COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT

Common Law & Equity Division

2026/CLE/gen/00433

BETWEEN

LAWAGOMA LIMITED

Claimant

AND

AMBROSE NIXON

Defendant

RULING

Before: The Honorable Mr. Acting Justice Raynard S Rigby KC

Appearances: Mrs. Viola Major and Ms. Camille Cleare for the Claimant/Applicant
Ms. Marie Wille and Mr. Philiip Lundy for the Defendant

Hearing Dates: 1 and 4 June 2026

Interim Injunction – Part 17 of the Supreme Court Civil Procedure Rules 2022 – Claim for Declaration of ownership over parcel of land – Matters to be taken into account when determining application – Balance of convenience - Irremediable prejudice

Held: Application for the Interim Injunction granted. The action concerns the claim to ownership of approximately 1.441 acres of a parcel of land situate in Eastern District of the Island of New Providence, The Bahamas. Both Claimant and Defendant assert a documentary title to the land. Parties agree there is a serious issue to be tried. Actions of Defendant in removing pad locks from the gate on the property. Damages though likely quantifiable is not an adequate remedy. Balance of convenience tilts in favour of the grant of an Injunction to maintain the status quo prior to the acts of the Defendant. Based on the recent acts of the Defendant there would likely be irremediable prejudice if the injunction is refused.

Rigby J (Acting)

Introduction

1. The application for an urgent interim injunction came before the Court as an *inter partes* hearing on 1 June 2026 and the Defendant required additional time to reply to the Claimant's submissions. I directed that the Submissions be lodged on or before 3 June 2006 and that any affidavit evidence be filed on or before 2 June 2026. The substantive hearing was scheduled for 4 June 2026.

2. At the substantive hearing on 4 June 2026, I granted the injunction in the following terms:

> **The Defendant, whether by himself, or his servants or agents, or otherwise be and is hereby restrained from entering upon all that piece or parcel of land comprising 1.441 acres situate approximately 450 feet west of Mackey Street in the Eastern District of the Island of New Providence for the purposes of cutting, removing, damaging or in any manner interfering with any fence, padlock, gate, barrier or other security measure erected or placed upon the property by or on behalf of the Claimant pending the final determination of this action or until further order of this Honourable Court.**

3. I also used my case management powers under Part 26 of the Civil Procedure Rules 2022 and set an early trial date with the usual directions for discovery and filing of witness statements.

4. I promised to set out my written reasons for granting the injunction at a later time and I do so now.

Procedural Background

5. The action was commenced by Standard Claim Form filed on 21 May 2026. The principal relief sought by the Claimant is a declaration that it is the owner in fee simple of ALL THAT piece or parcel of land comprising 1.441 acres situate approximately 450 feet west of Mackey Street in the Eastern District of New Providence.

6. The Claimant also seeks damages for trespass and aggravated damages.

7. The Statement of Claim asserts that the Claimant came to own the property by way of a conveyance dated 9 May 2008 from Byre Winifred Albury, which is recorded in the Registry of Records in Volume 10574 at pages 155 to 161.

8. The application for an interim injunction was made at the time of the filing of the action on 21 May 2026 and was served on the Defendant. The events that led to the application are set out at paragraphs 9 to 18 (inclusive) of the Standard Claim Form which I set out below.

> **(1) The Claimant, Lawagoma Limited, is a company incorporated under the laws of the Commonwealth of The Bahamas and is the owner in fee simple of all that piece or parcel of land comprising 1.441 acres situate approximately 450 feet West of Mackey Street in the Eastern District of the Island of New Providence, in the Commonwealth aforesaid ("the Property").**
>
> **(2) The Defendant, Ambrose Nixon, is an individual who purports to act in the capacity of Executor of the Estate of King Nixon, and who purports to challenge the Claimant's ownership of the property.**
>
> **(3) The Claimant acquired the Property by way of an Indenture of Conveyance dated 9th May 2008 between Byrle Winifred Albury and the Claimant, which is recorded at the Registry of Records in Volume 10574 at pages 155 to 161.**
>
> **(4) The Property is, and has been since the date the Claimant acquired it, bounded to the east by a concrete wall which separates it from property owned by Carl Treco Contractors Ltd., bounded to the north by a fence which separates it from a 20-foot wide road reservation which runs along the northern boundary of the Property, and bounded to the west by a concrete wall which separates it from property now or formerly owned by Dorothy Malone (nee Culmer). There is another 20-foot-wide road reservation which runs along the southern boundary of the Property. Until recently, the southern boundary of the property remained unenclosed.**
>
> **(5) The Claimant has at all material times been in possession and occupation of the Property and has permitted the Property to be used for the storage of fill and other purposes incidental to the business of CGT Contractors & Developers Ltd.**
>
> **(6) The Claimant recently commenced clearing and development of the Property, as is its lawful right as owner thereof.**

(7) On or about the 5th May 2026, the Defendant, purporting to act as Executor of the Estate of King Nixon, caused a letter addressed to Mr. Wayne Treco, President, and Mr. Ryan Treco, Vice-President, CGT Contractors & Developers to be delivered, asserting that the Property was "jointly owned by the Estate of King Nixon and the Estate of Collie" and demanding that all activities on the Property cease immediately.

(8) The Claimant's attorneys responded by letter dated 6th May 2026, setting out the Claimant's clear documentary title and rejecting the Defendant's unsubstantiated claims to the Property.

(9) On 11th May 2026, the Claimant erected a fence along the southern boundary of the Property, along with a gate, and on 13th May 2026 the Claimant secured the gate by installing a padlock, in order to protect its interest and prevent any unauthorized access to the property.

9. At the time of the application for the Injunction, the Defendant had not filed a Defence to the Standard Claim Form.

10. The Claimant also filed a Certificate of Urgency on 21 May 2026, which sets out the following matters which in the view of the Claimant amounts to an urgency for the hearing of the interim injunction application:

On 18th May 2026 the Claimant discovered that the Defendant had cut the padlock placed by the Claimant on the Property gate, installed his own padlock, and erected his own "No Trespassing" sign. The Claimant removed the Defendant's padlock and sign and again installed its own padlock on the Property gate.

On 19th May 2026, the Claimant discovered that the Defendant had again cut the Claimant's padlock and installed his own padlock on the Property gate. The Claimant once again removed the Defendant's padlock and sign and again installed its own padlock on the Property gate.

On 20th May 2026, the Claimant discovered that the Defendant had once again cut the Claimant's padlock and installed his own padlock. As before, the Claimant

removed the Defendant's padlock and installed another padlock of its own on the Property gate.
The Defendant's repeated and escalating attempts to assert ownership over the Property are interfering with the Claimant's use of its own property and are causing the Claimant's plans for development of its property to be delayed, causing further loss to the Claimant.

Unless restrained by Order of this Honourable Court, the Claimant verily believes that the Defendant will continue to trespass upon and interfere with the Property. I am satisfied that for the foregoing reasons the matter requires the urgent attention of the Court.

The affidavit evidence

11. The Claimant's Affidavit in support of the application for interim relief was sworn by Wayne Treco and filed on 21 May 2026. From that Affidavit several pertinent facts are disclosed, which are addressed at paragraphs 5, 7, 8, 11 to 21 (inclusive). I set out the paragraphs below:

5. The Claimant acquired the Property by way of an Indenture of Conveyance dated 9th May 2008 between Byrle Winifred Albury and the Claimant, which is recorded at the Registry of Records in Volume 10574 at pages 155 to 161. A copy of the said Conveyance is located at pages 1 to 7 of "WT-1".

6. The Property is, and has been since the date the Claimant acquired it, bounded to the east by a concrete wall which separates it from property owned by Carl Treco Contractors Ltd., bounded to the north by a fence which separates it from a 20-foot wide road reservation which runs along the northern boundary of the Property, and bounded to the west by a concrete wall which separates it from property now or formerly owned by Dorothy Malone (nee Culmer). There is another 20-foot wide road reservation which runs along the southern boundary of the Property. Until recently, the southern boundary of the property remained unenclosed.

7. The Property consists of vacant land. Since the date that we purchased the Property, we have at all times been in possession and occupation of it. Over the years we have used it for the storage of fill and other purposes

incidental to the business of CGT Contractors & Developers Ltd., a company of which I am also a Director.

8. We recently began clearing the Property in preparation for its development. On 5th May 2026, I received a letter from the Defendant, Ambrose Nixon, alleging that the Property was "jointly owned by the Estate of King Nixon and the Estate of Collie" and demanding that we cease and desist all activities on the Property. A copy of the said letter is located at page 8.

...

11 On 11th May 2026 we completed installation of a fence and gate along the southern boundary to the property.

12 On 13th May 2026, we installed a padlock on the property gate. A photograph of the padlock is located at page 11.

13 On 18th May 2026, I discovered that our padlock had been removed, a new padlock had been installed, and a sign had been erected which stated:

NO TRESPASSING
NIXONS
1 (242) 816-8170

14 The telephone contact on the sign is the same as the telephone contact given for the Defendant on his cease and desist letter of 5th May 2026. Photographs of the new padlock and sign are located at pages 12 and 13, respectively.

15 We removed the new padlock and the sign, and installed another padlock of our own on the gate. We also posted "No Trespassing" signs along the Property fence.

16 On 19th May 2026, I discovered that the second new padlock which we had installed had been removed, a new padlock had been put on the gate, and another sign with the same language had been erected on the Property. Photographs of this new padlock and sign are located at pages 14 and 15, respectively.

17 We again removed the padlock and sign, and installed a third padlock of our own on the Property gate. This time

we secured the padlock with piping, as an additional deterrent to prevent its removal. A photograph of the padlock installed by the Claimant on 19th May 2026, with piping, is located at page 16.

18 On 20th May 2026, I discovered that, once again, the third new padlock which we had installed had been removed, a new padlock had been put on the gate, and another sign had been erected on the Property with the same language. A photograph of the fourth padlock installed by the Claimant on 20th May 2026 is located at page 17.

19 In light of the Defendant's letter dated 5th May 2026, the word "Nixons" on the signage, and the telephone contact on the signage, I verily believe that the Defendant trespassed onto the Claimant's property, damaged the Claimant's property by cutting off the padlocks, and erected the above-mentioned signage.

20 The Defendant's repeated trespass leads me to believe that he intends to continue his actions of trespass and continue his interference with the Claimant's lawful use of the Property. The cost of repeatedly replacing padlocks and other security measures indefinitely cannot be sensibly quantified, nor can the cost of the delay to the Claimant in developing the Property.

21 I also verily believe that unless an injunction is issued by this Honourable Court, the Defendant will continue to interfere with the Claimant's use and enjoyment of the Property, in the same manner as above.

12. The Defendant filed an Affidavit in response on 29 May 2026 asserting its title to the property, the subject of the action, by way of a conveyance dated 24 October 186 made between Agnes Moss of the one part and King Richard Nioxon and Elkin Collie of the other part and recorded in the Registry of Records in Volume 5478 at pages 378 to 381.

13. In the Defendant's aforesaid Affidavit, he chronicles that he was familiar with the property from when he was a boy because his father, King Nixon, took him and his cousin, Wayne Wilkernson, to various properties he owned and farmed. He also makes additional assertions at paragraphs 7, 9 to 15 (inclusive) and 20, which I set out below:

7. The subject property was originally owned by my father and Elkin Collie. However, I was not aware of this until I saw the title documents for the property after I became an adult. I never saw Mr. Collie visit the property or dealt with the property in any way whatsoever. I always believed the property belonged solely to my father.

8. A Certificate as to Grant of Probate was issued to my brothers and I as Co-Executors of my father's estate on the 25th day of July A.D., 2022 by the Supreme's Probate Division in No. 2019/PRO/npr/0096. At the time of my late father's death, he was siesed in fee simple possession of the subject property free from encumbrances. Attached hereto and marked Exhibit AN-2 is a copy of the Certificate as to Grant of Probate.

9. After my father's death, I continued to visit and take care of the subject property. I removed trash from the premises at least twice per year because unknown persons would often use the property as an illegal dumping site for old furniture and garbage. I started to clear down the front of the property at least twice per year because the dumping started to happen more frequently and become more costly.

10. I have always placed "No Trespassing" and "No Dumping" signs on the property at its southern boundary facing St. George's Street. I began to make the signs bigger and add the name "Nixons" at the bottom of the signs along with my phone number as the dumping became more frequent.

11. Sometime in early May 2026, one of the neighbours living near the subject property stopped me and asked me if I was clearing down the property to build something, because he noticed that the property was being cleared down. I immediately went to the property and noticed that the property was cleared down and a tractor being operated on the subject property.

12. I informed the tractor operator that I was the owner of the property and told him to stop immediately. He informed me that he was practically completed with his job of clearing the property. I later discovered that the tractor operator was hired by CGT Contractors and Developers to clear the property.

13. The following day I hand delivered a letter to CGT Contractors & Developers informing them that the subject property belonged to Estate of my late father and Collie's Estate and demanded that they cease and desist from any further activities including clearing, excavating, construction or any form of alterations. I also hand delivered a copy of my letter to the Wulff Road Police station and made a formal complaint against CGT Contractors for trespassing.

14. Notwithstanding my letter, work continued on the property. I noticed preparation being done to erect fencing then the fencing followed. I placed another sign on the property stating, "No Trespassing", along with the name Nixons and my phone number. I never received a call from the Claimants or anyone on their behalf. I was completely ignored.

15. I later noticed a gate and pad lock was added to prevent access to the property and so I removed the locks and replaced it with my own. This happened about 3 or 4 times.

...

20. My late father's title to the land goes back beyond 30 years as is required by the law to establish title and his conveyance is first in time in the registry of records.

14. The Claimant also filed two affidavits by Samovia Miller. The first Affidavit was filed on 29 May 2026 and the Supplemental Affidavit on 1 June 2026. The first Affidavit sets out further acts of trespass committed by the Defendant between 21 May 2026 to 28 May 2026. Those acts were related to the Defendant's changing of the padlocks on the gate to the property in dispute. The Supplemental Affidavit exhibits the prior conveyance unto Marcel Hansel Albury dated 16 March 1978.

The Court's jurisdiction

15. There was no dispute by Counsel for the Claimant and the Defendant that the Court has the jurisdiction to grant an interim injunction. That jurisdiction is set out in section 21 of the Supreme Court Act and Part 17 of the Civil Procedure Rules, 2022 ("**CPR**"). I set out below section 21 of the Supreme Court Act.

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.

16. Part 17 of the CPR provides:

17.1 Orders for interim remedies: relief which may be granted.
(1) The Court may grant interim remedies including —
(a) an interim declaration;
(b) an interim injunction;
(c) an order authorising a person to enter any land or building in the possession of a party to the proceedings for the purposes of carrying out an order under subparagraph (h);
(d) an order directing a party to prepare and file accounts relating to the dispute;
...
(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.
(5) The Chief Justice may issue a practice direction in respect of the procedure for applying for an interim order including, in particular, interim injunctions, search orders and freezing orders.

17.2 Interim junctions and similar orders including search orders and freezing orders.
(1) **This rule deals with applications for —**
(a) an interim injunction under rule 17.1(1)(b);
(b) a search order under rule 17.1(1)(l);
(c) a freezing order under rule 17.1(1)(j);
(d) an order authorising a person to enter any land or building for the purpose of carrying out an order under rule 17.1(1)(h); and

(e) an order for the detention, custody or preservation of relevant property under rule 17.1(1)(h)(ii).
(2) Unless the Court otherwise directs, a party applying for an interim order under this rule must undertake to abide by any order as to damages caused by the granting or extension of the order.
(3) An application for an interim order under this rule may in the first instance be made on three days' notice to the respondent.
(4) The Court may grant an interim order under this rule on an application made without notice for a period of not more than twenty-eight days, unless any of these Rules permits a longer period, if it is satisfied that —
(a) in a case of urgency no notice is possible; or
(b) that to give notice would defeat the purpose of the application.
(5) On granting an order under paragraph (4) the Court must —
(a) fix a date for further consideration of the application; and
(b) fix a date, which may be later than the date under subparagraph (a), on which the interim order will terminate unless a further order is made on the further consideration of the application.

17.3 Time when an order for interim remedy may be made.
(1) An order for an interim remedy may be made at any time, including —
(a) after judgment has been given; and
(b) before a claim has been filed.
(2) Paragraph (1) is subject to any rule which provides otherwise.
(3) The Court may grant an interim remedy before a claim has been made only if —
(a) the matter is urgent; or
(b) it is otherwise necessary to do so in the interests of justice.
(4) Unless the Court otherwise orders, a defendant may not apply for any of the orders listed in rule 17.1(1) before filing an acknowledgement of service under Part 9.
(5) If the Court grants an interim remedy before a claim has been filed, it must require an undertaking from the claimant to file and serve a claim form by a specified date.

17. The parties agreed that the application for an interim injunction ought to be determined using the established principles set out in the oft cited and well-known English House of Lords decision of ***American Cyanamid Co v Ethicon Ltd [1975] 1 All ER 504.*** In ***American Cyanamid Co (supra)***, *Lord Diplock* established a four-stage test that ought to be considered on an application for an interim injunction; namely, (i) whether there is a serious issue to be tried; (ii) whether damages would be an adequate remedy; (iii) whether the 'balance of convenience'

favours the plaintiff or defendant; and (iv) consideration of any special factors that might affect the exercise of the court's discretion. Both Counsel in their written and oral submissions addressed the Court on the four pillars.

18. However, it is to be noted that the four-stage test outlined by *Lord Diplock* in ***American Cyanamid Co (supra)*** is not to be applied using a box ticking approach to straitjacket the Court's discretion. The Court in deciding on whether to grant interim relief will have regard to whether it is just and convenient to grant the interim injunction.

19. A modern-day summarization of the four principles is set out in ***O'Brien and Anr v. TTT Moneycorp [2019] EWHC 1491 (Comm.)***, where Christopher Hancock KC said:

> **"(1) Sections 37(1)-(2) of the Senior Courts Act 1981 state that the High Court may by order grant an injunction in all cases in which it appears "just and convenient" to do so, and any such order may be made either unconditionally or on such terms as the Court thinks just.**
> **Interim injunctions are therefore discretionary but the discretion is to be exercised judicially in light of the overriding objective in CPR 1.1.**
> **(2) Applying the well-known approach deriving from *American Cyanamid* [1975] AC 396, (HL), the onus is on the applicant to establish: first, that there is a serious question to be tried; second, that damages would not be an adequate remedy for the applicant if the injunction were refused; and third, that the balance of convenience favours the grant of the interim injunction. These tests are usually applied by reference to the seven guidelines extracted from *American Cyanamid* by Browne LJ in Fellowes & Son v Fisher [1976] 1 QB 122 (CA) at 137.**
> **(3) On an application for an interim injunction, the Court should not attempt to resolve "*critical disputed questions of fact or difficult points of law*" on which the claim of either party may ultimately depend, particularly where the point of law "*turns on fine questions of fact which are in dispute or are presently obscure*": *Sukhoruchkin v Van Bekestein* [2014] EWCA 399 at [32] (Sir Terence Etherton C).**
> **(4) In the exercise of its discretion to grant an injunction, and consistently with the overriding objective, the Court will not grant an injunction where it would be futile or serve no purpose: *Mosley v News Group Newspapers* [2008] EWHC 687 (QB).**
> **(5) A mandatory injunction is less likely to be granted on an interim basis. This is because, where other factors appear to**

be evenly balanced, the Court "should take whatever course seems likely to cause the last irremediable prejudice to one party or the other": *National Commercial Bank Jamaica Ltd. v Olint Corp. Ltd.* (Practice Note) [2009] 1 WLR 1405 (PC). A mandatory injunction requiring a party to take some positive step at an interlocutory stage will usually carry a greater risk of injustice if it turns out to have been wrongly made. It is therefore legitimate in such cases to require a "high degree of assurance" that the interim relief would ultimately be granted at trial: *Shepherd Homes Ltd. v Sandham* [1971] Ch. 340 at 351 (Megarry J.).
(6) Furthermore, where the grant of interim relief will have the practical effect of giving the application the final relief that it is seeking in the case, the Court will be more reluctant to grant such relief: *Films Rover Ltd. v Cannon Film Sales Ltd.* [1987] 1 WLR 670 at 680.
(7) Where an interim injunction is granted, the usual practice is to make this subject to a condition requiring the applicant to offer a cross-undertaking to pay damages for any losses sustained by reasons of the injunction in the event that it transpires that it ought not to have been granted."

20. Lord Hoffman in rendering the opinion of the Privy Council in ***National Commercial Bank of Jamaica v. Olint Corp. Ltd.* [2009] UKPC 16** made some helpful statements in respect of an application for an injunction. He said:

> [16] The second feature is the basis upon which Jones J decided to refuse an interlocutory injunction and the Court of Appeal decided to grant one. 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] 1 All ER 504, 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 irremediable prejudice (and to what extent) if it turns out that the injunction should not have been granted or withheld, as the case may be. The basic principle is that the court should take whichever course seems likely to cause the least irremediable prejudice to one party or the other. This is an assessment in which, as Lord Diplock said in *American Cyanamid* [1975] 1 All ER 504 at 511:
'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.'

21. In ***Re: Colin Wright v. Ex Parte The Bahamas Communications and Public Officers Union Pension Plan and Trust Fund (By Averil Clarke* Andrea Culmer and Steve Hepburn in their capacity as Trustees) (A Judgment Creditor), [2018] 1 BHS J. No. 62**, Charles J (as she then was) helpfully summarised the key **American Cyanamid Co (supra)** principles at paragraphs 25 to 28:

> **[25] The procedure to be adopted by the Court in hearing applications for interlocutory injunctions and the tests to be applied, were laid down by Lord Diplock in the landmark case of American Cyanamid Co. v Ethicon Limited [1975] A.C 396H.L. At page 407, Lord Diplock had this to say:**
>
> **"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 claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are questions to be dealt with at the trial...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 injunction relief that is sought." [Emphasis added]

[26] According to American Cyanamid, when an application is made for an interlocutory injunction, in the exercise of the Court's discretion, an initial question falls for consideration, i.e. whether there is a serious issue to be tried. If the answer to that question is yes, then a further question arises: would damages be an adequate remedy for the party injured by the Court's grant of, or its failure to grant, an injunction? If there is doubt as to whether damages would not be adequate, the Court then has to determine where does the balance of convenience lie?

[27] Some of the key principles derived from the speech of Lord Diplock in the American Cyanamid (at pages 406- 409) may be listed as follows:

1.The grant of an interlocutory injunction is a matter of discretion and depends on all the facts of the case.
2.There are no fixed rules as to when an interlocutory injunction should or should not be granted. The relief must be kept flexible.
3.The evidence available to the Court at the hearing of the application for an interlocutory injunction is incomplete. It is given on affidavit and has not been tested by oral cross-examination.
4.It is no part of the Court's function at this stage 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 and mature considerations. These are matters to be dealt with at the trial.
5.The object of the interlocutory injunction is to protect the claimant against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty was resolved in his favour at the trial; but the claimant's need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having prevented from exercising his own legal rights for which he could not be adequately compensated

under the claimant's undertaking in damages if the uncertainty were resolved in the defendant's favour at the trial.

6.Some additional factors that the Court needs to bear in mind are: (a) the extent to which damages are likely to be an adequate remedy for each party and the ability of the other to pay; (b) the balance of convenience; (c) maintenance of the status quo, and (d) any clear view the court may reach as to the relative strength of the parties' cases.

7.Unless the material available to the Court at the hearing of the application for an interlocutory injunction fails to disclose that the claimant 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.

8.The Court must be satisfied that the claim is not frivolous or vexatious, in other words, that there is a serious issue to be tried.

[28] These key principles were adopted and re-stated in Series 5 Software Ltd v Clarke and others [1996] 1 All E.R. 853 at 865; Grenada Co-operative Bank Limited v Valma Jessamy --Claim No. GDAHCV2013/0313 (unreported) and Cambridge Nutrition Ltd v BBC [1990] 2 All ER 523; authorities referred to by Mr. Glinton QC. Interestingly though, none of these cases has diminished the key principles derived from the House of Lords decision in American Cyanamid which, to date, remain the locus classicus on interlocutory injunctions.

The four-stage test

22. I am guided by the direction of the Privy Council in **Olint** (supra) that the Court should not be a slave to a "box-ticking approach" because it does not do justice in all circumstances. I deem that such a "strict" approach will not be judicially sensible and is not warranted in the context of the application before me.

23. I note that the Conveyance on which the Claimant relies indicates that the property was vested in the Estate of Marcel Hansel Albury. The property is situated within the historic Culmersville, the center of what is now referred to as "the Valley". The Defendant's purported ownership, that is, the conveyance to King Nixon and Elkin Collie, referenced the land in the Centerville Subdivision. Both conveyances refer to a right of way and to being bound by a property owned by St Georges Athletic Club or St George's Church Park.

24. On the first test, is there a serious issue to be tried, I do not have to consider or determine at this stage of the proceedings which party has the better title to the property in dispute. My sole role is to be satisfied that the Claimant's case is not frivolous or doomed to fail. Whether there is a serious issue to be tried is a low threshold. All that is required of the Court on such an application is to examine the Standard Claim Form and the affidavit evidence filed to glean the nature of the dispute between the parties. It is not my role at this stage to resolve conflicts of fact on the filed affidavits or to decide difficult questions of law. These are matters better reserved for the trial judge and may necessitate detailed and mature consideration of the facts and law after the evidence of the parties are tested through the trial processes.

25. I also note the Grant Probate dated 25 July 2020 issued in the Estate of King Richard Nixon, and that the Defendant along with three other persons are the administrators/executors. No similar Grant was exhibited to the Defendant's affidavit in respect of the estate of Elkin Collie.

26. Both Counsel agreed that there was a serious issue to be tried. That is, the question of who has the better title to the property. I agree that there is a serious issue to be tried. The conveyances on which the Claimant and the Defendant rely purportedly refer to the property and were recorded in accordance with the provisions of the Registration of Records Act. The central focus is ownership of the 1.44 acres and that must be determined at the trial. The trial Judge will have to access the relative "quality" of the documentary titles that are being advanced by the parties. In **Ocean Estates Ltd v Pinder [1969] 2 WLR 1359** the Privy Council noted that the issue of title is about determining who has the better title; confirming that there is no concept of "absolute" title under Bahamian law.

27. Similarly, there was no major dispute between Counsels that damages were not an adequate remedy. Mrs. Major, Counsel for the Claimant, argued that the nature of the trespass committed by the Defendant interfered with the Claimant's right of access to the property and further impeded the Claimant's continued intended development of the property. She highlighted the repeatedly replacement of the padlocks and other security measures. Mrs. Major argued that damages "***cannot be sensibly quantified, nor can the cost of the delay to the Claimant in developing its property***". She set out the acts of trespass committed by the Defendant at paragraphs 9 and 10 of her written Submissions, which I set out below:

> **9 Since 18th May 2026, the Defendant has repeatedly trespassed on the property and interfered with the Claimant's use of its own property by repeatedly cutting the padlocks that the Claimant has placed on the Property gate, installing his own padlock, and erecting his own "No Trespassing" sign. A chronology of the Defendant's acts of trespass to date is as follows:**

i. 18th May 2026: Claimant discovered that the Defendant had cut the padlock placed by the Claimant on the Property gate, installed his own padlock, and erected his own "No Trespassing" sign. The Claimant removed the Defendant's padlock and sign and again installed its own padlock on the Property gate.

ii. 19th May 2026: Claimant discovered that the Defendant had again cut the Claimant's padlock and installed his own padlock on the Property gate. The Claimant once again removed the Defendant's padlock and sign and again installed its own padlock on the Property gate.

iii. 20th May 2026: Claimant discovered that the Defendant had once again cut the Claimant's padlock and installed his own padlock. As before, the Claimant removed the Defendant's padlock and installed another padlock of its own on the Property gate.

iv. 21st May 2026: Claimant discovered that the Defendant had once again cut the Claimant's padlock, affixed his own lock to the gate, and posted a sign on the Property fence. The Claimant removed the Defendant's padlock and replaced it with another padlock of its own.

v. 22nd May 2026: Claimant discovered that the Defendant had again removed the Claimant's padlock and installed his own lock and posted his own sign on the Property fence. The Claimant removed the Defendant's lock and replaced it with another lock of its own.

vi. 23rd May 2026: Claimant discovered that the Defendant had again removed the Claimant's padlock and replaced it with his own. The Claimant removed the Defendant's padlock on 26th May 2026 and replaced it with its own padlock.

vii. On 28th May 2026: Claimant discovered that the Defendant had again removed the Claimant's padlock, replaced it with his own, and posted his own sign on the Property fence. The Claimant removed the Defendant's lock, replaced it with its own lock once

> **again, and installed another "No Trespassing" sign of its own.**
>
> **10 <u>To date, the Defendant has trespassed on the Property on at least seven (7) separate occasions within a 10-day period</u>.**

28. The Defendant's Counsel, Mr. Philip Lundy, in reply argued that in applying the approach set out by Lord Hoffmann in ***Olint*** **(supra)** that "**the irremediable prejudice to the Defendant from a wrongly granted injunction is substantially greater than any prejudice the Claimant could suffer from its refusal. The just result is the refusal of the injunction**".

29. Mr. Lundy strenuously argued that the Defendant is not a trespasser and that the alternative order is for the Court to make a mutual restraint order to preserve the status quo. Mr. Lundy relied on the decision of Card Stubbs J. in **<u>Leslie McKenzie & Ors. v Dwayne Gardiner & Anr. 2023/CLE/gen/00213</u>**. That case is distinguishable from the instant one because in part the Court determined that damages would be an adequate remedy arising from the finding that the defendants had businesses on the land. I highlight paragraphs 53 and 54 of the ruling:

> **[53.] I have also considered the implications of an injunction to the Defendants if it were granted in favour of the Claimant. The Defendants, on the evidence provided, have subsisting businesses on the subject property. I am mindful that the Claimants have alleged financial challenges (paragraph 24, John Olson Mckenzie affidavit) and it seems to me that it would be imprudent to ask the Claimants to enter into an undertaking in damages in the event of the Defendants succeeding at trial.**
>
> **[54.] It is my determination that the Claimants could be adequately compensated in damages were they to succeed at trial.**

30. Mrs. Major rejected the notion of a mutual restraint and advanced the argument that the Defendant opted to engage in "**antagonistic acts of trespass**" and "**a combative approach to the dispute**" as opposed to attempting an amicable resolution or commencing his own legal proceedings.

31. In assessing the position as to the adequacy of damages, I decided to examine the position if I refused to grant the injunction. The conduct of the Defendant in his repeated removal of the padlocks is not appropriate when an action is afoot to determine the ownership of the property. His conduct is relatively recent in time,

from about 18 May 2026, some 3 days before the filing of the action. This not only signals that the Defendant will likely continue in his inappropriate actions until trial but also that his conduct is designed to frustrate the Claimant, who is before the Court seeking a declaration as to its rights of ownership.

32. It also seems to follow that by the Defendant's conduct, which was not disputed or challenged at the hearing before me, that he holds the view that by changing the padlocks he is asserting his rights of ownership notwithstanding the fact that the action is filed and he is a named party thereto. I indicated at the hearing that once the action was filed the issue of possession or dispossession were matters to be determined at the trial.

33. In light of my conclusion that there are serious issues to be tried, I am bound to consider whether granting or withholding the interim injunction is more likely to produce a just result. In the balancing exercise, I am satisfied that the scale weighs in favor of granting an interim injunction. That course is most likely to preserve the status quo pending the determination of the action and to permit the Court to do justice after a determination of the merits and least likely to produce irremediable prejudice.

34. I note the observations of the House of Lords in ***American Cyanamid*** **(supra)**, where it was stated:

> **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 on 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.**

35. In light of the acts of the Defendant, I deem it appropriate to ensure that any new or further steps taken by the Defendant be restrained. In my view to allow the Defendant to continue in his acts would invariably lead to unnecessary conflict and give rise to the potential of one party or the other coming to the Court for interim relief. This must be avoided.

36. I also took into account the prejudice that the Claimant will likely suffer if no injunction is granted, and/or the likelihood of such prejudice occurring if an injunction was granted. I do not deem that damages can compensate for the inconvenience likely to be suffered by the Claimant. I closely examined the likely

consequences of granting or withholding the injunction. I am sufficiently satisfied on the evidence before me and the acknowledgement of the Defendant to the acts of changing and rechanging the padlocks that the irremediable prejudice and harm titled heavily in favour of granting the injunction.

37. I was also led to this decision by the uncontroverted evidence of the Claimant that since the date of its purchase of the property on 9 May 2008 and thereafter it used the property for "**the storage of fill and other purposes incidental to the business of CGT Contractors & Developers Ltd**.". There was no evidence before me that the Defendant earlier interfered with these acts of ownership by the Claimant. The Defendant only appeared content to interfere when the Claimant erected a gate and fence on the property on 11 May 2026 by sending a letter to the Claimant to record his disapproval and to assert his ownership of the property. That conduct is different in character to the steps he now takes in the constant changing of the padlocks.

38. In the round, it appeared to the Court that the Defendant had a new mischief in changing the padlocks because it appears that he did not disturb the acts of the Claimant when items and goods were stored on the property by the Claimant.

39. For these reasons, at the conclusion of the hearing I exercised my discretion and granted the injunction and made an order for costs in the cause.

40. I also gave directions for a speedy trial of the matter and set the trial dates to the 18 and 19 October 2025.

DATED the 16 day of June 2026

Raynard S Rigby KC
Acting Justice