IN THE COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Commercial Division

Claim No. 2026/COM/COM/00025

IN THE MATTER of an application by EDWARD COLSON pursuant to section 280 of the Companies Act 1992

B E T W E E N:

EDWARD COLSON

Claimant

AND

JAMES SCOTT FERGUSON
(sued in his capacity as a Director of Bluewater Builders Bahamas Ltd)
First Defendant

AND

BLUEWATER BUILDERS BAHAMAS LTD.

Second Defendant

RULING

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

Appearances: Mrs. Tara Archer-Glasgow and Mr. Trevor Lightbourn for the Claimant
Mr. Jacy Whittaker for the First & Second Defendants

Hearing Dates: 20 and 22 July 2026

Interim Injunction – Without Notice Application – Part 17 of the Supreme Court Civil Procedure Rules 2022 – Duty of Applicant to disclose material facts – Principles in determining whether material non-disclosure – Inter partes hearing – Whether interim Injunction should be continued – Matters to be taken into account when determining application for interim relief – Balance of convenience – Irremediable prejudice – Section 280 of the Companies Act – Disclosure Application

Rigby J (Actg.)

Introduction

1. The claim commenced by the Claimant is framed for certain declarations and orders under section 280 of the Companies Act. It is essentially an action based on allegations that the First Defendant, James Scott Ferguson, exercised the powers as a director in an oppressive or unfairly oppressive manner with unfair disregard to the interest of the Claimant, who is a 40% shareholder of the Second Defendant company.

2. The Standard Claim Form was filed on 17 June 2026. On that same date, the Claimant filed a Without Notice Application for an Interim Injunction with a Certificate of Urgency and supporting Affidavit. An Amended Without Notice Application for an Interim Injunction was filed on 22 June 2026. The matter came before the Court as an urgent Without Notice Application on 29 June 2026

3. The Certificate of Urgency sets out the nature of the matter and the urgency of the application. I highlight the sections below from the aforesaid Certificate:

> **Nature of the matter:**
> **1 The Claimant requests that the First Defendant be restrained, whether by himself, his servants, or agents, from operating, withdrawing from, transferring, or otherwise dealing with the bank account(s) of the Second Defendant without prior knowledge and consent of the Claimant and/or further Order of this Honourable Court.**
>
> **Urgency**
> **8 The Claimant's reason, therefore, for seeking an Order of this Honourable Court in an urgent basis is that the Claimant is concerned that the First Defendant will actively take steps to operate, withdraw from, transfer, or otherwise deal with the bank account(s) of the Second Defendant without prior knowledge and consent of the Claimant, thereby frustrating the relief sought and further prejudicing the Claimant's interests as a shareholder of the Second Defendant.**
> **9 In the circumstances, any delay in hearing the Without Notice Application for Interim Injunction may result in the First Defendant dealing with the Second Defendant's bank account(s) before ethe application is heard, thereby rendering the injunctive relief sought ineffectual. Accordingly, the Claimant respectfully requests that this matter be given urgent consideration in the interest of justice.**

4. The Affidavit of Edward Colson filed on 17 June 2026 ("**the Claimant's First Affidavit**"), to aid the Without Notice Application for an Interim Injunction, is the subject of the discharge application by the Defendants and in light of the same I set out below the full affidavit in light of the complaint of the Defendants that there was material non-disclosure at the hearing of the Without Notice Application.

> 3 I make this Affidavit in support of the Without Notice of Application filed herein for an Order pursuant to Part 17.1(1)(b) of the Supreme Court Civil Procedure Rules, section 280(3)(a) of the Companies Act, section 21 of the Supreme Court Act and/or under the Court's inherent jurisdiction for:
>
> (a) the First Defendant to be restrained, whether by himself, his servants, or agents, from operating, withdrawing from, transferring, or otherwise dealing with the bank account(s) of the Second Defendant without the prior knowledge and consent of the Claimant and/or further Order of this Honourable Court;
>
> (b) the First and Second Defendant do within 14 days of service hereof upon it inform the Claimant attorneys in writing of all the Second Defendant's assets in The Bahamas or elsewhere, giving for each asset (i) its nature (ii) its value (iii) its location; (iv) identify any person or entity holding the asset on its behalf; and (v) details of any encumbrances; and
> (c) the information must be confirmed in an Affidavit, which must be provided to the Claimant's attorneys within 21 working days of service hereof. The Affidavit must, (i) identify each asset; (ii) state its nature, value and location, (iii) identify any person or entity holding the asset on its behalf; (iv) exhibit all documents necessary to evidence the existence, ownership and/or control, and value of the asset, including, but not limited to: (i) bank statements showing current balances on any accounts; (ii) all trust deeds letters of wishes or instruments under which the Second Defendant has a beneficial interest or power; (iii) all loan agreements, promissory notes or receivables owed to them; and (iv) the company register, shareholder certificates, partnership agreements, or membership interest in any entity in which the second Defendant has an interest whether directly or indirectly.
> 4 There is now produced and shown to me and exhibited at "EC-1" a bundle of documents, references herein to tab numbers are references to this exhibit.
>
> 5 I am, and was at all material times, a shareholder of the Second Defendant, holding 2,000 shares pursuant to a Share Certificate dated 30th August 2024 as evidenced in a letter issued from the Central Bank of The Bahamas dated 30th August 2022

concerning the Second Defendant. **There is now produced and shown to me at Tab 1 Exhibit "EC-1" a true copy of the said Letter.**

6 The First Defendant is a director and majority shareholder of the Second Defendant and exercises control over its affairs, including its financial operations. **There is now produced and shown to me at Tab 2 and Tab 3 Exhibit "EC-1" a true copy of the Register of Members and a Written Consent of The Directors of the Second Defendant, respectively.**

7 The Second Defendant is presently in receipt of substantial settlement funds pursuant to the resolution of litigation arising from arbitration proceedings relating to a construction project in Abaco, namely the Bahamas Beach Club.

8 I verily believe that it is just, necessary, and appropriate that this Honourable Court order the First Defendant to provide a full and proper accounting of the financial affairs, assets, liabilities, and transactions of the Second Defendant.

9 I am a substantial shareholder of the Second Defendant, holding 2,000 shares representing approximately forty percent (40%) of the issued share capital, and I therefore have a direct and legitimate interest in the financial position and management of the Company.

10 Notwithstanding my status as a shareholder, the First Defendant has failed, refused, and/or neglected to provide access to proper and reliable accounting records of the Second Defendant, including records concerning monies received, expended, and distributed.

11 I have been advised by my counsel and verily believe that the First Defendant is under a statutory obligation pursuant to the Companies Act to maintain proper accounting records and to make such records available for inspection by shareholders, which obligations he has breached.

12 In particular, the First Defendant has failed and/or refused to disclose any proper accounting in relation to the funds received by the Second Defendant pursuant to the settlement of a Supreme Court Action, being Claim No. 2024/CLE/gen/FP/00200.

13 The First Defendant has exercised exclusive control over the receipt, verification, and administration of settlement payments, and has deliberately excluded the Claimant from any oversight or verification of such funds.

14 I verily believe that as a consequence of the First Defendant's unilateral control, there is no transparency as to (i) the total sums received by the Second Defendant; (ii) the timing and frequency of such receipts; (iii) the application and allocation of those funds; and (iv) whether all monies due and payable to the Second Defendant have in fact been received.

15 Further, the First Defendant has caused payments to be made to me on what appears to be an arbitrary and discretionary basis, without any explanation or supporting financial information.

16 By virtue of an email dated 12th February, 2026, the First Defendant requested that I provide my banking details to facilitate a payment in the sum of $100,000.00.

17 Through my wife, who is an attorney-at-law, I requested clarification as to how the said sum had been calculated.

18 The First Defendant failed and/or refused to provide any explanation. **There is now produced and shown to me at Tab 4 Exhibit "EC-1" a true copy of the email exchange commencing 12th February, 2026.**

19 By email dated 16th February 2026, the First Defendant advised he remitted only $25,000.00 to me, representing a portion of the sum previously indicated, without any proper explanation or accounting. **There is now produced and shown to me at Tab 5 Exhibit "EC-1" a true copy of the said email.**

20 On 25 February 2026, I again sought clarification (through my wife) regarding (i) the derivation of the $100,000.00 figure; (ii) the plan for distribution of funds; and (iii) whether any additional funds had been received.

21 Despite these requests, the First Defendant has failed and/or refused to provide any proper or satisfactory accounting. **There is now produced and shown to me at Tab 6 Exhibit "EC-1" a true copy of the email exchange commencing 25th February, 2026.**

22 Moreover, following my review of the limited information made available to me, I verily believe that funds belonging to the Second Defendant have been, and continue to be, utilised for purposes unrelated to its business.

23 In particular, such funds have been applied for the benefit of a property known as "Crosswinds" which is owned by a separate company wholly owned and controlled by the First Defendant.

24 On or about 13 August 2021, the First Defendant utilised funds belonging to the Second Defendant to acquire a residential property situated on Lot 7, Block 182, in Treasure Cay on the island of Great Abaco, one of the islands of the Commonwealth of The Bahamas (hereinafter referred to as "Crosswinds").

25 Notwithstanding that the purchase monies for Crosswinds were derived from the funds of the Second Defendant, a Conveyance dated 13 August 2021 was executed by Christopher Dunkley, whereby title to Crosswinds was vested in West Nick Holdings Ltd. The said Conveyance is duly recorded in the Registry of Records in Book 13936 at pages 23 to 30. **There is now produced and shown to me at Tab 7 Exhibit "EC-1" a true copy of the said Conveyance.**

26 At all material times, West Nick Holdings Ltd. was a company wholly owned and controlled by the First Defendant. **There is now produced and shown to me at Tab 8 Exhibit "EC-1" a true copy of an email dated 22nd February, 2023 from the First Defendant confirming his sole ownership in West Nick Holdings Ltd.**

27 Notwithstanding this position, the limited records made available to the Claimant disclose that funds belonging to the Second Defendant continue to be used for the benefit of Crosswinds.

28 The Second Defendant derives no legitimate or lawful benefit from the application of its funds to Crosswinds based on Crosswinds' current ownership.

29 As I previously indicated, I am a substantial shareholder of the Second Defendant, holding forty percent (40%) of its issued shares, and as such, I have a significant financial and proprietary interest in the proper management, governance, and financial integrity of the Company.

30 Notwithstanding my substantial shareholding, I have been wholly excluded by the First Defendant from any participation in the general management and affairs of the Second Defendant, including decisions relating to the receipt, application, and distribution of the Company's funds and banking.

31 The First Defendant has excluded me from participation in the management of the Second Defendant by refusing and/or failing to convene meetings, including meetings requested for the purpose of appointing me as a director.

32 By email dated 4th March 2026, I requested that a shareholder meeting be convened due to repeated failures to obtain an accounting of the Company's affairs. This request has been ignored and/or refused. **There is now produced and shown to me at Tab 9 Exhibit "EC-1" a true copy of the said email.**

33 I verily believe that my continued exclusion from the management of the Second Defendant has enabled, and will continue to enable, conduct on the part of the First Defendant that is oppressive, unfairly prejudicial, and contrary to the best interests of the Company and a breach of fiduciary duties.

34 In particular, the First Defendant has failed and/or refused to provide proper and reliable accounting records, has exercised unilateral control over the Company's finances, and, as mentioned in paragraph 27 above, has seemingly misapplied corporate funds for purposes unrelated to the business of the Company, including for the benefit of property owned and controlled by the First Defendant.

35 By reason of the matters set out above, the First Defendant exercises unfettered control over the bank accounts of the Second Defendant. There is a lack of transparency regarding the inflow and outflow of funds, and funds have already been misapplied for improper purposes.

36 I verily believe that there is a real and substantial risk that the First Defendant will continue to dissipate, misapply, or otherwise deal with the funds of the Second Defendant in a manner prejudicial to my interests unless restrained by this Honourable Court.

37 I am advised by my attorney, and verily believe, that there is a serious issue to be tried in this action and I have a good and

arguable case, including breach of fiduciary duty, misapplication of the funds of the Second Defendant; and oppressive and unfairly prejudicial conduct.

38 I verily believe that damages would not be an adequate remedy because the funds of the Second Defendant are not properly accounted for, further dissipation may render any judgment nugatory; and the financial position of the Second Defendant would remain unclear.

39 I verily believe that this Honourable Court should enter an Order that the First Defendant be restrained, whether by himself, his servants, or agents, from operating, withdrawing from, transferring, or otherwise dealing with the bank account(s) of the Second Defendant without the prior knowledge and consent of the Claimant and/ or further Order of this Honourable Court as it will preserve the funds while an accounting is being provided and the dispute is resolved and will prevent further misuse or dissipation of funds.

40 Further, I can not readily identify how the First Defendant will suffer prejudice from being restrained from operating, withdrawing from, transferring, or otherwise dealing with the bank account(s) of the Second Defendant without my prior knowledge and consent and/ or further Order of this Honourable Court, whereas I will suffer significant prejudice if the funds are dissipated.

41 In the circumstances, I respectfully believe that it is just and convenient that the Court restrain the First Defendant, his servants, and/or agents, from operating, withdrawing from, transferring, or otherwise dealing with the bank account(s) of the Second Defendant without my prior knowledge and consent and that the First Defendant and/or the Second Defendant inform the Claimant attorneys in writing of all the Second Defendant's assets in The Bahamas or elsewhere, giving for each asset (i) its nature (ii) its value (iii) its location; (iv) identify any person or entity holding the asset on its behalf; and (v) details of any encumbrances, verified by Affidavit.

5. Although the Amended Without Notice Application also sought a disclosure order, I decided to adjourn that portion of the Application to be heard inter partes at the return date of 20 July 2026. I granted the Interim Injunction in the following terms:

Service of this Order on the First Defendant, James Scott Ferguson, shall operate as an immediate interim order upon the First Defendant:
a. restraining him, whether by himself, his servants, or agents, from operating, withdrawing from, transferring, or otherwise dealing with the bank account(s) of the Second Defendant without the prior knowledge and consent of the Claimant and/or further Order of this Honourable Court.

6. By the return date, the Claimant filed a Supplemental Affidavit on 16 July 2026 ("**the Claimant's Supplemental Affidavit**") for use at the inter partes hearing.

7. The First Defendant filed two Affidavits on 9 and 17 July 2026.

__**Factual Matrix**__

8. The Claimant acquired 40% shares in the Second Defendant, Bluewater Builders Bahamas Ltd. ("**BBBL**") on 30 August 2022. The approval letter from the Central Bank of The Bahamas which allowed for the 2,000 shares issuance, notes that it was at no consideration. The First Defendant and one Darin Knowles are the other shareholders of BBBL; with the First Defendant holding 2,999 shares as at 30 August 2022.

9. There is no dispute between the parties on the shareholding. BBBL's share register records the Claimant as a shareholder. The First Defendant is the holder of 2,999 shares. BBBL's share capital is $5,000.00 at a par value of $1.00 resulting in 5,000 shares. The First Defendant is a 60% shareholder.

10. The First Defendant along with Darin Knowles are the directors of BBBL. The Claimant is not a director, and it appears that at no time after he acquired his shares in August 2022 was, he appointed a director of BBBL.

11. The shareholders, the Claimant and the First Defendant, appear to have a dispute over the allocation of the settlement proceeds of approximately $1.9 million derived from arbitral proceedings against Bahama Beach Club when the First Defendant shared an Allocation of Settlement funds from Bahama Beach Club with the Claimant's Counsel via email on 4 May 2026.

12. When the Without Notice Application for an Interim Injunction came before me on 29 June 2026, I inquired of Counsel for the Claimant of the salient issues around the sum of $100,000.00 that BBBL agreed to pay to the Claimant which had a balance of $25,000.00 owing as well as matters involving the arbitral proceedings. There was an allegation that the First Defendant refused to disclose any proper accounting information in relation to the settlement as well as other financial records of BBBL. These allegations were set out in the Claimant's First Affidavit.

13. There was no evidence adduced of any earlier dispute between the shareholders. The dispute that gave rise to the action and the injunction application, appears to surface in May 2026.

<u>The Inter partes Hearing</u>

14. Mr. Whittaker, on behalf of the Defendants, filed a Notice of Application on 6 July 2026 ("**the Notice**") to discharge the Without Notice Interim Injunction. The Notice contends (in part) non-compliance with the Supreme Court Civil Procedure Rules, 2022 ("**CPR**"), material non-disclosure by the Claimant and no real risk of dissipation.

15. In relation to the allegation of material non-disclosure, there are six matters that the First Defendant alleges that the Claimant failed to disclose in the discharge of his duty to make full and frank disclosure to the Court at the ex parte hearing. The material that the First Defendant alleges were not disclosed and are material are:

> **"2.1 the financial information provided to his own attorneys on 20 April, 4 May and 11 May 2026 (the Allocation of Settlement Funds report, the Company's balance sheets and profit and loss accounts), receipt of which was acknowledged on 11 May 2026, and which is directly inconsistent with his sworn assertion of "no transparency";**
> **2.2 the First Defendant's open disclosure, since February 2023, of the use of Company funds in respect of Crosswinds and of the Claimant's 40% interest;**
> **2.3 the payments made to the Claimant and the First Defendant's confirmation of the Claimant's own accountant's figures;**
> **2.4 the Claimant's own proposal of 25 March 2026 to resolve matters amicably;**
> **2.5 the months of correspondence between the parties' attorneys; and**
> **2.6 the responsive correspondence of 20, 22, 26 and 30 March 2026, only the Claimant's demand of 4 March 2026 having been exhibited."**

16. The Claimant disagrees with the allegations made by the Defendants and seeks a continuation of the injunction until the trial of the matter or the determination of the issues in the action.

17. The Defendants rely on two Affidavits of James Ferguson filed on 9 and 17 July 2026 to support its discharge of the interim injunction. In the first affidavit, which is Mr. Ferguson's primary response to the claim, he makes several observations. I feel it necessary to set out the majority of the contents of the affidavit.

3 The Company is a construction and renovation business operating principally in Treasure Cay, Abaco. It is a live, trading company with employees, subcontractors and suppliers, and ongoing financial obligations.

5 The Claimant and I have known each other for some fifty years. The present dispute concerns a disagreement over the allocation of funds received by the Company, in particular settlement funds arising from the Company's litigation against the Bahama Beach Club Condominium Associations (Claim No. 2024/CLE/gen/FP/00200), which in my view should first be applied to the Company's existing debts.

6 In summary, the Claimant if of the view that the Company should forego the existing debts and give him 40% of the settlement proceeds. At its core, that is what gives rise the present proceedings.

7 The Company has never held an annual general meeting or any general meeting of its shareholders. The Claimant became a shareholder on 30 August 2022, when his 2,000 shares (40%) were issued to him at no consideration. He has never attended any meeting of the Company, had not previously sought or seen its accounts, and does not, on his own evidence, know the extent of the Company's debts and liabilities.

8 The dispute has a single origin. The Claimant wished to be paid his 40% share of the settlement funds received in the Bahama Beach Club litigation. My position was, and remains, that the Company's existing debts must first be met in accordance with normal business operations. When the Claimant asked for access to the Company's books, I did not have finalised accounts to hand, and I instructed the Company's accountant and bookkeeper to bring the accounts up to date.

9 The Claimant's attorneys, Higgs & Johnson, wrote to me and to the Company asserting the Claimant's entitlement to reasonable access to the Company's records under the Companies Act. I did not dispute that entitlement. As soon as the Company's accountant had prepared the documents, my attorneys provided them: (a) the Allocation of Settlement Funds report on 4 May 2026, and (b) the Company's balance sheets and profit and loss accounts on 11 May 2026, receipt

of which Higgs & Johnson acknowledged the same day (Tab 6). The access complained of was therefore given.

10 Notwithstanding that the access complained of had been given, the Claimant did not revert. Instead, and without further notice, he issued these proceedings under section 280 and obtained the Injunction.

11 The correspondence and the accounts were in the possession of the Claimant and his attorneys; there was no reason they could not have been placed before the Court on the without notice application, and had they been, the Company's cooperation and transparency would have been apparent.

12 Save for the complaint about access to records, which had been addressed prior to the issuance of these proceedings, the Claimant makes no particularised complaint of mismanagement. His real grievance is that he wishes to be paid 40% of the settlement proceeds now, ahead of the Company's creditors. That is a disagreement about the allocation of the Company's funds, and not oppression.

...

14The effect of the Injunction is severe and, I am advised, out of all proportion to anything the Claimant could legitimately require. Although the Order is directed to dealings with the Company's bank account(s), in practice the bank has treated the account as frozen. The Company cannot operate its account in the ordinary way and cannot make ordinary business payments without the prior knowledge and consent of a 40% shareholder who is not a director and has no role in day-to-day management. This directly impairs the Company's ability to trade. As at the date of this affidavit, the Company has immediate obligations. If those obligations are not met, the Company risks interruptions to ongoing projects, claims by creditors, employee hardship, loss of supplier and subcontractor confidence and damage to its reputation.

15 In practical terms the Company cannot pay its staff, subcontractors, suppliers or creditors, and cannot apply the settlement funds to the obligations for which they are intended. If continued, the Injunction threatens the

Company's ability to trade and to meet the very liabilities of which the Claimant complains.

16 The Claimant's affidavit asserts that I "failed, refused, and/or neglected" to provide accounting records and that there was "no transparency". That is not correct. The payments made to the Claimant and the financial information provided to him and his attorneys, none of which I understand was placed before the Court, show the contrary.

16.1The property known as Crosswinds was purchased in or about 2021 to 2022 with Company funds, at a time when I was the sole shareholder of the Company and before the Claimant became a shareholder. It has never been recorded as an asset on the Company's balance sheet, and it is held by my company, West Nick Holdings. Any interest of the Claimant in Crosswinds was to arise under a verbal understanding between the Claimant and me that he would introduce further business to the Company, which understanding the Claimant did not fulfil. The Claimant's interest, if any, in Crosswinds is a matter to be determined in the substantive proceedings, and it is not necessary for the purposes of this application to discharge the Injunction.

16.2Mrs Colson, who is an attorney, was actively involved for years in the affairs now complained of. I kept her informed of the Bahama Beach Club litigation and strategy.

16.3I made payments to the Claimant and explained the figures.

16.3.1 On 12 February 2026, I indicated that I intended to pay US$100,000. That sum was paid to the Claimant in full, in four instalments of US$25,000 each, made on 13 February, 18 February and 20 February 2026, and on 2 March 2026.

16.3.2Far from concealing the position, Mrs Colson's own email of 25 February 2026 records that I had confirmed her breakdown of monies received and expended, showing approximately US$641,000 remaining in the account (Tab 5).

16.3.3 That sum was not idle or at risk: it was retained in the Company's account, and disclosed, precisely so that it could be applied to the Company's existing debts and obligations in accordance with the Allocation of Settlement Funds report.

16.3.4The Claimant plainly had detailed financial information.

17 After Higgs & Johnson came on the record for the Claimant, my attorneys provided further financial disclosure to them: under cover of correspondence dated 20 April 2026;

by email of 4 May 2026 enclosing the Allocation of Settlement Funds report; and by email of 11 May 2026 enclosing the Company's balance sheets and profit and loss accounts. Mr Trevor Lightbourn of Higgs & Johnson acknowledged safe receipt in writing on 11 May 2026 (Tab 6).

18 The accounts so provided, namely the Allocation of Settlement Funds report, the Company's balance sheets as at 31 December 2025 and 30 April 2026, and the Company's profit and loss accounts for the years 2022 to 2026, are exhibited at Tab 8. I am advised that none of this was disclosed to the Court, even though the Claimant's affidavit was sworn on 17 June 2026 and asserted that there was "no transparency".

19 There was no emergency justifying an application without notice. As late as 25 March 2026 the Claimant emailed me directly proposing that we "meet and have a beer" to "resolve our issues" on an "unconfrontational" basis (Tab 7). That is not the conduct of a man who believed I was about to remove the Company's funds.

Matters Not Disclosed To The Court

23 I am advised and believe that, on a without notice application seeking relief that restrained the Company's own bank account(s), the Claimant was obliged to disclose fully and frankly all matters material to the Court's decision, including those matters adverse to his application.

24 I am advised that the following material matters were not disclosed, or were not fairly presented to the Court:
24.1 the financial disclosures of 20 April, 4 May and 11 May 2026;
24.2 the Claimant's own proposal of 25 March 2026 to resolve matters amicably;
24.3 the months of correspondence between attorneys;
24.4 Mrs Colson's longstanding involvement and access to information;
24.5 the payments made to the Claimant; and
24.6 the responsive correspondence of 20, 22, 26 and 30 March 2026, only the Claimant's own demand of 4 March 2026 having been exhibited.

25 I am further instructed that the Claimant's attorneys wrote to Mr Craig Roberts in relation to the Bahama Beach

Club arbitration; that correspondence, and its effect on the settlement, was likewise not disclosed.

25.1 On 20 March 2026, the Claimant's attorneys, Higgs & Johnson, wrote directly to Mr Craig Roberts, the President of the Bahama Beach Club Condominium Phases I to IV Associations (the "Associations"), being the very counterparty against which the Company had litigated and with which the Company had settled.

25.2 The letter was written expressly on the Claimant's behalf as "a 40% shareholder" of the Company, and it sought from the Associations a "full and complete accounting of all monies received, disbursed, or otherwise handled in connection with the settlement". A copy of that letter is at Tab 9.

25.3 The Claimant is a shareholder only. He is not, and has never been, a director or officer of the Company, and he has no authority to communicate with the Company's contractual counterparties on its behalf.

25.4 The settlement with the Associations is the Company's business, and the settlement agreements name me as the Company's authorized point of contact for all matters relating to payments and releases. The Claimant had no role in the settlement and no authority to approach the Associations about it.

25.5 This conduct is seriously damaging to the Company. At the time, the settlement funds were not yet fully paid and further payments remained due.

25.6 By writing to the paymaster and inviting it to account for the settlement monies, the Claimant created a real risk that the Associations may pause, withhold, or redirect payments still owed to the Company.

25.7 The Company's attorneys wrote to Higgs & Johnson on 22 March 2026 setting out the Company's position, namely that the letter to Mr Roberts "was sent entirely without authority and constitutes an impermissible interference with the Company's contractual affairs", and that, by writing to the counterparty, the Claimant "invites the Associations to treat the settlement arrangements as being in controversy, thereby furnishing them with a pretext for non-performance or delayed performance of their contractual obligations". A copy of that letter is at Tab 10.

25.8 Neither the letter to Mr Roberts nor its potential effect on the settlement was disclosed to the Court on the without notice application. It was plainly material, because it is the Claimant, and not I, whose conduct has placed the Company's settlement funds at risk.

25.9 The letter also exposes the true character of the Claimant's complaint. The Claimant alleges that he has been unfairly prejudiced and oppressed, yet he has himself taken deliberate steps, directed at the Company's own contractual counterparty, that are calculated to disrupt the Company's ability to receive and apply the very funds of which he complains.

25.10 In a company of this character, a shareholder is not entitled to exercise his rights in a manner that is adverse to the Company's interests or that amounts to an abuse of the shareholder relationship for his own ends.

25.11 The Claimant's approach to the Associations, taken together with his demand to be paid 40% of the settlement proceeds ahead of the Company's creditors, is conduct of that kind, and it is difficult to reconcile with the case he now advances against me.

18. In the second Affidavit, Mr. Ferguson responds to the Claimant's supplemental Affidavit and avers that the Claimant did not "**contribute capital in exchange**" for his shares and when "**he became a shareholder was that he would help to bring additional work and contracts to the Company. He did not do so. On the contrary, during the years in which he has been a shareholder, the Claimant solicited and performed new projects through his own company, Bluewater Developers, and Bluewater Developers acted, at most, as a subcontractor to the Company**".

19. Mr. Ferguson also addressed other matters raised in the Claimant's Supplemental Affidavit. I set out several paragraphs below:

The Loans Were Disclosed, Not Concealed

24 At paragraphs 29 to 31 the Claimant refers to loans owed by the Company to me, and to a communication from Mr Doug Benson concerning monies owed to him, and presents these as newly discovered and suspicious. They are neither. The loans are recorded on the very balance sheets that the Company provided to the Claimant. They are ordinary liabilities of the Company.

25 That the balance of my loan account reduced between 31 December 2025 and 30 April 2026 reflects repayment in the ordinary course of business, which is what a company does with its creditors. The existence of these genuine debts is, if anything, the entire point: the Company has real creditors whose debts must be met, and that is precisely why the settlement funds cannot simply be paid out to the Claimant as to 40%.

The Loan From Mr Doug Benson

26 The loan from Mr Benson merits particular explanation, because it illustrates both the reality of the Company's indebtedness and the conduct of the Claimant. In order for construction to continue at the Bahama Beach Club project, Mr Benson lent the Company the sum of $300,000. The funds were sent to the Claimant in the United States. The Claimant retained $100,000 of those funds in payment of a receivable allegedly owed to Bluewater Developers as a subcontractor, and provided only the remaining $200,000 to the Company. When the Company borrowed money to keep its principal project alive, the Claimant paid himself first.

27 By a Payment Authorization dated 26 June 2026, exhibited at Tab 1 of **"JSF-2"**, Mr Benson has confirmed the state of the account between himself and the Company. Pursuant to the settlement between the Company and the Bahama Beach Club phases, each unit owner was to pay the Company $45,000 in settlement of all claims. Mr Benson owned three units, being units 2003, 2008 and 2030, and $135,000 of the $300,000 loan was accordingly allocated to the settlement sums payable in respect of those units, leaving a balance of $165,000 owed by the Company to Mr Benson.

28 Mr Benson has authorized repayment of that balance by deposits into a designated account in The Bahamas, in Bahamian dollars, with every dollar so deposited to be credited against the outstanding balance. Mr Benson presses the Company, through me, for repayment on an almost daily basis, and I am concerned that he will shortly commence proceedings against the Company. He is a genuine creditor of the Company whose interests are directly affected by the Injunction, because the Injunction prevents the Company from operating the very account from which he would be repaid.

My Shareholder Loan and The Funding of The Bahama Beach Club Litigation

29 As to my own loan account, it may assist the Court to understand how it arose. Throughout the Bahama Beach Club litigation, arbitration and counterclaim, I personally advanced substantial funds to the Company so that it could fund and pursue those proceedings. As President and Managing Director, I led

that litigation on the Company's behalf for more than two years, in both the United States and The Bahamas. In those proceedings the Company obtained an award exceeding $3.5 million and successfully defeated a counterclaim of approximately $2.5 million.

30 My advances are the shareholder loan recorded in the Company's financial statements. They were made for the benefit of the Company and not for my personal benefit, and the repayments to which the Claimant points are nothing more than the repayment of a bona fide company debt in the ordinary course of business.

20. The Claimant's Supplemental Affidavit filed on 16 July 2026 seeks to answer the averments and complaints made by the First Defendant. I set out below several paragraphs from the Claimant's Supplemental Affidavit:

9 The Second Defendant's primary purpose was the Bahamas Beach Club project, from which the Second Defendant ceased involvement at the end of 2022. Litigation concerning that project commenced in February 2023 and ultimately resulted in a Final Arbitration Award dated 22 September 2024 of $3.544 million.

10 The Profit & Loss statements provided indicate only a minor project in 2023 and despite the First Defendant's assertions at paragraph 3 of the Ferguson Affidavit that it is a "live, trading company with employees, subcontractors and suppliers, and ongoing financial obligations." The Profit and Loss Statements suggest that no actual business was conducted for the periods as (i) January – December, 2024; (ii) January – December, 2025; and (iii) January- April, 2026, listing **<u>NO GROSS PROFIT</u>**. **There is now produced and shown to me at Tab 1 Exhibit "EC-1" a true copy of the said Profit and Loss Statements.**

11 Thus, in addition to reporting no gross profit, the financial records provided, including the Balance Sheets as at 31 December 2025 and 30 April 2026, suggest that the Second Defendant had no regular employees during the relevant periods. The records disclose total payroll expenses of only $1,552.50 for the period January to December 2025 and $2,430.00 for the period January to April 2026, while National Insurance contributions are reported as $0.00 throughout the preceding year and a half. These figures appear inconsistent with the operation of an active business and raise legitimate questions concerning the nature and extent of the Second Defendant's activities, staffing, and financial affairs. **There is now produced**

and shown to me at Tab 2 Exhibit "EC-1" a true copy of the said Balance Sheets.

12 Further, despite the Bahamas Beach Club project being terminated in 2022, the Profit and Loss statements show significant expenses for the Beach Club project.

i. In **2023,** the First Defendant reported approximately $114,000 supervision, $94,000 travel, $78,000 rent and lease.
ii. In **2024,** the First Defendant reported approximately $100,000 supervision and $56,000 vehicle depreciation.
iii. In **2025,** the First Defendant reported approximately $98,000 supervision, $28,000 vehicle depreciation, and $285,818 legal and professional fees; and
iv. In **2026**, the First Defendant incurred approximately $30,000 supervision costs.

13 In any event, at no time has the First Defendant contacted either me or my attorneys to seek my consent in relation to the operation of the Second Defendant's bank accounts. As such, I have not unreasonably withheld, nor have I refused, my consent to the First Defendant operating the bank accounts of the Second Defendant or making payments in the ordinary and proper course of its business.

14 I verily believe that the First Defendant's failure to engage with me in this regard further demonstrates his disregard for my interests as a shareholder and is consistent with the oppressive conduct complained of in these proceedings. It appears that the First Defendant would sooner allow difficulties to arise in relation to the payment of employees, subcontractors, suppliers, and professional advisors than engage with me in a transparent and cooperative manner concerning the affairs of the Second Defendant.

...

20 By letter dated 20 March 2026, I formally requested certain information and documents from the First Defendant pursuant to section 118A of the Companies Act. The request was directed to the First Defendant in his capacity as a director and officer of the Second Defendant and sought the production of records to which I am **entitled** as a shareholder under the provisions of the Act. The information requested consisted of:-

i. Board minutes, board resolutions, records of board discussions and papers provided to directors in respect of any board meeting;

ii. Communications between directors of the Company from time to time;

iii. Communications between any director, president, vice-president, employee, representative, consultant, advisor, or other agent of the Company with Christopher Dunkley and/or West Nick Holdings Ltd or companies affiliated with Christopher Dunkley and/or West Nick Holdings Ltd, concerning Lot 7 in Block Number One Hundred and Eighty Two situate in Treasure Cay Subdivision in Abaco;

iv. Communications between any director, president, vice-president, employee, representative, consultant, advisor, or other agent of the Company with Bahama Beach Club Condominium Phases I–IV Associations or companies affiliated with Bahama Beach Club Condominium Phases I–IV Associations concerning the aforesaid settlement payments;

v. The Company's audited (or otherwise prepared) financial statements for the last five (5) completed financial years;

vi. Any interim financial statements prepared for the current financial year.

vii. All general accounting records, including but not limited to general ledgers, bank statements, cash-book records, and trial balances for the last five (5) financial years; and

viii. Accounting of the trailers located on the Red Bay property and the associated rental income generated.

There is now produced and shown to me at Tab 3 Exhibit "EC-1" a true copy of the said letter.

21 While the First Defendant states at paragraph 9 of the Ferguson Affidavit that he does not dispute my entitlement to reasonable access to the Company's records, that assertion represents a marked departure from the position previously advanced on his behalf. In particular, by letter dated 22 March 2026, Counsel for the First Defendant wrote to my Counsel acknowledging, in general terms, that a member of the Company has a statutory right of inspection pursuant to section 118(1) of the Companies Act for a proper purpose. However, notwithstanding that apparent acknowledgment of principle, the letter expressly stated that my request "as framed is objectionable." **There is now produced and shown to me at Tab 4 Exhibit "EC-1" a true copy of the said letter.**

...

29 Further, I became aware from the financial documents provided that there were alleged loans made by the First Defendant to the Second Defendant, of which I had no prior

knowledge. According to those documents, the outstanding balance of such loans was stated to be $640,838.54 as at 31 December 2025 and $555,016.49 as at 30 April 2026. Given the material nature of these purported liabilities and the absence of any prior disclosure to me, I have sought, in the present application, disclosure of all loan agreements, together with any related documentation evidencing the terms, validity, and treatment of those loans.

30 Similarly, the records disclose a loan from Doug Benson in the amount of $300,000.00 as at 31 December 2025, which is listed as outstanding in full in the April, 2026 Balance Sheet. However, I verily believe that Mr. Benson received a credit prior to the April, 2026 Balance Sheet as the First Defendant, by virtue of an email to my wife dated 9th February, 2026 indicated that "when including all Doug Benson credits Phase 3 has met over 50%". Further, on or about 30th June, 2026, I also received a Whatsapp communication from Doug Benson inquiring as to when he would receive the $165,000.00 remaining on the loan. **There is now produced and shown to me at Tab 6 and Tab 7 Exhibit "EC-1" a true copy of the said email and Whatsapp communication, respectively.**

50 In the circumstances, I maintain that there is a real and substantial risk of dissipation of the Second Defendant's assets. My concern arises from the fact that significant assets, including Crosswinds House, were previously reflected on the Second Defendant's Balance Sheet but are now said not to have belonged to the Second Defendant at all. Either Crosswinds House was in fact an asset of the Second Defendant, in which case I should have derived the corresponding benefit as a shareholder but have not, or the financial information provided to me regarding the Second Defendant's assets and affairs was inaccurate and/or misleading. In either case, I verily believe that full and proper disclosure is required.

51 Further, if Crosswinds House is not an asset of the Second Defendant, the First Defendant seemingly misapplied corporate funds for its benefit with no corresponding gross profit/income relating to Crosswinds, see as follows:-

i. Profit and Loss dated 16th September to 31st December, 2022, which lists total expenses for Crosswinds at $3,162.00;
ii. Profit and Loss dated January to December, 2023, which lists total expenses for Crosswinds at $6,453.81;

iii. Profit and Loss dated January to December, 2024, which lists total expenses for Crosswinds at $3,878.63;

52 The decision to commence litigation and seek injunctive relief was not the result of delay or inaction on my part. Rather, it was prompted by serious concerns arising from discrepancies between the financial information recently disclosed to me and the historical records previously provided by the First Defendant, including the Balance Sheet as at 30 November 2022. Those discrepancies raised legitimate questions regarding the nature and extent of the Second Defendant's assets, liabilities, expenses, and the treatment of settlement proceeds received by the company.

...

55 With respect to the evidence before the Court, I maintain that I was frank and disclosed all the information the First Defendant claims I did not disclose as follows:-

i. **The financial disclosures of 20th April, 4th May and 11th May 2026**- This is denied. I admitted I received financial disclosure. **See paragraph 5.39v of my submissions** "some financial information was provided to the Claimant on a without prejudice basis, though it remains unaudited or unverified by supporting documents. Again, **see paragraph 22 of my Initial Affidavit** "Moreover, following my review of the limited information made available to me";
ii. **The Claimant's own proposal of 25th March 2026 to resolve matters amicably**- While I admit I made an attempt to meet with the First Defendant for a beer to resolve our issues, the First Defendant failed to advise this Honourable Court that my attempts were rejected. The First Defendant through his counsel issued a letter dated 26th March, 2026 to my Counsel indicating, inter alia, that "the suggestion of a meeting is premature and, given the conduct outlined above, is not one that our client is prepared to entertain at this time." In any event, this exchange predated my receipt of the purported financial records.
iii. **The months of correspondence between attorneys**- The only reason why there was months of correspondence between the parties is because that time was spent chasing financial records. My initial request was made via letter dated 20th March, 2026. The purported financial records were not received until nearly two months later on 4th May, 2026 and 11th May, 2026;
iv. **Mrs. Colson longstanding involvement and access to information**- This is disingenuous, every email I exhibited in

my Initial Affidavit is either addressed to or written by my wife. Even the email exhibited to my Initial Affidavit that I issued has my wife copied therein. It is not fair to state that this Honourable Court was not aware of my wife's involvement.

v. **The payments made to the Claimant**- The Defendant is seeking to reframe my concern/allegation. My concern/allegation was not that I did not receive any funds from the settlement. I confirm that I did receive the funds referenced in paragraph 19 of my Initial Affidavit. My concern/allegation was a lack of transparency as set out in paragraphs 16 to 18 of my Initial Affidavit, where I indicated that the First Defendant sent me an email advising he would send me $100,000.00, and when we requested clarification as to how the same would be calculated, there was a failure to provide any explanation. While the First Defendant provided me with a purported Allocation of Settlement Funds on 4th May, 2026, again the same was sent on a without prejudice basis. There were also a number of entries in the said Allocation of Settlement Funds that raised concerns, including namely,

- pay off Salary to the First Defendant in the sum of $217,949.78;
- payments made on loan due to First Defendant in the sum of $122,474.42 (which is in excess of the sums cited for the Loan from Scott Ferguson as being paid on the Balance Sheets as at 31st December, 2026 and 30th April, 2026 (i.e. $640,838.54 - $555,016.49 = $85,822.05).
- payments made to Doug Benson in the sums of $90,000.00 and $45,000.00 (which are not reflected as being paid in the Balance Sheets as at 31st December, 2026 and 30th April, 2026, both of which reference a continuing liability of $300,000.00.); and
- A payment of $49,721.52 allegedly made on 11th February, 2026 for an old bill that wasn't put in A/P (Hattan Electric) Pass Builders.

vi. **The responsive correspondence of 20th 22nd, 26th and 30th March, 2026**- The letter issued to Mr. Roberts is not material to the matter at hand as Mr. Roberts is the President of the Bahama Beach Club Owners Association Ltd., which is not involved in the failed Bluewater matter. He is not the President or Board member of the Phase I, II, III, & IV Body Corporate. Further, while the First Defendant suggests at paragraph 25.5 of the Ferguson Affidavit that the said letter to Mr Roberts created a real risk that the Associations may pause, withhold, or redirect payments, the First Defendant has not indicated whether such risks actually materialised.

<u>Outline of Counsel Submissions</u>

21. Counsel for the Defendants advanced the position that at the inter partes hearing the Court must consider the matter as a whole with the salient question being "**whether the injunction should be continued, and that is the applicant's case to make: Dormeuil Frères SA v Nicolian International (Textiles) Ltd [1988] 1 WLR 1362 (Ch); and see JIPFA Investments Ltd v Brewley BVIHCV2011/0038 (ECSC (BVI), 2011)**".

22. The Defendants argued that the injunction is a freezing order and not a proprietary injunction and relied on **AML Foods Ltd v Williams** (Diane Stewart J, 27 March 2023); **Ivy Group Co Ltd v Otto PVT Ltd** (Fitzcharles J, 2024/COM/com/00007): "**a proprietary injunction preserves specific property to which the applicant asserts a proprietary claim, and does not require proof of a risk of dissipation, whereas a freezing injunction does**".

23. On the material non-disclosure point, Mr. Whittaker relied on the celebrated authority of **Brink's Mat Ltd v Elcombe [1988] 1 WLR 1350** and cited **Siporex Trade SA v Comdel Commodities Ltd [1986] 2 Lloyd's Rep 428**, at 437, where Bingham J described the duty to make full and frank disclosure:

> **"Such an applicant must show the utmost good faith and disclose his case fully and fairly. He must, for the protection and information of the defendant, summarise his case and the evidence in support of it ... and not rely on general statements and the mere exhibiting of numerous documents. He must investigate the nature of the cause of action asserted and the facts relied on before applying, and identify any likely defences. He must disclose all facts which reasonably could or would be taken into account by the Judge in deciding whether to grant the application. It is no excuse for an applicant to say he was not aware of the importance of matters he has omitted to state."**

24. Mr. Whittaker also challenged the Claimant's reliance on the financial information being provided to his Counsel on a without prejudice basis as a ground for the non-disclosure. He stated the following in his written arguments:

> 6.7 The excuse advanced at the hearing, that the financial material was "**without prejudice**" and so was not exhibited, does not answer the duty of candour, for the following reasons.
>
> 6.7.1 First, and most directly, this Court has held that without prejudice correspondence is admissible for the limited purpose of establishing the fact and the timeline of the parties' dealings and of explaining their conduct: **Calico Energy DMCC v The Owners**

of the MV "Phospherus NH" (Delancy J, 16 April 2026), applying **Unilever v Procter & Gamble** and **Win Business Energy Caofeidian Ltd v Anadarko Petroleum Corp** [2024] 1 BHS J No 134. The Claimant's attorneys could therefore have placed the March correspondence before the Court, for that limited purpose, without breaching any privilege. They did not. They chose to withhold it behind the label "**without prejudice**", while advancing to the Court a case of "**no transparency**" that the very same correspondence flatly contradicts. That is not a permissible use of the privilege; it is the use of the privilege to keep from the Court material that the Claimant was obliged to disclose.

6.7.2 Secondly, the without prejudice rule may not be used as a cloak for perjury or other unambiguous impropriety: **Unilever plc v Procter & Gamble Co** [2000] 1 WLR 2436 (CA); **Ferster v Ferster** [2016] EWCA Civ 717 (a decision on a petition under the English unfair-prejudice provision, being the analogue of section 280). A party who swears to the Court, on a without notice application, that there was "**no transparency**" and that the First Defendant "**refused**" to provide accounts, while relying on the without prejudice label to conceal from the Court that full disclosure had in fact been made and acknowledged, uses the privilege to mislead the Court. That is the paradigm of the unambiguous impropriety exception, and the privilege is displaced.

25. As to the substance of the application, the Defendants argued that there is no good arguable case for an injunction and no evidence to show a real risk of dissipation. He also argued that the risk is not met out by the First Defendant's control of the company's bank account.

26. Mr. Whittaker also argued that damages is an adequate remedy. He quoted from the decision of **Margrette Curry v Shawon Curry 2022/CLE/gen/00090** where the Supreme Court held, "**If damages in the measure recoverable at common law would be [an] 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**."

27. In summing up his arguments, Mr. Whittaker said that the relief is disproportionate and oppressive to the company because it is a trading company and that the injunction "**freezes the Company's operating account and subjects its banking to the veto of a non-director minority shareholder, thereby paralysing a trading company, threatening its ability to pay staff, subcontractors, suppliers and creditors, and endangering the very assets it purports to preserve**".

28. The Claimant rejected the notion of there being material non-disclosure and argued that the test of materiality was not made out. Mr. Lightbourn relied on **Alliance Bank JSC v Zhunus [2015] All ER (D) 210 (Mar)** per Cooke J that

> "**The test of materiality of a matter not disclosed is whether it would be relevant to the exercise of the court's discretion. A fact is material if it would have influenced the judge when deciding whether to make the order or deciding upon the terms upon which it should be made**. The question of materiality is a matter for the court and not the subjective judgment of the applicant or his lawyers."

29. The Claimant's position is that the conduct complained of by the Defendants are not material and therefore did not require disclosure. In addressing the communications exchanged between Counsels, the written submissions of the Claimant states the following:

> **3.12 The second behaviour identified is the communication between counsel**. The First Defendant seeks to mischaracterize the nature of what he describes as 'months of correspondence between attorneys.' As made clear at paragraph 55(iii) of the Claimant's Supplemental Affidavit, the correspondence consisted of repeated requests from the Claimant's attorney pressing for the information promised, spanning nearly two months (letters dated 20 March 2026 through 4 May 2026, and email dated 11 May 2026). These exchanges were not negotiations to forgo litigation. On the contrary, as paragraph 37 of the Claimant's Supplemental Affidavit records, the First Defendant's final communication of 11 May 2026 expressly maintained that 'our client does not acknowledge that your client is entitled to this information' and reserved all rights and defences.
>
> 3.13 The First Defendant's portrayal of these communications is therefore misleading.
>
> **3.14 The Claimant submits that pre-action discussions between the parties is not, without more, a material fact within the established test for disclosure, because it has no bearing on the matters the Court was required to consider in deciding whether to grant relief without notice, namely (i) the existence of a good arguable case; (ii) urgency; (iii) and the risk that the First Defendant would act to defeat the purpose of the injunction if put on notice.**

30. In highlighting the facts that were disclosed by the Claimant in his first Affidavit, Mr. Lightbourn argued that the receipt of financial disclosure was brought to the

Court's attention at the ex parte hearing. He further developed his arguments by asserting the following instances of disclosure:

> 3.6 For context, paragraph 20 of the Claimant's Supplemental Affidavit records that, by letter dated 20 March 2026, he formally requested certain information and documents from the First Defendant pursuant to section 118A of the Companies Act. That request, directed to the First Defendant in his capacity as a director and officer of the Second Defendant, sought the production of records to which the Claimant is entitled as a shareholder under the Act. The information requested consisted, inter alia, of:-
>
> i. The Company's audited (or otherwise prepared) financial statements for the last five (5) completed financial years;
> ii. Any interim financial statements prepared for the current financial year.
> iii. All general accounting records, including but not limited to general ledgers, bank statements, cash-book records, and trial balances for the last five (5) financial years; and
> iv. Accounting of the trailers located on the Red Bay property and the associated rental income generated.
>
> 3.7 The Claimant disclosed at paragraph 22 of his Initial Affidavit that he was provided with **limited** information made available to him. This is because the financial information provided related only to **some** of the Second Defendant's Balance Sheets and the Profit and Loss Statements.
>
> 3.8 Further with respect to the financial disclosures of 20th April, 4th May and 11th May 2026, the Claimant expressly disclosed in paragraph 5.39v of his initial submissions "some financial information was provided to the Claimant on a without prejudice basis, though it remains unaudited or unverified by supporting documents.

31. Mr. Lightbourn also addressed the submission on the exceptions to the without prejudice communications and urged the Court to agree that none of the exceptions were made out. He further argued that the without prejudice communisations were disclosed and "**that partial disclosure of financial records does not equate to transparency as alleged by the Defendants. Transparency requires full and candid production of all information to which the shareholder is entitled under statute. Selective disclosure cannot cure the absence of genuine openness and accountability**".

32. In his arguments to support the continuation of the injunction, the Claimant's Counsel advanced the point that there is a good arguable case under section 280 of the Companies Act and relied on **Galantis v Alexiou [2019] UKPC 15:**

"Section 280 creates a special procedure for the purpose of restraining oppressive action. It permits the court to intercede in the internal affairs of the company in order to rectify the matters complained of... Section 280(1) permits an application to the court for an order against a company or a director or officer of that company to restrain oppressive action. Where there is oppression or unfair disregard of the interest of "any shareholder or debenture holder, creditor, director or officer of the company"

...

[92] The original wrong recognized in the cases was described simply as oppression, and was generally associated with conduct that has variously been described as "burdensome, harsh and wrongful", "a visible departure from standards of fair dealing", and an "abuse of power" going to the probity of how the corporation's affairs are being conducted..."

[93] The CBCA has added "unfair prejudice" and "unfair disregard" of interests to the original common law concept, making it clear that wrongs falling short of the harsh and abusive conduct connoted by "oppression" may fall within s. 241. "Unfair prejudice" is generally seen as involving conduct less offensive than "oppression". Examples include squeezing out a minority shareholder, failing to disclose related party transactions, changing corporate structure to drastically alter debt ratios, adopting a "poison pill" to prevent a takeover bid, paying dividends without a formal declaration, preferring some shareholders with management fees and paying directors' fees higher than the industry norm: see Koehnen, at pp. 82-83.

[94] "Unfair disregard" is viewed as the least serious of the three injuries, or wrongs, mentioned in s. 241. Examples include favouring a director by failing to properly prosecute claims, improperly reducing a shareholder's dividend, or failing to deliver property belonging to the claimant: see Koehnen, at pp. 83-84."

33. The Claimant further argued that the real question is whether the company's funds were being used to maintain assets wholly owned and controlled by the First Defendant.

34. The Claimant also disputed that the undertaking in damages required fortification and urged the Court to conclude that damages is not an adequate remedy.

Analysis & Determination

35. The Court's jurisdiction to grant interim injunctive relief was not in dispute. I only need to refer in passing to section 21 of the Supreme Court Act and Part 17 of the CPR. It is however clear on the authorities and the jurisprudence that the Court's jurisdiction to grant interim relief is discretionary. A significant obligation, in fact, a duty on Counsel seeking a without notice injunction, is to make full and frank disclosure of all material facts that can aid the court in the discharge of its discretionary jurisdiction to grant an injunction. Both Counsel agreed that this duty fell on the Claimant/applicant at the Without Notice hearing. Their disagreement was however on whether there was material non-disclosure by the Claimant at that hearing. I deem that to be the starting place for my consideration on the instant application.

36. The duty to make full and frank disclosure is now a cardinal pedestal in the arsenal to challenge an ex parte injunction. The case law in this jurisdiction and the Commonwealth is in abundance and therefore it should be a ready source for Counsel to ensure that the duty is satisfied on such an application. Often described as the **Brink's Mat** principles, the speech of Ralph Gibson LLJ in the English case of **Brink's Mat Ltd. v Elcombe [1988] 1 WLR 1350** (at 1356) is the starting place. I therefore set out below the relevant portions of the speech:

> **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.**
> **(i) The duty of the applicant is to make 'a full and fair disclosure of all the material facts': see R v Kensington Income Tax Comrs, ex p Princess Edmond de Polignac [1917] 1 KB 486 at 514 per Scrutton LJ.**
> **(ii) 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 the Kensington Income Tax Comrs case [1917] 1 KB 486 at 504 per Lord Cozens-Hardy MR, citing Dalglish v Jarvie (1850) 2 Mac & G 231 at 238, 42 ER 89 at 92, and Thermax Ltd v Schott Industrial Glass Ltd [1981] FSR 289 at 295 per Browne-Wilkinson J.**
> **(iii) The applicant must make proper inquiries before making the application: see Bank Mellat v Nikpour [1985] FSR 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.**
> **(iv) 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, (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 [1986] 3 All ER 338, [1987] Ch 38, and (c) the degree of legitimate urgency and the time available for the making of inquiries: see Bank Mellat v Nikpour [1985] FSR 87 at 92–93 per Slade LJ.
(v) 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 Bank Mellat v Nikpour (at 91) per Donaldson LJ, citing Warrington LJ in the Kensington Income Tax Comrs case.
(vi) 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.
(vii) Finally 'it is not for every omission that the injunction will be automatically discharged. A locus poenitentiae may sometimes be afforded': see Bank Mellat v Nikpour [1985] FSR 87 at 90 per Lord Denning MR. 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:

'... when the whole of the facts, including that of the original non-disclosure, are before it, [the court] may well grant such a second injunction if the original non-disclosure was innocent and if an injunction could properly be granted even had the facts been disclosed.'

(See Lloyds Bowmaker Ltd v Britannia Arrow Holdings plc (Lavens, third party) [1988] 3 All ER 178 at 183 per Glidewell LJ.)

37. In **Blue Planet Group Limited v William Downie SCCivApp No. 80 of 2018**, Crane-Scott JA (as she then was) in delivering the decision of the Court of Appel made some instructive comments on the principles in issue and I find it necessary to highlight several portions of that decision:

> **55 The law is clear. A party seeking an *ex parte* injunction or other order, especially one as draconian as that which BPGL sought in the court below, is under a duty to make *"a full and fair disclosure of all the material facts"*. If this is not done (as the law requires) in the body of the supporting affidavit, the applicant is certainly not entitled to lay the blame at the feet of the judge for not fully appreciating the significance of matters appearing in the pleadings or vaguely buried in one of the paragraphs of the draft order attached to the application. The duty of full and fair disclosure means precisely that. The judge's attention is to be drawn to the relevant facts, (both favourable and unfavourable) which are to be set out in the supporting affidavit. BPGL failed to do this.**
>
> **57. Despite counsel for the appellant's views and her submissions regarding whether there was a non-disclosure and if so, whether it was or was material, the law (as the Brink's- Mat principles clearly establish) is that the materiality of the non-disclosures is a question for the learned judge to determine *not* the parties.**
>
> **65. Apart from the Brink's Mat principles outlined above, we find it useful to set out some of the additional considerations which have a bearing on the exercise of a judge's discretion whether to continue or discharge an *ex parte* order on the ground of nondisclosure. A useful statement of some of the additional principles (distilled from decided cases) is located at paragraph 7.29 of author David Bean Q.C.'s work: "Injunctions", 8th Edition, under the sub-heading *"Non-Disclosure."* We reproduce it below:**
>
> **"7.29 The fact that the judge may well have made the same order even if the full facts had been disclosed is beside the point (*Behbehani v. Salem* [1989] 1 W.L.R. 723; in that case it was also held that any existing or contemplated proceedings against the defendant in another jurisdiction must be disclosed on the without notice application). See also *per* Potter J. in *Sumitomo Heavy Industries v. Oil and Gas Natural Commission* [1994] 1 Lloyd's Rep. 45 at 62.**
> **The place to disclose the relevant facts, both favourable and**

unfavourable, is in the affidavit, not the exhibits (*National Bank of Sharjah v. Dellborg* [1993] 2 Bank. L. R. 109): see para. 5.14.
If non-disclosure was entirely the fault of the claimant's solicitor, that may be a ground for refusing to discharge the injunction (*Eastglen International Corp v. Monpare* SA (1987) 137 New L.J. 56). But if the non-disclosure was not innocent in the sense used by Ralph Gibson L.J. in the *Brink's-Mat* case (fact not known to the claimant or not perceived to be relevant) an outright discharge of the order is almost inevitable.
The injunction is unlikely to be continued or replaced if the claimant has delayed unreasonably in pursuing the claim *Lloyds Bowmaker Ltd v Britannia Arrow Holdings plc....*)".

74. The test for assessing the "innocence" (or otherwise) of a material non-disclosure is enunciated in the authorities as: whether *"the fact was not known to the applicant or that its relevance was not perceived".* See item (vi) Brink's-Mat principles *(above)* .
75. Furthermore, where a 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 Kensington Income Tax Comrs, ex parte Princess Edmond de Polignac [1917] 1 KB 486 per Warrington LJ; Bank Mellat v. Nikpour [1985[FSR 87 per Donaldson LJ at 91; approved at item (v) Brink's-Mat principles *(above).*

38. In my judgment the Claimant failed to make full and frank disclosure to the Court at the without notice hearing. Not only was the affidavit in support woefully slim and incomplete, but it also failed to place the full picture before the Court of relevant and material facts that were in the Claimant's knowledge and that of his Counsel. It is my view that the Claimant failed to "**show the utmost good faith and [failed to] disclose his case fully and fairly. ... He [failed to] ... identify the crucial points for and against the application, and not rely on general statements and the mere exhibiting of numerous documents. He must investigate the nature of the cause of action asserted and the facts relied on before applying and identify any likely defences. He must disclose all facts which reasonably could or would be taken into account by the Judge in deciding whether to grant the application. It is no excuse for an applicant to say that he was not aware of the importance of matters he has omitted to state**" (as per **Bingham J** in **Siporex Trade v Condel [1986] 2 Lloyds Rep 428** at 437).

39. I closely considered the evidence adduced by the Claimant at the ex parte hearing and in my judgment the Claimant failed to disclose to the Court material facts which would have led me to refuse to entertain the application ex parte or without notice and would have also led me to refuse to grant the interim injunction. In my judgment, the failure to disclose material information and documents was extensive, and more startling, the material information and documents were in the possession of the Claimant and his Counsel prior to the making of the application for an interim injunction.

40. **The Claimant failed to disclose the letters dated 20 March 2026 and the response of 22 March 2026. These letters were material and their non-disclosure could not be deemed innocent.** The letter dated 20 March 2026 from Trevor Lightbourn to James Scott Ferguson regarding Bluewater Builders Bahamas Ltd. raised issues in respect of the ownership of "Crosswinds" as well as the settlement of the arbitration against Bahamas Beach Club. It further requested details relative to any further distributions from the company's account in relation to the sum of approximately $641,153.77. The other letter dated 20 March 2026 from Trevor Lightbourn to Craig Roberts, President of Bahama Beach Club Condominium Phases 1-IV Associations, sought in part "**full and complete accounting of all monies received, disbursed or otherwise handled in connection with the settlement ...**". Mr. Whittaker's response by letter dated 22 March 2026 addressed the complaints and indicated (in part) that "**on January 30, 2026 Mr. Ferguson caused a wire transfer to be made to Mr. Colson in respect of attorney's fees incurred in connection with the arbitration. This is not the conduct of a director who is concealing or misappropriating funds**." Mr. Whittaker though resisted the request for documents in 14 days and stated that the documents "**will be provided within a reasonable time**". He also agreed to preserve all documents.

41. The Claimant did not explain his refusal or failure to disclose these letters in his First Affidavit. The letters were not marked without prejudice. Their materiality is clear because in large part the contents of the letters go to the root of the issues raised in the action and they show that the parties were not only in open discussions around the issues but that the First Defendant appeared to be acting in good faith and was answering the inquires raised. They too show that the First Defendant was not "hiding" the money belonging to the Second Defendant but paid the Claimant a portion of what was due to him as early as January 2026. These letters also show and manifest that there was a level of transparency by the First Defendant in the dealings with the bank accounts of the Second Defendant, which evaporated the vile threat of dissipation of the assets of the Second Defendant.

42. **The Claimant failed to disclose the email communications of 4 and 11 May 2026 exchanged between Counsels for the parties. These emails were material and their non-disclosure cannot be categorised as innocent. Like**

the letters of March 2026, the emails of May 2026 were in the possession of the Claimant's Counsel.

43. The email exchange of 4 and 11 May 2026 between Trevor Lightbourn and Jacy Whittaker, which were not disclosed at the without notice hearing, relate to the financial information shared with the Claimant and show that the Defendants were cooperative in sharing information of an accounting nature and of the allocation of the settlement funds from the arbitration award. The email of 4 May 2026 from Mr. Whittaker to Mr. Lightbourn states:

> **Dear Trevor**
>
> **Further to our correspondence dated 20 April 2026, please find attached the Allocation of Settlement Funds report.**
> **Our client has been working with its auditors and bookkeeper to bring the accounts up to date and to review the allocation of settlement funds received to date and future payments. The yearly reports are expected to follow by the end of today.**
> **This document is provided on a strictly without prejudice basis. Our client does not admit that your client is entitled to this information, and it is furnished in good faith as contemplated in our earlier letter and solely in the interests of narrowing the issues between the parties.**
> **After we send the yearly reports, we remain available to coordinate a meeting to discuss next steps.**

44. In an email of 11 May 2026, Mr. Whittaker sent seven financial documents in relation to the Second Defendant to Trevor Lightbourn. The reports are (i) Balance Sheets as at 30 April 2026 and 31 December 2025; and (iii) the Profit and Loss Statements for the years ended 2022, 2023, 2024, 2025 and 2026. Mr. Whittaker maintained his statement from his earlier email of 4 May 2026 that the documents were sent "**on a strictly without prejudice basis and in good faith effort to narrow the issues between the parties and advance the matter toward resolution...**". The financial information was acknowledged by Mr. Lightbourn via email of the same day, 11 May 2026.

45. In his affidavit in support of the Without Notice Application, Mr. Colson did not disclose the emails of 4 and 11 May 2026. He repeatedly referred to the failure of the First Defendant "**to provide access to proper and reliable accounting records of the Second Defendant, including records concerning monies received, expended and distributed**". I make specific reference to paragraphs 8, 10, 12, 21, 22, 27 and 34 of the Claimant's First Affidavit filed on 17 June 2026.

46. The Claimant's Counsel response to not sharing the emails at the ex parte hearing is that the financial information was shared on a without prejudice basis. The Court

inquired of this at the ex parte hearing and was provided with that answer. However, what is patently not accurate is that the emails of the 4 and 11 May 2026 were not marked without prejudice; nor were the letters of 20 and 22 March 2026. These communications were omitted from Mr. Colson's First Affidavit. The obvious intent of not disclosing them was to shield from the Court that there was open dialogue between the parties and that information was in fact shared with Mr. Colson's Attorneys. While the financial statements may have been captured by the without prejudice rule, the emails and the letters were not subject to the without prejudice rule and should have been disclosed by the Claimant and his Counsel. The failure to do so, while regrettable, undermined the Court's discretionary jurisdiction.

47. Although captured by the without prejudice rule, the Claimant could have provided some limited instances where the financial information shared raised a red flag and placed him in a state of alarm to approach the Court. That posture was not taken until the inter partes hearing and the filing of the Claimant's Supplemental Affidavit. I need not decide if the without prejudice rule prevented the disclosure, because in principle I have determined that the emails alone ought to have been disclosed by the Claimant.

48. Similarly disturbing is the non-disclosure of the fact that the Claimant received the repayment of the legal fees that he incurred in the arbitral proceedings which totaled $100,6876.57. The impression given at the Without Notice hearing was that the First Defendant promised to pay $100,000.00 from the settlement proceeds and failed to pay the balance of $25,000.00. However, after an inquiry by the Court if the sum of $75,000.00 was received by the Claimant, Counsel intimated that it was received. I only need to highlight paragraphs 16, 19 and 20 of the Claimant's Affidavit filed on 17 June 2026.

> **16 By virtue of an email dated 12th February, 2026, the First Defendant requested that I provide my banking details to facilitate a payment in the sum of $100,000.00.**
>
> **19 By email dated 16th February 2026, the First Defendant advised he remitted only $25,000.00 to me, representing a portion of the sum previously indicated, without any proper explanation or accounting. There is now produced and shown to me at Tab 5 Exhibit "EC-1" a true copy of the said email.**
>
> **20 On 25 February 2026, I again sought clarification (through my wife) regarding (i) the derivation of the $100,000.00 figure; (ii) the plan for distribution of funds; and (iii) whether any additional funds had been received.**

49. It was incumbent on Counsel at the Without Notice hearing to indicate to the Court that in the allocation of the settlement funds that was in fact received by the Claimant that the First Defendant decided to pay to each shareholder a disbursement of $25,000.00 times their shareholding in the Second Defendant. That is, the Claimant would receive $100,000.00 and the First Defendant would receive $150,000.00 based on their corresponding 40% and 60% shareholding in the Second Defendant. This was not shared with the Court and was not included in the supporting affidavit of Mr. Colson for use at the Without Notice hearing. This information was material and relevant to the exercise of the Court's discretion and its non-disclosure is without excuse and was deliberate and not innocent. Further, it is my view that on its face, the proposed share allocation seems fair and transparent.

50. Additionally, at the Without Notice Hearing, the Claimant's Counsel referred to the Crosswinds property which is held by a company named West Nick Holdings Ltd. The Claimant's complaint was that the Second Defendant's funds were used to purchase this property. The Claimant referred to a conveyance dated 13 August 2021 in his Affidavit at paragraph 25. In his Supplemental Affidavit filed on 16 July 2026 Mr. Colson refers at paragraph 45 to an email of 18 December 2022 where the First Defendant "**<u>provided my wife with a Balance Sheet for the Second Defendant as of 30 November 2022. That Balance Sheet listed among the Second Defendant's fixed assets "Crosswinds House, Treasure Cay" and assigned a value of that asset of $202,468.94</u>**". These details in the Supplemental Affidavit were noticeably absent from the first Affidavit filed on 17 June 2026. The Balance Sheet and the email of 18 December 2022 were also not disclosed. Given the complaint made by the Claimant regarding Crosswinds it was incumbent, in fact, a duty on the part of the Claimant and his Counsel to share this information with the Court at the Without Notice hearing.

51. Even if the Claimant was of a genuine belief that the financial information provided by the First Defendant's Counsel via emails of 4 and 11 May 2026 was "limited information" as he described in his First Affidavit, that is no excuse for refusing and failing to make full and frank disclosure to the Court. It is not for the Claimant to decide what to disclose, the law requires the disclosure of **<u>ALL</u>** material information to the Court. By failing to do so, the Claimant thereby did not discharge the duty to make full and frank disclosure to the Court. I have no hesitation in arriving at this view.

52. In my judgment, the Claimant failed also to advance any defences that were likely available to the Defendants. On their face, the Balance Sheets and Settlement Allocation showed that the Second Defendant had financial records which were provided to the Claimant. Whether they paint the full or an accurate picture is another issue which can be canvased at the trial. However, for the purposes of an application for an ex parte injunction, the Claimant had a strict duty to bring these matters to the attention of the Court, and the failure to do, is not innocent in my view, but it appears to me to be deliberate.

53. I am cognisant that the Court has a discretion to continue the injunctive order or to make a new order on terms notwithstanding being satisfied that there was material non-disclosure which justifies the immediate discharge of the ex parte order (see **Lloyds Bowmaker Ltd. v. Britannia Arrow Holdings Plc. [1988] 3 All ER 178**. In the exercise of my discretion and in light of the full matters before me I decline to grant a new injunction in same or different terms. In arriving at this view, I endorse the comments made by Arnold LJ in **Mold Investments Ltd v Holloway [2026] 2 WLR 435** (and see **Valbonne Estates Ltd v Cityvalue Estates Ltd and another [2021] EWCA Civ 973**):

> **151 So far therefore I am in agreement with Mr Crow's submissions. But there is also another principle which is relevant. This is that an applicant for a without notice order must make full and frank disclosure of all matters relevant to the application. The principles are well established and were not in dispute. They can be found summarised in Civil Procedure (The White Book) 2025 at para 25.8.2ff, and see also the convenient summary by Carr J in Tugushev v Orlov [2019] EWHC 2031 (Comm) at [7]. If the duty of full and frank disclosure is not observed, the court may discharge any order obtained. This is a long-standing principle, already regarded as settled law in R v Kensington Income Tax Comrs, Ex p Princess Edmond de Polignac [1917] 1 KB 486. It applies in particular in the context of Mareva or freezing injunctions where applications without notice in the first instance are the norm: Bank Mellat v Nikpour [1985] FSR 87, Brink's Mat Ltd v Elcombe [1988] 1 WLR 1350. Although discharge of the order is not automatic, on any non-disclosure being established of any fact known to the applicant, it would only be in exceptional circumstances that the court would not discharge an order where there had been deliberate non-disclosure or misrepresentation: Congentra AG v Sixteen Thirteen Marine SA (The Nicholas M) [2009] 1 All ER (Comm) 479 at para 62 per Flaux J. Such is the importance of the duty that, in the event of any substantial breach, the court strongly inclines towards setting its order aside and not renewing it, so as to deprive the defaulting party of any advantage that the order may have given him. This is particularly so in the case of freezing and seizure orders: In re OJSC Ank Yugraneft [2009] 1 BCLC 298 at para 104 per Christopher Clarke LJ.**
>
> **152 This is a salutary principle. It deprives the wrongdoer of an advantage improperly obtained and serves as a deterrent to ensure that those who make applications without notice realise that they have this duty and the consequences if they**

fail: Brink's Mat Ltd v Elcombe at p 1358c–d per Balcombe LJ. The duty is owed not just to the other party but to the court itself and exists in order to secure the integrity of the court's process: In re OJSC Ank Yugraneft at para 104 per Christopher Clarke J.

54. I considered the evidence raised in all of the affidavits before me and I am not satisfied that there is any strong or compelling evidence that the First Defendant is intending on or plans to dissipate the assets belonging to the Second Defendant to deprive the Claimant of his 40% shareholding. The evidence by way of the Allocation of the Settlement sums show consideration given to debts owed and to the distribution to shareholders. If some of the alleged invoices or debts are not legitimate expenses of the Second Defendant, this is a matter rightfully reserved to be raised and challenged and determined at the substantive trial of the claim. I am not being asked to determine that issue on the instant application. Similarly, I am not being asked to decide on this application if the loans to the First Defendant or to Doug Benson are legitimate debts. These are matters for the trial judge.

55. I also considered if the First Defendant would dissipate the funds from the settlement proceeds before a trial of the matter and therefore place them outside the reach of the Claimant. I have no evidence of dissipation before me. The only evidence is the unsubstantiated view of the Claimant of dissipation in his First Affidavit (see paragraph 36), which I find to be lacking in substance and forthrightness.

56. As to dissipation, the Court must be satisfied that there is a real risk such that if judgment is granted in favour of the Claimant, it will go unsatisfied if the injunction is not granted (see **Derby v Weldon [1990] 1 Ch 48**). In **Ketchum International plc v Group Public Relations Holdings Ltd & Ors[1996] 4 All ER 374** Stuart - Smith JA in the Court of Appeal of the United Kingdom addressed the court's jurisdiction on an application to ensure that its judgment was not rendered valueless by an unjustifiable disposal of assets.

> **In my judgment, the judge misdirected himself by relying on the passage already quoted from Derby & Co Ltd v Weldon (No 2) [1989] 1 All ER 1002, [1990] Ch 65 for the proposition that the plaintiff must show that the defendant intends to deal with his assets for the purpose of ensuring that a judgment will not be met. It is sufficient if there is a real risk that the judgment in favour of the plaintiff will remain unsatisfied if injunctive relief is refused (see Ninemia Maritime Corp v Trave Schiffahrtsgesellschaft mbH & Co KG, The Niedersachsen [1984] 1 All ER 398 at 419, [1983] 1 WLR 1412 at 1422 and R v Secretary of State for the Home Dept, ex p Muboyayi [1991] 4 All ER 72 at 81, [1992] QB 244 at 257, where Lord Donaldson MR clarified what he had said in**

Derby & Co Ltd v Weldon by explaining that in this context 'designed to' does not mean 'intended' but 'having the consequence that').

The judge's finding was that he had 'seen nothing to indicate that, if Ketchum's appeal were to succeed, those who control Holdings, namely Miss Poe and Mr O'Donoghue, would not seek to ensure that Holdings would honour the court's order'. I find this difficult to reconcile with the expressed opposition to the grant of injunctive relief on the basis that it will frustrate long laid plans by Mr O'Donoghue and Miss Poe as to use by them of the money, which implicitly if not expressly indicates that they will seek to effect a distribution of the money to themselves.

The judge appears to have given three or possibly four grounds for reaching his conclusion; first, the favourable view which he had formed of Miss Poe and Mr O'Donoghue from seeing them in the witness box. But for my part, I cannot see how this has any bearing on their intentions of keeping the proceeds of the sale of the shares within the jurisdiction, a question which was not in issue at the trial, and to which they have given no undertaking or evidence contrary to that to which I have referred. In the absence of injunctive relief the money will clearly go out of the jurisdiction to Jersey and I am not persuaded that there is any legal restraint on its distribution to the shareholders. Secondly, the judge referred to the fact that throughout Holdings had been represented by well-known and extremely competent solicitors and counsel. I doubt whether the judge really intended to advance this as a reason; but if he did, it is plainly irrelevant. Thirdly, the judge pointed to the fact that Mr O'Donoghue is now living in this country. Again I cannot see that this is relevant. There is nothing to prevent Holdings taking the money out of the jurisdiction to Jersey where it is registered and judgment against Holdings would not be enforceable against the shareholders. Finally, the judge observed that it 'merely happens' that Holdings has sold the retained shares and received the proceeds of sale in this country. But I do not think this is anything to the point. Prior to trial, Holdings' only assets were the shares; it could not dispose of these since it was seeking to enforce the put option; there was therefore no question of Ketchum seeking Mareva relief before trial. But if the sole questions in the action had been those which arose in the dividend actions, and Holdings had cash assets within the jurisdiction

and there was a real risk that these cash assets would be removed, it might well have been a classic case for Mareva relief. That, in effect, is the situation which now exists. Had I been satisfied that Ketchum has a sufficiently good arguable appeal, I would have granted the relief sought. As it is, in my judgment, the application should be dismissed.

57. I agree with Mr. Whittaker that the Claimant's fear is not with the dissipation of any settlement funds in the account of the Second Defendant but rather with the allocation of the settlement funds as proposed by the First Defendant in the Allocation provided by email of 4 May 2026.

58. The evidence before the Court is that all of the settlement funds are not in the account of the Second Defendant and that the Bahamas Beach Club Associations pay over a period. The Allocation also shows that as of 31 March 2026 the cash in bank totals $357,252.77. It also appears that the balance to be paid from the settlement is roughly $315,000.00. The net cash shortage is projected in the sum of $382,407.60, reflecting a loss. I am confident that when the Claimant saw the projected net loss he was overly concerned as he expected a significant pay day from the proceeds of the settlement of the arbitral proceedings. The possibility of a loss is not strong evidence of dissipation, and I reject the notion of the same. In **TTMI Ltd of England v ASM Shipping Ltd of India [2005] EWHC 2666 (Comm)** Christopher Clarke J made some helpful comments on dissipation, which I set out below:

[25] The purpose of the Mareva jurisdiction is sometimes referred to as the prevention of the "dissipation of assets". Without explanation that phrase is, itself, obscure. As Colman J stated in Gangway Ltd v Caledonian Park Investments (Jersey) Ltd [2001] 2 Lloyd's Rep 715 the underlying purpose of the jurisdiction is not to provide a claimant with security for its claim but to restrain a defendant from evading justice by disposing of assets otherwise than in the ordinary course of business so as to make itself judgment proof with the result that any judgment or award in favour of the claimant goes unsatisfied. The purpose is not to provide security for the claimant in respect of his claim. It is well established that it is not necessary to establish that the defendant is likely to act with the object of putting his assets beyond reach. What has to be shown is that there is, absent an injunction, "a real risk that a judgment or award in favour of the plaintiffs would go unsatisfied", The Niedersachen [1984] 1 All ER 398, [1983] 2 Lloyd's Rep 600. That formulation cannot, however, be regarded as a complete statement of the law. A defendant may be likely to make perfectly normal dispositions, such as

> **the payment of ordinary trading debts, the effect of which may be that, when any award is made, it is, in whole or in part unsatisfied when, absent those payments, it might have been satisfied or satisfied to a greater extent. Something more than a real risk that the judgment will go unsatisfied is required.**
>
> **[26] Thus in a case in the Court of Appeal of Ontario – Chitel v Robart [1982] 39 OR (2d) 513, 532-3 – the Court said:**
>
> **"The applicant must persuade the court by his material that the defendant is removing or there is a real risk that he is about to remove his assets from the jurisdiction to avoid the possibility of judgment, or that the defendant is otherwise dissipating or disposing of is assets, in a manner clearly distinct from his usual or ordinary course of business or living, so as to render the possibility of future tracing of the assets remote, if not impossible in fact or in law."**

59. The Claimant's evidence of a risk of dissipation appears to be limited to the loans to Doug Benson and the First Defendant, that he questions. This evidence has not, in my view, met the required threshold. I am not persuaded that the loans are not in the ordinary course of the Second Defendant's construction business and to fund the arbitration in Florida and the proceedings in The Bahamas. In fact, this evidence went unchallenged. The First Defendant's Second Affidavit also states that the Claimant refused to advance any funds to the company and was repaid his contribution to the legal fees in the USA arbitration, when the First Defendant's contribution remains on the books and unpaid. This too was unchallenged by the Claimant.

60. Although I find that there was deliberate and calculated material non-disclosure, I considered whether to grant a fresh injunction, but I decline to do so having taken into account the usual factors set out in the **American Cyanamid Co v Ethicon Ltd [1975] 1 All ER 504** and find that the balance tilts heavily in favour of maintaining the status quo. In view, the issues raised by the Claimant in the claim, on the face, appear to be serious issues in dispute between the parties. Whether they are legitimate or otherwise is a matter left for trial. However, I do agree that damages would be an adequate remedy.

61. I am further not satisfied that there is a serious issue to be tried. In any event, damages will be an adequate remedy in the prevailing circumstances.

62. I also decline to grant the disclosure order sought by the Claimant. That application seeks disclose of the Defendants' assets in The Bahamas inclusive of their nature, value and location. The Claimant relies on the decision of the Eastern Caribbean Supreme Court in **Emmerson International Corporation v Vekselberg** (BVIHCM

2013/0160) and the regime under Part 17.1 of the CPR. I do not find that the threshold test for the grant of the disclosure order is made out primarily because the jurisdiction to grant a freezing injunction was not made out.

63. I bore fully in mind that the Claimant is only seeking an order for the provision of information from the Defendants. Although such an order is less invasive than a freezing order, the Court must be satisfied that the factual basis is warranted and met out.

Conclusion

64. For the reasons set out above, I refused to continue the Interim Injunctive Order granted on 30 June 2026 and similarly refused to make a new order. Firstly, I am not satisfied that the material non-disclosure was innocent. Secondly, I am not satisfied that having regard to the facts before the Court at the inter partes hearing, I could properly grant an injunction in the terms which I did on 30 June 2026. In the circumstances therefore I set aside the injunction granted on 30 June 2026 in its entirety with costs to the Defendants to be agreed and in the absence of an agreement to be assessed by the Registrar.

65. I share my gratitude to Counsel for their submissions and for their "focused" presentation during the hearing on 22 July 2026, which was of great assistance to the Court.

DATED the 29 day of July 2026

RS Rigby J. Act.

Raynard S Rigby KC
Acting Justice