COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law & Equity Division

2026/CLE/gen/00293

IN THE MATTER OF the Estate of the late Clarington Ferguson, of Taylor Street in the Island of New Providence, one of the Islands of the Commonwealth of The Bahamas, Deceased; and other matters

BETWEEN

YVONNE GIBSON SANDS
(Executrix of the Estate of Angela Ann Marie Smickle-Ferguson, suing by her Attorney David Anthony Morris)
1st Claimant

DAVID ANTHONY MORRIS
2nd Claimant

TIAJA LUNDY
3rd Claimant

AND

CLARENCE FERGUSON
1st Defendant

SYLVAN FERGUSON
2nd Defendant

ELEVIOUSE FERGUSON
3rd Defendant

TOMESINA FERGUSON
4th Defendant

SHANTELL FERSGUOSN
5th Defendant

CALVANICE FERGUSON
6th Defendant

RULING

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

Appearances: Mr. Jeffrey Lloyd for the Defendants/Applicants
Mr. Sidney Dorsett for the Claimants

Hearing Dates: 12, 22 and 25 June 2026

Interim Injunction – Part 17 of the Supreme Court Civil Procedure Rules 2022 – Dispute over ownership of property – Estate of Clarington Ferguson – Estate of Angela Ann Marie Smickle-Ferguson - Substantive claims under the provisions of the Inheritance Act and the Partition Act - Matters to be taken into account when determining application for interim relief – Balance of convenience - Irremediable prejudice

Rigby J (Actg.)

Introduction

1. The claim and counterclaim between the parties are in relation to the Estate of the late Clarington Ferguson and the Estate of Angela Ann Marie Smickle-Ferguson.

2. The Claimants are the adult children of Angela Ann Marie Smickle-Ferguson and claim under her Estate ("**Mrs. Smickle-Ferguson**"). Mrs. Smickle-Ferguson was married to Clarington Ferguson. She died on 18 January 2023.

3. The Defendants are the adult children and grandchild of the late Clarington Ferguson ("**Mr. Clarington Ferguson**"). Mr. Clarington Ferguson predeceased his wife, Mrs. Smickle-Ferguson, and died intestate in March 2016. It appears that none of the parties are the children of the marriage between Mr. Clarington Ferguson and Mrs. Smickle-Ferguson.

4. The property that is featured in the application before the Court is a house situated at No. 28 Taylor Street, Nassau Village, New Providence ("**the Property**"), which was purchased in October 1977 by Mr. Clarington Ferguson in his sole name and prior to his marriage to Mrs. Smickle-Ferguson. The marriage occurred on 23 February 2013.

5. Mr. Clarington Ferguson died without a Last Will and Testament. However, Mrs. Smickle-Ferguson died with a Last Will and Testament which secured a Grant of Probate from the Probate Division of Supreme Court on 6 May 2024. She devised her Estate to her children.

6. Tensions and controversy appear to sour seeds between the children of Mr. Clarington Ferguson and Mrs. Smickle-Ferguson which led to the present application before the Court. The core factual dispute surrounds the disconnection of the electricity supply by the Bahamas Power and Light Company Limited ("**BPL**") at the Property which was reconnected with BPL threatening to disconnect it if no order is obtained from the Court to allow for the connection of electricity supply to the Property until the resolution of this matter or a determination by the Court.

7. The 4th and 6th Defendants, Tomesina Ferguson and Calvanice Brown, are the current occupants of the Property, and they advanced the present application for interim injunctive relief.

Case Background

8. The claim was commenced by the Claimants by way of Standard Claim Form filed on 2 April 2026. The principal relief sought by the Claimants are for an Order partitioning all the lands forming part of the Estate of Clarington Ferguson amongst the Claimants and the Defendants, a sale and distribution of the proceeds of any such sale of the properties in the Estate of Clarington Ferguson, an accounting and damages for defamation.

9. The Defendants filed a Defence and Counterclaim on 3 June 2026. In the Defence they raise the preliminary objection of whether the Mrs. Smickle-Ferguson has "**any transmissible interest in the Estate of Clarington Ferguson capable of forming the subject matter of these proceedings**". They assert that Mrs. Smickle-Ferguson had a limited life interest presumably based on what they allege to be a short marriage of 3 years (February 2013 to March 2016). They contest the right of any interest in No. 28 Taylor Street, after the death of Mrs. Smickle-Ferguson.

10. The Defendants' Counterclaim seeks competing declarations from the Court and in particular that Mrs. Smickle-Ferguson's Estate has no beneficial interest capable of passing by her Will to the Claimants from assets in Mr. Clarington Ferguson's Estate. Claims for an accounting, damages for defamation and harassment are likewise made in the Counterclaim.

11. The Claimants presented to the Court an unfiled Reply and Defence to Counterclaim denying the claims in the Defence and Counterclaim.

The Application for injunctive relief

12. The Notice of Application ("**the Notice**") seeking interim injunctive relief along with a Certificate of Urgency ("**the Certificate**") were filed on 3 June 2026. The urgency was described as directing BPL "**to reconnect electrical supply**". Three wider reliefs were sought by the Notice and Certificate: (i) to restrained the Claimants "**from taking steps to interfere with, damage, dispose of or otherwise deal with the estate property pending the determination of the Counterclaim**"; (ii) prohibiting the Claimants from "**visiting, attending at, or interfering with the property or harassing, intimidating or threatening any of the Defendants who presently reside at or are associated with the property**"; and (iii) preserving "**ALL ASSETS of the Estate of Clarington Ferguson ..until final determination of this matter**".

13. The application came before the Court for an urgent interim injunction. Although the Notice of Application was framed as an Ex parte Notice, it proceeded as an *inter partes* hearing on 12 June 2026. Substantive arguments were made at the hearing on 25 June 2026.

14. At the hearing on 12 June 2026 Mr. Sidney Dorsett, Counsel for the Claimants, in opposition took a preliminary point with regards to the supporting Affidavit of Tomesina Ferguson filed on 3 June 2026 to aid the Notice for interim injunctive relief. That Affidavit violated Part 30.5(3) of the Supreme Court Civil Procedure Rules 2022 ("**the CPR**") as it was notarised before Paul Moss II, a member of Colonels Chambers, and bore the notary seal of the Defendants' Counsel, Jeffrey Lloyd, who is also a member of Colonel Chambers. Unfortunately, when the matter came before the Court on 22 June 2026 the defective Affidavit although re-sworn and refiled on 12 June 2026 remained in non-compliance with Part 30.5 of the CPR because on its re-filing it bore the notary seal of Paul Moss II. Part 30.5 of the CPR provides:

> **30.5 Making of affidavits.**
> **(1) An affidavit must —**
> **(a) be signed by all deponents;**
> **(b) be sworn or affirmed by each deponent;**
> **(c) be completed and signed by the person before whom the affidavit is sworn or affirmed; and**
> **(d) contain the full name, address and qualifications of the person before whom it is sworn or affirmed.**
> **(2) The statement authenticating the affidavit ("the jurat") must follow immediately from the text and not be on a separate page.**
> **(3) An affidavit may not be admitted into evidence if sworn or affirmed before the attorney of the party on whose behalf it is to be used or before any agent, partner, employee or associate of such attorney.**
> **(4) If it appears that the deponent is illiterate or blind, the person before whom the affidavit is sworn or affirmed must certify in the jurat that the —**
> **(a) affidavit was read to the deponent by him;**
> **(b) deponent appeared to understand it; and**
> **(c) deponent signed or made his mark in his presence.**
> **(5) A person may make an affidavit outside the jurisdiction in accordance with —**
> **(a) the law of the place where he makes the affidavit; or**
> **(b) this part.**
> **(6) Any affidavit which purports to have been sworn or affirmed in accordance with the law and procedure of any place outside the jurisdiction is presumed to have been so sworn.**

15. It is incumbent on Counsel to pay close attention to the provisions of the CPR to ensure that the rules of the Court are adhered to and/or obeyed. This will ensure that valuable judicial time is not needlessly wasted on minute matters that could easily be corrected by strict compliance with the CPR before a matter is listed for hearing. It is even more necessary to carefully read the CPR after an objection is taken to ensure strict compliance. Such repeated acts of error add to unnecessary delays and frustrate the speedy hearing and determination of matters. Such actions certainly do not seek to give effect to the overriding objective of the CPR.

16. In the exercise of my discretion under Part 30.5(3) of the CPR, I did not strike out the offending Affidavit but gave Counsel for the Defendants a final courtesy to correct the obvious defect. The corrected Affidavit of Tomesina Ferguson was subsequently filed on 22 June 2026 ("**the Tomesina Affidavit**"), after the hearing. She also filed a further Affidavit on 24 June 2026 to address the Notice of Application for summary judgment filed on 22 June 2026 by the Claimants. I will address the summary judgment application in the postscript below.

17. The Claimants filed and relied on the first and Second Affidavits of David Anthony Morris filed on 22 and 24 June 2026, respectively, to oppose the application for interim injunctive relief and to support the summary judgment application.

18. At the substantive hearing on 25 June 2026, I heard submissions from Counsel on the Notice and reserved my ruling.

19. Having considered the matter and for the reasons set out below, I grant the application for interim injunctive relief in the following terms:

> **The Claimants, whether by themselves, or their servants or agents, or otherwise be and are hereby restrained from entering upon No. 28 Taylor Street, Nassau Village, New Providence for the purposes of or in any manner interfering with the electricity supply thereto duly installed and maintained by the Bahamas Power & Light Company Limited pending the final determination of this matter or until further order of this Honourable Court.**

20. I did not address the wider reliefs sought in the Notice because Counsel did not argue them, with primary focus being placed on the BPL issue and the occupation of the Property.

21. I also order that the usual undertaking in damages is to be given by the Defendants.

The evidence in summary

22. The Tomesina Affidavit (filed on 22 June 2026) sets out the history of the Property and notes that it was purchased in the sole name of her father, Mr. Clarington Ferguson, on 31 October 1977. She states that it became the matrimonial home after his marriage on 23 February 2013 to Mrs. Smickle-Ferguson. After the death of Mrs. Smickle-Ferguson in January 2023, her sons, Rodrakes Gibson and David Morris, lived at the Property. In October 2024 the Property was vacant when Rodrakes Gibson and David Morris were detained by the Immigration authorities. This led Tomesina Ferguson and Calvanice Brown to assume occupation. Prior to the occupation by Tomesina Ferguson, she resided in Exuma and her siblings convinced her to relocate to Nassau to take care of the Property.

23. Based on the Tomesina Affidavit, the dispute over "**ownership and rights of occupation**" of the Property arose when David Morris was released from the Detention Centre. She chronicles the matters in the Magistrate's Court over allegations of defamation, threats and damages.

24. Ms. Tomesina Ferguson further discloses the following matters at paragraphs 17 to 22 of her Affidavit:

> **17. On Friday, 29th May 2026, while attempting to pay the bill at BPL, I discovered to my shock and distress that the electricity supply to the Property had been disconnected by BPL. I had received no notice of any disconnection. I contacted BPL and was informed that the disconnection had been requested by another party.**
> **18. I was informed by BPL Customer Service Supervisor that one of Angela's sons - she didn't give me a name - presented Angela's Death Certificate and requested that BPL disconnect the power service to the said matrimonial home.**
> **19. My family and I maintained, after seeking legal counsel, that Angela's children had no LEGAL right, title or interest in the Property. My father bought the property before he ever met Angela Smickle.**
> **20. The disconnection has rendered the Property extremely difficult to inhabit. I and the other persons residing at the Property are without electricity – no lighting, no refrigeration, no functioning appliances. Additionally, and most concerning, is the fact that the property contains a well, from which the home is supplied water. Electricity is VITAL to ensuring the functioning of the pump in that regard. A loss of electricity, therefore causes immediate and serious hardship.**

21. On June 4th, I attended BPL and pleaded (sic) for a relief and requested that they reconnect the power, if only temporarily, while the matter of title and ownership be adjudicated by the Court, and that the son who asked that the power be disconnected, had no lawful authority to do so.
22. BPL Supervisor agreed to reconnect the service on the ONE CONDITION that within two weeks, the power will again be disconnected UNLESS they receive an Order from the Court to keep it on.

25. The Affidavit in response filed by David Anthony Morris on 22 June 2026 asserts that the Defendants failed to provide any evidence of the BPL disconnection and that he and his brother, Rodrakes Gibson, were threatened "**by Tomesina Ferguson, her daughter Calvanice Brown, and her brother Clarence Ferguson with arrest and deportation**". He also states that he was arrested on 10 November 2024 by a cousin of the Defendants and when the personal representative of his mother's estate, Yvonne Gibson Sands, went to the Property on 10 November 2024 "**she was confronted by numerous persons associated with the Defendants**" and that personal items "**of my family [were] discarded outside the residence**".

26. Mr. Morris also denies the allegation that the electricity was disconnected and that when Tiaja Lundy, the third named Claimant, "**drove past the Nassau Village property and [she] observed that the premises were brightly illuminated. I disbelieve the electricity was ever off".**

27. The remaining paragraphs of that Affidavit and the Second Affidavit of David Anthony Morris filed on 24 June 2026 address the Claimants' application for summary judgment (see postscript below).

Outline of Counsel Submissions

28. Mr. Jeffrey Lloyd, Counsel for the Defendants/Applicants relied on the English House of Lords decision of **American Cyanamid Co v Ethicon Ltd [1975] 1 All ER 504.** He addressed the four-stage test namely, (i) whether there is a serious issue to be tried; (ii) whether damages would be an adequate remedy; (iii) the 'balance of convenience' and (iv) consideration of any special factors that might affect the exercise of the court's discretion. He argued that the application is necessary because without the injunction the Property will be rendered uninhabitable by the disconnection of the electricity by BPL.

29. On whether there is a serious issue to be tried, Mr. Lloyd relied on the decision of **Joyce Bannister-Cole v Torah Anita Camille Cole – 2023/CLE/gen/01053** where Justice Darville-Gomez addressed section 24 of the Inheritance Act. He

quoted from paragraph 71 of the Ruling, which I set out below along with paragraph 70:

> **[70.] It is the Defendant's position that the action is improperly pleaded because the surviving spouse cannot invoke section 24 of the Inheritance Act, 2002 in the manner that the Claimant has done in her Originating Application.**
> **[71.] Even if I accept this submission, it is obvious to the Court that the Claimant as the surviving spouse is attempting to enforce the rights provided for in Section 24 of the Inheritance Act 2002 which established a statutory right of occupation for a surviving 15 spouse. The surviving spouse though not entitled to the matrimonial home by virtue of ownership or otherwise, is permitted to remain in occupation following the death of the spouse who was so entitled. The provision is designed to protect the surviving spouse from immediate eviction or exclusion by heirs or personal representatives, subject only to the occurrence of specific events such as death, remarriage, or modification by court order.**

30. Mr. Sidney Dorsett attacked the application on the premise of the defective Affidavit. He says that the Affidavit contains scandalous, irrelevant and oppressive materials and should be rejected by the Court. Mr. Dorsett directed the Court's attention to paragraphs 9 to 18 and 22 to 26 of the Affidavit of Tomesina Ferguson and Clarence Ferguson filed on 24 June 2026. He relies on Part 30.3 of the CPR, which provides:

> **30.3 Contents of affidavits.**
> **(1) The general rule is that an affidavit may contain only such facts as the deponent is able to prove from his or her own knowledge.**
> **(2) An affidavit may contain statements of information and belief —**
> **(a) if any of these Rules so allows; and**
> **(b) if the affidavit is for use in an application for summary judgment under Part 15 or any procedural or interlocutory application, provided that the affidavit indicates —**
> **(i) which of the statements in it are made from the deponent's own knowledge and which are matters of information or belief; and**
> **(ii) the source of any matters of information and belief.**

(3) The Court may order that any scandalous, irrelevant or otherwise oppressive matter be struck out of any affidavit.
(4) An affidavit containing any alteration may not be used in evidence unless all such alterations have been initialled both by the deponent and the person before whom the affidavit is sworn.

31. With respect to this complaint by Mr. Dorsett, I do not have to take these complaints into account on the determination of the application before the Court principally because the contents of the Affidavit of Tomesina Ferguson and Clarence Ferguson filed on 24 June 2026 are in some respects a regurgitation of the contents of the Tomesina Affidavit and respond to the claim for summary judgment. I found no new material in this Affidavit to materially assist in the determination of the instant application. I found that there are some elements of the Affidavit that are not written for "evidence purposes" and ignores the requirement for the sources, grounds, information and belief to be stated. There is great latitude however in affidavits for use in interlocutory matters. In arriving at this view, I rely on the statements made by Thorne J. in **Hal Nominees Ltd. v. Steadman Labier Investments Ltd. [1995] BHS J. No. 39**. Thorne J. said the following on the contents of affidavits in interlocutory application under the former RSC Order 41.

> **10 In Rossage v Rossage and others [1960] 1 All E.R. 600 Hodson L.J.; commenting on the English counterpart of O.41 R.5 referred to Gilbert v Endean (1878) 9 Ch D 259and quoted Cotton L.J. who said:-**
>
> **"... for the purpose of this rule those applications only are considered interlocutory which do not decide the rights of parties, but are made for the purpose of keeping things in status quo till the rights can be decided, or for the purpose of obtaining some direction of the court as to how the cause is to be conducted, as to what is to be done in the progress of the cause for the purpose of enabling the court ultimately to decide upon the rights of the parties. Now many of the cases which are brought before the court on motions and on petitions, and which are therefore interlocutory in form, are not interlocutory within the meaning of that rule as regards evidence. They are to decide the rights of the parties, and whatever the form may be in which such questions are brought before the court, in my opinion the evidence must be regulated by the ordinary rules, and must be such as would be admissible at the hearing of the cause. In my opinion, therefore, on such applications if an affidavit on**

information and belief is made, the other side is not called upon to answer it under the peril of its being said to him, You have in fact admitted this by not denying it, and therefore the court may act upon the admission'. But I must add this: where in the court below the evidence not being strictly admissible, not being that upon which the court can properly act, if the person against whom it is read does not object, but treats it as admissible, then before the Court of Appeal, in my judgment he is not at liberty to complain of the order on the ground that the evidence was not admissible. But In such a case the court does not act on the statement as being evidence properly admissible, but because the party has by the course which he adopted waived proof of the facts stated on information and belief. I have said this because I think that the matter is one of very considerable importance, and that the habit of introducing into applications to decide the rights of parties evidence on information and belief has done great injury in many ways in Chancery Division." (Emphasis added)

11 In Wilmington Trust Company v Rawat and others Equity Action No. 1407/1990 Hall J. after reviewing several authorities summarised the principles governing the striking out of evidence as follows:-

"(a) an affidavit must comply with the ordinary laws of evidence; accordingly it may exceptionally contain hearsay evidence only when the "sources and grounds" are disclosed.

(b) an affidavit must not contain matter which is scandalous and/or irrelevant and/or oppressive. "Irrelevant" material includes opinions, conclusions and submissions.

(c) where an affidavit which is filed contains any matter which it ought not to contain, the court need only ignore the offending matter unless the breach is egregious.

(d) where an objection is taken by a party to material contained in an affidavit filed by another party, the court may instead of proceeding as at (c) order the offending material to be struck out, but should only do so in "plain and obvious" cases. If the matter is inconsequential the court would still proceed as at (c)."

32. Mr. Dorsett also argued that the proper course is for the matters ventilated in the Defendants' application to be ventilated at a trial. He posited that the application

invites the Court to determine substantive issues in dispute and thereby the evidence should be tested by cross examination.

Part 17 and the American Cyanamid Co. principles

33. The Court's jurisdiction to grant interim injunctive relief is set out in section 21 of the Supreme Court Act and Part 17 of the CPR. I set out below section 21 of the Supreme Court Act.

> **21. (1) The Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the Court to be just and convenient to do so.**
> **(2) Any such order may be made either unconditionally or on such terms and conditions as the Court thinks fit.**
> **(3) If, whether before, or at, or after the hearing of any cause or matter, an application is made for an injunction to prevent any threatened or apprehended waste or trespass, the injunction may be granted, if the Court thinks fit, whether the person against whom the injunction is sought is or is not in possession under claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title, and whether the estates claimed by both or either of the parties are legal or equitable.**

34. Part 17 of the CPR provides:

> **17.1 Orders for interim remedies: relief which may be granted.**
> (1) The Court may grant interim remedies including —
> (a) an interim declaration;
> **(b) an interim injunction;**
> (c) an order authorising a person to enter any land or building in the possession of a party to the proceedings for the purposes of carrying out an order under subparagraph (h);
> (d) an order directing a party to prepare and file accounts relating to the dispute;
> ...
> **(3) The fact that a particular type of interim remedy is not listed in paragraph (1) does not affect any power that the Court may have to grant that remedy.**
> **(4) The Court may grant an interim remedy whether or not there has been a claim for a final remedy of that kind.**

(5) The Chief Justice may issue a practice direction in respect of the procedure for applying for an interim order including, in particular, interim injunctions, search orders and freezing orders.

17.2 Interim junctions and similar orders including search orders and freezing orders.

(1) **This rule deals with applications for —**

(a) an interim injunction under rule 17.1(1)(b);

(b) a search order under rule 17.1(1)(l);

(c) a freezing order under rule 17.1(1)(j);

(d) an order authorising a person to enter any land or building for the purpose of carrying out an order under rule 17.1(1)(h); and

(e) an order for the detention, custody or preservation of relevant property under rule 17.1(1)(h)(ii).

(2) Unless the Court otherwise directs, a party applying for an interim order under this rule must undertake to abide by any order as to damages caused by the granting or extension of the order.

(3) An application for an interim order under this rule may in the first instance be made on three days' notice to the respondent.

(4) The Court may grant an interim order under this rule on an application made without notice for a period of not more than twenty-eight days, unless any of these Rules permits a longer period, if it is satisfied that —

(a) in a case of urgency no notice is possible; or

(b) that to give notice would defeat the purpose of the application.

(5) On granting an order under paragraph (4) the Court must —

(a) fix a date for further consideration of the application; and

(b) fix a date, which may be later than the date under subparagraph (a), on which the interim order will terminate unless a further order is made on the further consideration of the application.

17.3 Time when an order for interim remedy may be made.

(1) An order for an interim remedy may be made at any time, including —

(a) after judgment has been given; and

(b) before a claim has been filed.

(2) Paragraph (1) is subject to any rule which provides otherwise.

(3) The Court may grant an interim remedy before a claim has been made only if —

(a) the matter is urgent; or

(b) it is otherwise necessary to do so in the interests of justice.

(4) Unless the Court otherwise orders, a defendant may not

apply for any of the orders listed in rule 17.1(1) before filing an acknowledgement of service under Part 9.
(5) If the Court grants an interim remedy before a claim has been filed, it must require an undertaking from the claimant to file and serve a claim form by a specified date.

35. The four-stage test outlined by Lord Diplock in **American Cyanamid Co v Ethicon Ltd [1975] 1 All ER 504** need no detail elaboration. It is often and repeatedly applied by the Bahamian courts and has become a fixture in such applications. I however highlight the comments made by Christopher Hancock KC in **O'Brien and Anr v. TTT Moneycorp [2019] EWHC 1491 (Comm.)** where he summarized the four principles:

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

seems likely to cause the last irremediable prejudice to one party or the other": *National Commercial Bank Jamaica Ltd. v Olint Corp. Ltd.* (Practice Note) [2009] 1 WLR 1405 (PC). A mandatory injunction requiring a party to take some positive step at an interlocutory stage will usually carry a greater risk of injustice if it turns out to have been wrongly made. It is therefore legitimate in such cases to require a "high degree of assurance" that the interim relief would ultimately be granted at trial: *Shepherd Homes Ltd. v Sandham* [1971] Ch. 340 at 351 (Megarry J.).

(6) Furthermore, where the grant of interim relief will have the practical effect of giving the application the final relief that it is seeking in the case, the Court will be more reluctant to grant such relief: *Films Rover Ltd. v Cannon Film Sales Ltd.* [1987] 1 WLR 670 at 680.

(7) Where an interim injunction is granted, the usual practice is to make this subject to a condition requiring the applicant to offer a cross-undertaking to pay damages for any losses sustained by reasons of the injunction in the event that it transpires that it ought not to have been granted."

36. I also rely on the following statements of Lord Hoffman in **National Commercial Bank of Jamaica v. Olint Corp. Ltd. [2009] UKPC 16**:

> **[16] The second feature is the basis upon which Jones J decided to refuse an interlocutory injunction and the Court of Appeal decided to grant one. It is often said that the purpose of an interlocutory injunction is to preserve the status quo, but it is of course impossible to stop the world pending trial. The court may order a defendant to do something or not to do something else, but such restrictions on the defendant's freedom of action will have consequences, for him and for others, which a court has to take into account. The purpose of such an injunction is to improve the chances of the court being able to do justice after a determination of the merits at the trial. At the interlocutory stage, the court must therefore assess whether granting or withholding an injunction is more likely to produce a just result. As the House of Lords pointed out in *American Cyanamid Co v Ethicon Ltd* [1975] 1 All ER 504, that means that if damages will be an adequate remedy for the plaintiff, there are no grounds for interference with the defendant's freedom of action by the grant of an injunction. Likewise, if there is a serious issue to be tried and the plaintiff could be prejudiced by the acts or omissions of the defendant pending trial and the cross-undertaking in**

> **damages would provide the defendant with an adequate remedy if it turns out that his freedom of action should not have been restrained, then an injunction should ordinarily be granted.**
> **[17] In practice, however, it is often hard to tell whether either damages or the cross-undertaking will be an adequate remedy and the court has to engage in trying to predict whether granting or withholding an injunction is more or less likely to cause irremediable prejudice (and to what extent) if it turns out that the injunction should not have been granted or withheld, as the case may be. The basic principle is that the court should take whichever course seems likely to cause the least irremediable prejudice to one party or the other. This is an assessment in which, as Lord Diplock said in *American Cyanamid* [1975] 1 All ER 504 at 511:**
> **'It would be unwise to attempt even to list all the various matters which may need to be taken into consideration in deciding where the balance lies, let alone to suggest the relative weight to be attached to them.'**

37. I resist the temptation to engage in a "box-ticking approach". I do not think that such an approach is warranted on the narrow issue before me. That issue is - should the Court grant an interim injunctive relief to prevent the further disconnection of the electricity supply by BPL pending the determination of the issues in the matter at a trial.

38. On the first limb of the test, I am satisfied there is a serious issue to be tried relating to the questions of inheritance and the rights of the Estates of Mr. Clarington Ferguson and Mrs. Angela Marie Smickle-Ferguson in respect of the Property. The Court at a trial will have to determine whether Mrs. Smickle-Ferguson had a life interest or a beneficial interest in the Property and whether any interest fell to her Estate. Those are not matters that I must canvass and determine at the hearing of this application and I resist to do so.

39. It does not appear to me that the Defendants' defence and counterclaim are frivolous or doomed to fail. Whether there is a serious issue to be tried is a low threshold and in my judgment the Defendants met the threshold test.

40. I am also satisfied that damages is not an adequate remedy if the electricity supply is disconnected. I accept Tomesina Ferguson's evidence that if the electricity supply is disconnected that the Property will be uninhabitable with no water and electricity supply. In my view, damages in such instances is not an adequate remedy.

41. In considering the balance of convenience, I rely on the observations of the House of Lords in **American Cyanamid (supra)** to preserve the status quo. The Court said:

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

42. In my judgment, the best course is to grant the relief sought because "**withholding an injunction is more or less likely to cause irremediable prejudice**" (as per Lord Hoffman in **National Commercial Bank of Jamaica v. Olint Corp. Ltd. [2009] UKPC 16**).

43. In the round and for these reasons, I exercise my discretion and grant the injunction in the terms set out above at paragraph 19.

44. As to the costs of and occasioned by the application, I order costs to abide the outcome of the substantive matter at the conclusion of the trial.

Postscript – re Summary Judgment application

45. The Claimants filed a Notice of Application on 22 June 2026 for summary judgment pursuant to Part 15 of the CPR. The Notice seeks judgment on the "**inheritance issue, namely that Angela Ann Marie Smickle-Ferguson was entitled to transmissible rights under the Inheritance Act which vested in her estate and remain enforceable by her personal representative**". The Notice is supported by the Affidavits of David Anthony Morris.

46. The Defendants opposed the application and intimated that the service did not comply with the provisions of the CPR, which requires 14 days' notice. The Claimants' Notice seeks an order to abridge the time for service and the hearing of the summary judgment application.

47. Part 15 of the CPR provides:

> **PART 15 – SUMMARY JUDGMENT**
> **15.1 Scope of this Part.**

This Part sets out a procedure by which the Court may decide a claim or a particular issue without a trial.

15.2 Grounds for summary judgment.

The Court may give summary judgment on the claim or on a particular issue if it considers that the —

(a) claimant has no real prospect of succeeding on the claim or the issue; or

(b) defendant has no real prospect of successfully defending the claim or the issue.

15.3 Types of proceedings for which summary judgment is not available.

The Court may give summary judgment in any type of proceedings except —

(a) admiralty proceedings in rem;

(b) probate proceedings;

(c) proceedings by way of a fixed date claim;

(d) proceedings for —

(i) claims against the Crown;

(ii) defamation;

(iii) false imprisonment;

(iv) malicious imprisonment; and

(v) redress under the Constitution.

15.4 Procedure.

(1) Notice of an application for summary judgment must be served not less than fourteen days before the date fixed for hearing the application.

(2) The notice under paragraph (1) must identify the issues which it is proposed that the Court should deal with at the hearing.

(3) The Court may exercise its powers without such notice at any case management conference.

15.5 Evidence for the purpose of summary judgment hearing.

(1) The applicant must —

(a) file affidavit evidence in support with the application; and

(b) serve copies of the application and the affidavit evidence on each party against whom summary judgment is sought, at less than fourteen days before the date fixed for hearing the application.

(2) A respondent who wishes to rely on evidence must —

(a) file affidavit evidence; and

(b) serve copies on the applicant and any other respondent to the application; at least seven days before the summary judgment hearing.

15.6 Powers of Court on application for summary judgment.

(1) The Court may give summary judgment on any issue of fact or law whether or not the judgment will bring the proceedings to an end.
(2) Where the proceedings are not brought to an end the Court must also treat the hearing as a case management conference.

48. I refused to entertain the summary judgment application because the Defendants' Notice of Application for interim injunctive relief proceeded as an emergency application and the Defendants' Counsel took the point on service of the summary judgment application. The best course is for the Claimants to seek a date at the Listing Office for the hearing of the summary judgment application.

49. It also appeared to the Court that the Notice was only filed in response to the Notice filed by the Defendants. That being the case, the Court was also not willing to entertain the application and considered the overriding objectives set out at Part 1.1 of the CPR, which provides:

> **PART 1 - OVERRIDING OBJECTIVE OF RULES**
> **1.1 The Overriding Objective.**
> **(1) The overriding objective of these Rules is to enable the Court to deal with cases justly and at proportionate cost.**
> **(2) Dealing justly with a case includes, so far as is practicable:**
> **(a) ensuring that the parties are on an equal footing;**
> **(b) saving expense;**
> **(c) dealing with the case in ways which are proportionate to -**
> **(i) the amount of money involved;**
> **(ii) the importance of the case;**
> **(iii) the complexity of the issues; and**
> **(iv) the financial position of each party;**
> **(d) ensuring that it is dealt with expeditiously and fairly;**
> **(e) allotting to it an appropriate share of the Court's resources, while taking into account the need to allot resources to other cases; and**
> **(f) enforcing compliance with rules, practice directions and orders.**

50. I highlight the following extract from the Notes in the CPR Practice Guide on the application of the overriding objective:

> **The overriding objective of the CPR is to enable the Court to deal with cases justly and at proportionate cost. It requires an objective and even-handed approach (*Al-***

Zahra (PVT) Hospital v DDM [2019] EWCA Civ 1103.) **Appellate courts have and can lay down binding principles regarding what justice requires in the context of litigation (such as the principle of finality) and this informs the proper approach to the interpretation and application of the overriding objective (*Sainsbury's Supermarkets Ltd v Visa Europe Services LLC et al [2020] UKSC 24*).**

It has long been established that the purpose of procedural rules is to facilitate the achievement of substantive justice and that the proper relation of procedure to justice is that of handmaid and not mistress (see, e.g., *Coles v Ravenshear [1907] 1 KB 1.*) The fact that the Court is mandated by the CPR to deal with cases justly means that there will be considerably less tolerance for arid squabbles about insubstantial technicalities than in the past. The Court must ensure that justice is done at proportionate cost in accordance with the overriding objective without being diverted by technicalities.

51. It seemed to me that to entertain the summary judgment application at the hearing on 25 June 2026 would amount to a serious miscarriage of justice given the very short notice of 2 days afforded to the Defendants to attend their minds to the application. I was therefore not mined to abridge the time of service and refused to hear the application. Counsel for the Claimants is therefore directed to have the Notice set down for hearing in the usual fashion.

DATED the 1 day of July 2026

Raynard S Rigby KC
Acting Justice