Mellat v. Nikpour* [1985] F.S.R. 87. The duty of disclosure therefore applies not only to material facts known to the applicant but also to any additional facts which he would have known if he had made such inquiries.

(4) The extent of the inquiries which will be held to be proper, and therefore necessary, must depend on all the circumstances of the case including (a) the nature of the case which the applicant is making when he makes the application; and (b) the order for which application is made and the probable effect of the order on the defendant: see, for example, the examination by Scott J. of the possible effect of an Anton Piller order in *Columbia Picture Industries Inc. v. Robinson* [1987] Ch 38; and (c) the degree of legitimate urgency and the time available for the making of inquiries: see per Slade L.J. in *Bank Mellat v. Nikpour* [1985] F.S.R. 87, 92–93.

(5) If material non-disclosure is established the court will be “astute to ensure that a plaintiff who obtains [an ex parte injunction] without full disclosure ... is deprived of any advantage he may have derived by that breach of duty:” see per Donaldson L.J. in *Bank Mellat v. Nikpour*, at p. 91, citing Warrington L.J. in the *Kensington Income Tax Commissioners' case* [1917] 1 K.B. 486, 509.

(6) Whether the fact not disclosed is of sufficient materiality to justify or require immediate discharge of the order without examination of the merits depends on the importance of the fact to the issues which were to be decided by the judge on the application. The answer to the question whether the non-disclosure was innocent, in the sense that the fact was not known to the applicant or that its relevance was not perceived, is an important consideration but not decisive by reason of the duty on the applicant to make all proper inquiries and to give careful consideration to the case being presented.

(7) Finally, it “is not for every omission that the injunction will be automatically discharged. A locus poenitentiae may sometimes be afforded:” per Lord Denning M.R. in *Bank Mellat v. Nikpour* [1985] F.S.R. 87, 90. The court has a discretion, notwithstanding proof of material non-disclosure which justifies or requires the immediate discharge of the ex parte order, nevertheless to continue the order, or to make a new order on terms.”

The Application to Discharge the Injunction

27. The Defendants contend that the injunction should be discharged because (1) there was a breach of the duty of full and frank disclosure; (2) there is no serious question to be tried; (3) damages would be an adequate remedy; (4) the balance of convenience does not support the grant of an injunction; and (5) there is a lack of evidential support for the Claimant's assertions.

28. The Defendants' case for discharge is supported by the Affidavit of the First and Second Defendants filed the 25 February, 2026 (“the Defendants' Affidavit”) which, amongst other things, sets out facts relied upon by them to support their argument that the Claimant breached his obligation to provide full and frank disclosure at the February 17th hearing. The Defendant's affidavit and submissions on this point must be considered in the context of what occurred at the 17 February hearing.

The 17 February Urgent Hearing

29. The Claimant's Affidavit and the exhibits were actively discussed during the 17 February urgent hearing. Noting that the Company is a regular Bahamian company incorporated under the Companies Act, I referred the parties to the Companies Act, in particular, the provisions of section 56 of the Act, which requires every company to keep a register of its shareholders at its registered office and which provides that the register constitutes prima facie evidence of any matters which by the Act are directed or authorised to be inserted therein. I asked the parties' counsel to address me on the share register and to tell me what it contained. Neither the Claimant's nor the Defendants' counsel was able to confirm what

the position was with regard to the share register, which they both understood to be in the possession of the law offices of Mr. Valentine Grimes.

30. The Claimant's counsel, Mrs. Rolle, stated that she was instructed that the last position up to 2018 reflects the Claimant as majority shareholder in the share register. The Defendants' counsel, Mr. Malone, stated that his clients had commenced an action against Valentine Grimes' office seeking the transfer of the corporate files and disclosure of the records maintained at the registered office, including the share register. Mr. Malone stated that although they had been denied access to the corporate records maintained at Mr. Grimes's office, he was instructed that the Defendants have share certificates issued in their names.
31. I enquired as to the mechanism by which the First and Second Defendant claimed to have become the owners of 2,500 shares. Mrs. Rolle confirmed that her instructions were that no director's resolution authorising any such issuance existed, nor had any been referred to in extensive pre-litigation correspondence.
32. I raised with the parties section 38 of the Companies Act which provides that subject to the articles of association, shares may be issued at such times, to such persons, and for such consideration as the directors may determine. I asked whether there was any documentation, such as a director's resolution or a properly executed transfer, that would demonstrate how the Defendants came to be the holders of the 2500 shares that they assert ownership of and the Claimant disputes. No such documentation was produced to the Court at the hearing.
33. In the course of the hearing the Affidavit and Statement of Claim were extensively discussed. The Exhibits to the Affidavit were also reviewed and discussed including in particular the following:
 - i. The Central Bank authorization letter dated 3rd July 2007 (Page 94 of the affidavit). I noted this showed approval for issuance of shares, with the Claimant, Gerardo Capo, listed for 3,080 shares.

- ii. Annual Statement for 2018 (page 97 of the Affidavit). I reviewed this document and observed the breakdown showing the Claimant with 3,080 shares, Raphael Reyes (First Defendant) with 245 shares, and Beatrice Reyes (Second Defendant) with 245 shares.
 - iii. Central Bank letter dated August 2022 (page 176 of the Affidavit). Mr. Turnquest pointed out that this letter stated that “the aforementioned letter is canceled” with reference to the 2007 designation letter.
 - iv. Annual returns for 2022, 2023 and 2024 and Certificates of Incumbency for 2023 and 2024 (Affidavit pages 189-198) Mrs. Rolle indicated that these documents erroneously reflected the First and Second Defendants as owning 2,500 shares and are the subject of claims for declaratory relief in the main action.
34. After hearing submissions and reviewing the documents before the Court, including the Claimant’s Affidavit and the exhibits, I was satisfied that the Claimant had met the standard for the grant of an interlocutory injunction.
35. In the circumstances I granted an interim injunction restraining the First and Second Defendants from, *inter alia*, conducting any acts or dealings or business concerning BBHV, on the basis that they are the holders or owners of 2,500 Shares of the issued Share Capital of BBHV. I also ordered that Mr. Rafael Reyes and Mrs. Christine Capo-Hernandez shall act as the Court-Appointed Directors of BBHV.
36. I directed that on the return date, it would be helpful for counsel to address me specifically on the share register and any documentary proof that the shares claimed to be owned by the Defendants had been issued in compliance with the Companies Act and the Company's articles of association.

The Inter Partes Hearing

37. At the return date hearing on 6 March 2026, the original share certificate booklet of the Company was produced by the Claimant and was before the Court. A copy of the Share Register was also produced by Mr. Raynard Rigby KC, the attorney representing Mr. Grimes in the proceedings stated by Mr. Malone to have been commenced by the Defendants against Mr. Grimes for production of the corporate documents.
38. I observed that share certificates numbers 1 through 11 appeared to have been issued and delivered, as the counterfoils were completed and the share certificates themselves were absent from the book. The counterfoils to those certificates reflected a share distribution consistent with the 2007 Central Bank letter (page 283 of the Claimant's Affidavit) and this was also consistent with the share register produced by Mr. Rigby on behalf of Mr. Grimes' office, which was agreed by all parties to be the Registered Office of the Company prior to the December EGM. I noted that share certificates numbers 12 through 19 remained in the book, were unsigned, and had incomplete counterfoils. Significantly, share certificate number 15, made out to the First and Second Defendant as registered holders of 2,500 shares, was among those still in the book and unsigned.
39. I considered the first affidavit of the First and Second Defendants (filed on 25th February 2026), to which there was exhibited at Exhibit RBR7 (page 47 of 55) a copy of share certificate number 15. I observed that while the original share certificate remains in the share book and is unsigned, by contrast, the copy exhibited to the Defendants' affidavit bears the signature of the First Defendant as President and the signature of the First and Second Defendant's daughter, Camille Reyes, as Secretary. The certificate purports on its face to have been "[g]iven under the common seal of the Company the 1st March 2019". However, the signatures appearing on the copy are dated 8th December 2025. I further observed that the First Defendants' daughter, who signed the photocopy as Secretary, had not been appointed as Secretary by the resolution of 4th December 2025 (see page 242 of the Claimant's Affidavit); that resolution elected her only as a director. I also noted that as at the date on which the share certificate is purported to have been issued, namely 1st March 2019, she was not an officer of the company at all.

40. I was taken to the annual statements filed with the Registrar General's Department for 2022, 2023, and 2024 (pages 268 to 270 of the Claimant's first affidavit), which supported the share distribution reflected by the unsigned share certificates that were still in the share book rather than the distribution reflected by the completed counterfoils to the (apparently) issued certificates which were absent from the book.
41. I examined the minutes of the December EGM (Affidavit page 242) and reviewed Article 5 of the Company's articles of association (Affidavit page 36), which provides that shares are at the disposal of the directors and may be allotted as they think fit. I noted the absence of any director's resolution authorising the issuance of shares numbered 12 through 19.
42. I further considered the share register produced by Mr. Rigby, which was sent by email on the morning of the hearing, but noted that Mr. Rigby had advised that he could not attest to its authenticity as Mr. Grimes was out of town. I observed that the register appeared to reflect the 2007 shareholding position that was cancelled by the Central Bank's letter of 18th August 2022 (page 176). At the conclusion of the hearing, I adjourned to consider the submissions and the evidence on the question of whether the Injunction should continue.

Full and Frank Disclosure

43. I will take each of the Defendants' allegations of non-disclosure in turn.

(i) The 2007 Central Bank letter and its cancellation

44. The Defendants contend that the Claimant misled the Court by relying on the 3 July 2007 Central Bank letter showing the Claimant with 3,080 shares, and failing to highlight that the letter was later "cancelled" by Central Bank correspondence of 18 August 2022.

45. I reject that submission. I was expressly taken to the 2022 Central Bank email at the hearing. I read it, and it was discussed substantively. Mr Turnquest drew my attention to the words in the 2022 correspondence indicating that the 2007 letter had been cancelled.

46. Further, even if the 2022 email had not been emphasised, the alleged omission would not have been material. The Claimant's position was that the Defendants were not the lawful owners of 2,500 shares, regardless of the Central Bank letter. The cancellation of the 2007 letter does not establish the 2,500 shares were validly issued to the Defendants, nor does it cure the absence of executed original share certificates and the absence of demonstrated corporate authorisation.

(ii) The 2022-2024 annual statements and certificates of incumbency

47. The Defendants argue that the Claimant failed properly to address the annual statements for 2022-2024 and certificates of incumbency that state or reflect their asserted 50% shareholding. The Defendants acknowledge that these documents were exhibited at pages 268 to 277 of Mr. Capo's affidavit; however, they argue that Mr. Capo neither referred to these documents in his affidavit nor made any pretense to explain their existence, and that attempts by Mr. Capo's attorney at the hearing to explain them away as errors cannot take the place of evidence from Mr. Capo himself.

48. I do not accept this submission. The Statement of Claim squarely pleads that those annual statements and certificates are erroneous, filed in error and/or without approval, and seeks declarations setting them aside. Those documents are part of the pleaded controversy. The fact that corporate filings, certificates of incumbency, and annual returns do not necessarily establish that shares have been validly issued to the parties was expressly raised and discussed at the hearing. This issue was raised in Mr. Capo's affidavit and it was canvassed at the hearing. The Claimant's attorneys were fully candid and forthright in their disclosure and discussion of these materials. These documents and what they purport to show was not something that was withheld from the Court; there was no misleading here.

49. Moreover, the Defendants' reliance on these annual statements does not address the evidential difficulties, including the lack of board authorisation for the corresponding

issuance of shares, the discrepancies between the share certificates and the original share book and register of members, and the fact that the original share certificate for the 2,500 shares remains unsigned in the share book.

50. How these annual filings are to be reconciled with a share register and share book that are said to show a different position is a question for trial, and it is sufficient to say that there is, in my judgment, no substance to the argument that the Claimant failed to bring adequate attention to these matters at this interlocutory stage.

(iii) Allegations concerning RAV and the alleged fraudulent conveyance

51. The Defendants assert that, in an apparent attempt to poison the mind of the Court, Mr. Capo refers at paragraph 12 of his Affidavit to what he calls a fraudulent conveyance by them. They assert that they believe this is an attempt to poison the Court's mind since they "cannot imagine why else he would mention it".

52. The Defendants contend that Mr. Capo had not to this point explained in his Affidavit what RAV is. They say he should have made it crystal clear that RAV Bahamas Limited is a company separate and apart from Bimini Bay Hotel Village Limited (the Fourth Defendant), and that he should not have tried to conflate issues relating to one entity with issues relating to the other as if they are the same entity.

53. They say that against this background, the statement by Mr. Capo in paragraph 18 of his Affidavit appears to them to be gratuitous and perplexing. In that paragraph, Mr. Capo states that since the Defendants are no longer involved in the business operations of RAV, any significant business dealings or activities by them in Bimini are likely to concern the Company, its business and its assets. The Defendants contend that this statement can only have been made in a further attempt to confuse the Court.

54. I do not accept that it was at all unclear that RAV Bahamas Limited is a company separate and apart from BBHV. That distinction is apparent from the corporate names alone.

Moreover, the details of RAV and its shareholders are found in several places in Mr. Capo's evidence, which was placed before the Court in full candour. These include the copy of the Defendants' Statement of Claim in the arbitration before the Hon. Michael Hanzman commenced by the Defendants against RAV Bahamas Limited and Mr. Capo. That document is exhibited to Mr. Capo's Affidavit at page 355. It contains a fulsome exposition of the Defendants' allegations against Mr. Capo, encapsulated in introductory paragraph 4: "This arbitration is brought by [Rafael Reyes and Beatriz Reyes] in their capacity as shareholders of RAV, as the first phase in a larger effort to seek redress and hold the Respondents [RAV and Mr. Capo] accountable for a multi-decade scheme by the Respondents to defraud and exploit RAV's minority shareholders through Capo's rampant self-dealing, misappropriation, and corporate waste."

55. With respect, I cannot accept the Defendants' allegation that there has been a lack of candour in Mr. Capo's disclosure on this front.

56. Nor do I accept that the allegation in paragraph 18 of Mr. Capo's affidavit was intended to confuse the court. I was not confused by it. It was clear to me that Mr. Capo's concern was as follows: the Defendants, having (according to him) illegitimately taken control of BBHV on the footing that they are the owners of 2,500 shares, would now proceed to act on that basis. It was clear that Mr. Capo called into question the First Defendant's activities on behalf of the Company, including any activities in Bimini undertaken under the authority of the disputed board and on the disputed standing of the First and Second Defendants as owners of 2,500 shares. There was no misleading or lack of frank disclosure here.

57. The Defendants also say that Mr. Capo knew when he swore his Affidavit that they have consistently rejected any suggestion that they prepared a fraudulent conveyance and he failed to make that clear in his Affidavit.

58. They also state that Mr. Capo knew when he swore his Affidavit that the issue of the supposed fraudulent conveyance is in fact the subject of another proceeding which was

filed by Mr. Capo against them on 16 January 2026. They say that Mr. Capo should have specifically disclosed that fact in his Affidavit, as this would have made it clear to the Court that fraud neither was admitted by them nor had been decided on by any court. They contend that Mr. Capo improperly buried a copy of that claim in his bundle without drawing attention to it or explaining its significance.

59. I do not accept this submission. The Standard Claim Form that sets out the full particulars of the fraudulent conveyance claim is not "buried" in Mr. Capo's bundle as alleged by the First and Second Defendants. It is exhibited at Tab 12 of the Statement of Claim and it was never suggested that the First and Second Defendants did not dispute this claim.

60. Paragraph 42 of the Statement of Claim states: "The Claimant became aware of this fraudulent conveyance in late August 2025 and RAV has since commenced legal action against the First and Second Defendant in the Bahamas Supreme Court. A copy of the Claim Form filed in the Supreme Court against the First & Second Defendants is served herewith as Annexure 12."

61. Mr. Capo made it clear in his affidavit that he relied on the facts set out in his Statement of Claim in the main action, the truth of which he once again confirmed. The Statement of Claim is the first Exhibit to the Affidavit. There was no need to set out all of the facts in the Statement of Claim again in the body of the Affidavit.

62. The Fraudulent Conveyance Claim was not buried. It was appropriately referenced and easy to find. This was not a case of material non-disclosure or misleading the Court.

(iv) The First Defendant's role as President

63. The Defendants contend that while Mr. Capo complains bitterly that the First Defendant has been involved in conducting business on behalf of the Company, he nowhere says in his Affidavit that the First Defendant is the President of the Company. They argue that this

fact had to be raised by their Counsel at the hearing, who called attention to Mr. Capo's failure to mention that fact in his Affidavit.

64. They argue that as any company's president has management responsibilities, and since it is nowhere suggested that the First Defendant is not President of the Company, they believe it was wrong for Mr. Capo to give the impression that the First Defendant had somehow acted improperly in conducting the affairs of the Company when he should have said that as its President, the First Defendant was only doing what was required of him.

65. The Defendants assert that Mr. Capo nowhere alleges misconduct or impropriety in the First Defendant's management of the affairs of the Company; and to the extent that he was trying to infer that there was or may have been such impropriety, he has chosen not to provide any evidence in support of such a serious inference.

66. I am not persuaded by this submission. First, it was never suggested that the First Defendant was not the President of the Company. This fact was disclosed in the papers that were before me at the February hearing, I was fully aware of it and there was never any misleading or lack of proper disclosure on this score. It was also clear that Mr. Capo's core contention in these proceedings is that the misconduct on the part of the Defendants was in purporting to convene the disputed EGM on the footing that they were the holders of 2,500 shares in the Company and passing resolutions that purported to remove the existing board of directors and installing themselves and their daughter as the newly appointed and sole directors. Mr. Capo seeks an injunction to prevent these disputed resolutions from taking effect and to prevent the Defendants from taking any further actions on the basis that they are the valid holders of the disputed shares.

(v) Mr. Capo's Role

67. The Defendants contend that Mr. Capo is neither an officer nor a director of the Company, nor does he claim to be. They submit that it was incumbent on him to point this fact out in

his Affidavit, lest the Court assume that he must have had some legal basis for complaining about not being given information.

68. I do not find this a convincing submission. It was always clear to the Court that Mr. Capo's contention is that he is the lawful holder of the majority of the shares in the Company and that the Defendants did not have the requisite majority to convene an EGM. The letter that Mr. Capo wrote to the Defendants in response to their notification makes his position clear:

"Thursday 4th December, 2025.

Mr. Rafael Reyes
(acting for and on behalf of himself, Beatriz Reyes and Christine Miranda)

I have received a Notice of an Extraordinary General Meeting of Bimini Bay Hotel Village, Ltd. dated 26th November, 2025. I am writing to confirm that I do not recognize you, Rafael Reyes, as the majority shareholder of Bimini Bay Hotel Village, Ltd and as such I consider the entire process of trying to convene an EGM initiated by you as improper and unlawful. I will not participate in this improper and unlawful process and I reserve the right to petition the Supreme Court of the Bahamas to declare this process as such."

69. This letter is exhibited at page 240 of Mr. Capo's Affidavit. It bears his signature, and immediately below the signature appear the words: "Shareholder of Bimini Bay Hotel Village, Ltd."

70. There was no misleading here. The Court was never at risk of inferring that Mr. Capo's complaints were grounded in rights purportedly held as a director.

(vi) The Freezing of BBHV's US Bank Account

71. The Defendants contend that the Claimant failed to inform the Court that BBHV's US bank account had been frozen, allegedly resulting in operational difficulties.

72. This information was disclosed in the Claimant's affidavit, which exhibits the complaint filed by Centennial Bank against BBHV, the Claimant, and the First Defendant. That complaint specifically states:

"8. On March 21, 2024 Bimini Bay Hotel Village Ltd. established an account at Centennial Bank...

9. Both Gerardo Capo and Raphael Reyes have signature authority on the Bimini Bay account

10. Centennial Bank was contacted by both Gerardo Capo and Rafael Reyes as they make competing claims to the funds on deposit in the Bimini Bay Account

11. As a result, the Plaintiff has placed a freeze on the Bimini Bay Account"

73. The information was before me. Any lack of specific focus on this collateral issue would not have been material to my decision to grant the Injunction.

74. The Defendants argue that as a result of Mr. Capo's actions, the Company's ability to conduct business was severely hampered, if not brought to a complete halt. They argue that Mr. Capo should have disclosed to this Court his disruptive role in "spitefully hampering the proper conduct of the Company's affairs, as a result of which the Company itself has unquestionably suffered considerable loss in the form of lost sales because Mr. Capo, having managed to freeze the account, then proceeded to object strenuously to the use of any other account for the Company's business, including placement of sales proceeds from purchasers or deposits from prospective purchasers."

75. Information relating to the disputes among the parties and allegations made by them against each other has been sufficiently and frankly disclosed. Clearly, the relationship between the parties has broken down. Mr. Capo's Affidavit shows, and the Defendants' Affidavit confirms, that there are multiple court actions ongoing between these parties. It is not the job of this Court to decide these issues at this time, nor will all of these issues necessarily be determined in these proceedings. I do not find that there was any misleading or non-disclosure here that would warrant the discharge of the Injunction.

(vii) Alleged Collusion concerning Registered Office

76. The Defendants attach to their affidavit a copy of the correspondence between their attorneys and Mr. Raynard Rigby, KC, regarding an action that they commenced against Mr. Valentine Grimes to compel him to produce the corporate records of the Company maintained by his firm as registered office. They contend that they had to bring this action against Mr. Grimes because he refused to respond to their repeated requests that he transfer the registered office to their attorneys' chamber and, more particularly, that he provide their attorneys with a copy of the Register of Members.
77. They go on to state: "It is obvious to us, and we are confident, that Mr. Grimes is colluding with Mr. Capo to withhold from us information regarding both our shareholding and the statutory operation of the Company. Given the issues in dispute, Mr. Capo should have placed before the Court the fact that he has influenced and continues to influence Mr. Grimes to deny us information that would prove our ownership interest as we claim it to be."
78. As to their share certificates, the Defendants state in their affidavit: "We attach a copy of share certificates which were handed to me, the First Defendant, by Mr. Valentine Grimes during one of my visits to his office. The copy certificates were given to me by Mr. Grimes complete with the March 1, 2019 date already inserted, and it remained only for me to sign them and for them to be countersigned, which my daughter did much later, in December 2025."
79. I find the suggestion in the Defendants' affidavit, that it remained only for the copy certificates to be signed, to be an implausible one. The fact that the First Defendant and the First and Second Defendants' daughter signed the copy certificates in purported completion of the share issuance to the First and Second Defendants, while the original share certificates remain in the share book unsigned and the share register does not reflect the issuance of these shares to the First and Second Defendants, casts doubt on their contention that these shares have been validly issued to First and Second Defendants.

80. I do not accept the contention that Mr. Grimes was colluding with the Claimant to withhold information from the Defendants that would prove their ownership interest as they claim it to be. This contention is not supported by the evidence before me. The requested information that was produced to the Court by Mr. Grimes's attorney, Mr. Rigby, shows that the relevant original share certificates are unsigned and that the Defendants are not listed in the share register as the owners of these shares. Thus, contrary to the Defendants' suggestion, the records in the possession of Mr. Grimes do not appear to support the Defendants' claim to ownership.

(viii) The process for convening the December EGM

81. The Defendants contend that the Claimant failed to put proper evidence of the "process" of the EGM before the Court (notices, quorum, voting process, contemporaneous compliance evidence), and that this was material. I reject that submission.

82. The Claimant's pleaded case is that the Defendants lacked the authority to convene and conduct the EGM because their asserted shareholdings were not valid. That is the issue.

83. Moreover, the Statement of Claim specifically pleads the quorum provisions in the articles and pleads that the persons present did not together hold 51% of issued share capital, and pleads the Claimant's written objection to the EGM process and notice. This is not a case where the Court was misled as to the issues or where there was material non-disclosure.

(ix) Conclusion on full and frank disclosure

84. The Defendants have not established material non-disclosure of the kind contemplated by the authorities. Even if I accepted that some matters could have been highlighted differently, any alleged omission would not have altered my decision to grant the Injunction. The central evidential issues about the disputed 2,500 shares were all before me and I was not misled.

Serious Question to be Tried

85. The Defendants contend that there is no serious issue to be tried. I reject that submission.
86. As Lord Diplock stated in *American Cyanamid*, it is no part of the court's function at this stage to try to resolve conflicts of evidence on affidavit or to decide difficult questions of law which call for detailed argument and mature considerations.
87. The documentary evidence presently before the Court gives rise to substantial questions concerning whether the disputed shares were ever lawfully issued.
88. The annual statements and certificates of incumbency relied on by the Defendants are not proof of share ownership. The register of members is the prima facie evidence of shareholdings under section 56 of the Companies Act. That register, as produced by Mr Grimes' office, does not support the Defendants' contention that they are indeed the owners of the disputed shares.
89. The Claimant has demonstrated that there are substantial grounds for doubting that (i) the disputed shares were validly issued to the First, Second and Third Defendants; (ii) the December EGM was valid and (iii) the resolutions purportedly made at the December EGM were valid.
90. The Claimant pleads that there is no signed shareholders' agreement implementing the 2022 Shareholding Structure and that the contemplated allotment of 2,500 shares to the First and Second Defendants was never carried into effect. The evidence presently before the Court discloses a substantial dispute which comfortably exceeds the frivolous or vexatious threshold. The original share certificate number 15 remains in the share book unsigned, the Share Register does not record the First and Second Defendants as holders

of the disputed shares, and no director's resolution or other documentation authorising the issuance of those shares has been produced.

91. Further, the photocopy share certificate relied upon by the Defendants gives rise to additional questions requiring determination at trial. Although the certificate purports on its face to have been issued on 1 March 2019, the signatures appearing on the copy are dated 8 December 2025. The Defendants' daughter signed the certificate as Secretary some four years after the purported issue date at a time when, according to the evidence, she was not an officer of the Company. Furthermore, she was neither the Secretary nor was she a director of the Company at the time the shares were purportedly issued. These discrepancies, taken together, plainly raise substantial questions concerning whether the disputed shares were ever lawfully issued.

92. For these reasons I cannot accept the Defendants' submission that there is no serious question to be tried.

Adequacy of Damages

93. The Defendants argue that any harm alleged by the Claimant is financial in nature and can be adequately compensated through damages. I reject that submission.

94. The harm relied upon by the Claimant is not confined to quantifiable financial loss. It includes the risk of unauthorised changes to corporate control and governance, the potential dissipation or encumbrance of valuable and unique assets (including real estate development land in North Bimini), and the erosion of proprietary and managerial rights pending trial. Such matters are not readily compensable in damages and, once effected, may be difficult or impossible to reverse.

95. I am satisfied that damages would not be an adequate remedy.

Balance of Convenience

96. The Defendants argue that the continuation of the injunction would cause them substantial and unquantifiable prejudice, including disruption to business operations and impairment

of commercial relationships. They also highlight the lack of evidence that the Claimant has the financial means to honour his undertaking in damages.

97. Applying *Films Rover*, I must adopt the course carrying the lowest risk of injustice. If the Injunction is discharged and the Defendants are ultimately found not to be entitled to act as majority shareholders or directors, irreversible prejudice may result. The December EGM resolutions will have been implemented, the board will have been changed, and third-party dealings may have taken place on a disputed footing.
98. By contrast, if the Injunction is continued and the Defendants ultimately succeed at trial, they will have been restrained from acting on their disputed share ownership and directorship for a period. However, the status quo will have been preserved, and the Claimant's undertaking in damages will be available to compensate them for any loss suffered as a result of the Injunction.
99. The Injunction substantially preserves the governance structure that existed prior to the disputed December EGM while allowing the Company to continue operating. Prior to the December EGM, the board consisted of the First Defendant and the Claimant's daughter, Mrs. Christine Capo-Hernandez. The effect of the Injunction is not to exclude the First Defendant from participation in the management of the Company, but rather to prevent the implementation of the disputed resolutions by which the First Defendant and Second Defendant sought to remove Mrs. Capo-Hernandez and appoint their daughter in her place. The Injunction holds the ring by reinstating the First Defendant and Christine Capo-Hernandez as directors pending trial. The Injunction restores the board to what it was prior to the disputed EGM. The First Defendant remains involved in the operation and management of the Company pending trial. In my judgment, the balance of convenience firmly favours the continuation of this Injunction.

Undertaking in damages

100. The Defendants submit that the Claimant's undertaking in damages is not supported by satisfactory evidence as to his ability to honour it. I reject that submission. Counsel for

the Claimant pointed to a history of substantial payments made by the Claimant, including the funding of the Company's land acquisition and development activities. I am not persuaded that the undertaking is so lacking in substance that the Injunction should be discharged. If the Defendants are of the view that the undertaking does not give them adequate protection, they may apply for fortification of the undertaking.

Costs

101. CPR 71.6 provides that the successful party is generally entitled to costs. See as follows:

71.6 Successful party generally entitled to costs.

(1) Where the Court decides to make an order about the costs of any proceedings, the general rule is that it must order the unsuccessful party to pay the costs of the successful party.

(2) The Court may, however, make no order as to costs or, in an exceptional case, order a successful party to pay all or part of the costs have an unsuccessful party.

102. In deciding whether to make an order about the costs of this application, I bear in mind that I have not made any final determination of the parties' substantive rights. I have decided only that it is appropriate to preserve the status quo pending trial or to "hold the ring". My finding that the balance of convenience favours continuing the injunction is a provisional assessment, not a finding that the Claimant will succeed at trial. Any attempt to identify a successful or unsuccessful party at this stage would be both unrealistic and potentially lead to injustice.

103. At the interlocutory stage the court does not finally determine the merits of the underlying claim. It reaches only a provisional view on whether there is a serious question to be tried and where the balance of convenience lies. A full determination of the rights of the parties, including who is ultimately the successful party, must await trial. Rather than awarding costs now, an order that reserves costs to the trial judge preserves the Court's

ability to do justice once the substantive issues have been resolved after full evidence and cross-examination.

104. This is the approach that is taken by the courts in England and Wales, where the ordinary rule is that costs of the application for an injunction where the injunction is continued are usually reserved to the trial judge. These principles were discussed extensively by the Court of Appeal in *Digby v Melford Capital Partners (Holdings) LLP & Ors* [2020] EWCA Civ 1647. In *Digby* the Court of Appeal allowed an appeal against a first-instance order that required the unsuccessful party on an interim injunction application to pay costs immediately (with an interim payment on account). Lewison and McCombe LJJ (delivering the judgment of the Court) reviewed the leading authorities, including *Desquenne et Giral UK Ltd v Richardson* [2001] FSR 1 and *Picnic at Ascot v Kalus Derigs* [2001] FSR 2. The Court in *Digby* emphasised that, in hotly contested interim applications turning on the balance of convenience (where the court cannot resolve the underlying factual disputes), it is usually fruitless and inappropriate to attempt to identify a "winner" or "loser" at that stage. The normal order is therefore "costs reserved". See as follows from the ruling of the Court in *Digby*:

35. We were taken to the authorities. As we have noted, the judge referred to *Desquenne* and *Picnic at Ascot*. Of these two cases, the editors of *Civil Procedure 2020* (the "White Book") at para. 44.6.1 say,

"Where an interim injunction is granted the court will normally reserve the cost of the application until the determination of the substantive issue (*Desquenne* ...) However, the court's hands are not tied and if special factors are present an order for costs may be made and those costs summarily assessed (*Picnic at Ascot*) ..."

36. In our judgment, that short passage accurately represents the law.

...

39. The quest for the successful and unsuccessful party in such cases is usually fruitless. The respondent to the application, like the Appellant in the present case, denies that the claimant is entitled to any relief, because the underlying cases of the parties on disputed facts are diametrically opposed. The Applicant for the grant of interim relief, even if the court holds that the claimant has a good

arguable case or is more likely to succeed than not, the applicant still has to persuade the court that the balance of convenience makes the grant of an interim injunction or other related relief more appropriate than its refusal.

...

48. As we have said, we consider that the judge erred here in failing to have proper regard to Desquenne as authoritative in a case where he was expressly deciding that he could not resolve the underlying disputes between the parties. We find that it was wrong to try to identify a winner or loser in these interim proceedings...

49. In the light of what we find to be important errors by the learned judge, in the very difficult circumstances before him, it falls to us to exercise our own discretion as to these costs. We are clearly of the view, as Morrill LJ and Morison J were in Desquenne, that the decision here was unjust in all the circumstances. In this hotly disputed case, in which the underlying issues were impossible to determine at the interim stage, it is right to follow the normal rule emerging from Desquenne. We find no special factors indicating a contrary decision.

50. ... We agree that such a liability needed rather wider consideration than could be given to it on that day and was another pointer towards ordering that the costs be reserved.

51. For these reasons, we allow the appeal and substitute for the costs order made by the judge an order that the costs of the applications dated 6 and 17 April 2020 be reserved to the trial judge. We will also order the repayment to the Appellant of the interim sum already paid on account.

105. There is sound wisdom in this approach.

106. In the present case, there has been no determination of the merits, only a finding that there is a serious question to be tried and that the balance of convenience favours the continuation of the Injunction. Therefore, following the approach endorsed by the English Court of Appeal in *Digby*, I order that the costs of the Claimant's application dated 3 February 2026 (heard on 17 February 2026) and of the inter partes hearing on 6 March 2026 shall be reserved to the trial judge.

CONCLUSION AND DISPOSITION

107. For the reasons set out above, the First and Second Defendants' application to discharge the injunction is refused.

108. I am satisfied that there is a serious issue to be tried. The challenge to the validity of the asserted 2,500 shares and 4 December 2025 meeting called in reliance on this position is plainly arguable.
109. Damages would not be an adequate remedy for the Claimant if disputed authority were exercised to effect irreversible corporate changes or third party dealings pending trial.
110. The cross-undertaking in damages is adequate for present purposes, subject to any application for fortification that the Defendants might choose to make if so advised.
111. The balance of convenience favours continuation of the Injunction.
112. Accordingly, the interim injunction made on 17 February 2026 is continued on the same terms until trial or further order, with liberty to apply.
113. The costs of the applications heard on 17th February and 6th March shall be reserved to the trial judge.

Dated this 11th day of May 2026

Gail Lockhart Charles KC, J (Acting)