

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 Clarrington 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 Honourable Mr. Acting Justice Raynard S Rigby KC

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

Hearing Date: 28 July 2026

Rigby J. (Actg.):

Introduction

[1.] By Notice of Application filed on 7 July 2026 the Claimants seek leave to appeal this Court's Ruling made on 1 July 2026 granting an interim injunctive relief to the Defendants ("the Injunctive Order"). The Claimants' application is supported by the Affidavit of David Anthony Morris filed on 7 July 2026.

[2.] The Injunctive Order was granted 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.

[3.] In my decision I also refused to hear the application for summary judgment filed by the Claimants on 22 June 2026 because it did not comply with Part 15 of the Supreme Court Civil Procedure Rules, 2022 (the CPR"). The Defendants also objected to the hearing of the application as it did not comply with the required 14 days' notice period. I did not dismiss the summary judgment application but directed that the Claimants have the summary judgment application properly listed and brought on for a hearing in the normal course.

[4.] The Claimants also seek leave to appeal from my 'decision' to not entertain the summary judgment application.

[5.] The Defendants did not support the leave to appeal application.

Grounds of appeal

[6.] Having reviewed the intended grounds of appeal set out in the Notice of Application, I am not satisfied that the Claimants' prospective appeal presents a realistic prospect of success. In my judgment, the prospective appeal raises no novel points of law, nor any legal issues of public importance that require clarification by the appellate process in the public interest. I do not deem that the Claimants have a serious appeal or one set up in good faith that satisfies the test to be applied in granting leave to appeal.

[7.] The Claimants' intended grounds of appeal are summarized below:

- (i) The Court erred in failing to consider that the Defendants are trespassers;
- (ii) The Court misapplied the principles set out in *American Cyanamid* and wrongly decided that there was a serious issue to be tried;
- (iii) The Court erred in refusing to hear the summary judgment application; and
- (iv) The Court wrongly determined that costs should abide the outcome of the trial.

Leave to appeal

- [8.] The Injunctive Order is an interlocutory order requiring leave to appeal (see *Old Fort Bay Property Owners Association Limited v Old Fort Bay Company Limited; Matthew Chance Hudson and Zsuzsanna Marta Foti v Old Fort Bay Company Limited and New Providence Development Company Limited; Old Fort Bay Company Limited v Old Fort Bay Property Owners Association Limited 2014/CLE/gen/773 consolidated with 2014/CLE/gen/0889 and 2017/CLE/gen/00014*).
- [9.] In *Gateway Ascendancy Ltd. v R & R Holdings Limited 2023/CLE/gen/00781*, this Court had to consider the test to be applied on an application for leave to appeal. At paragraph 13 of that decision, this Court stated:

13. Mr. Gomez KC in his opposition to the leave to appeal application argues that the Claimant's intended appeal has no prospects of success. That is not the sole criteria for the grant of leave to appeal. In *Gregory Cottis (as Executor of the Estate of Raymond Adams) v Robert Adams (a beneficiary of the Estate of Raymond Adams) SCCiv App No. 23 of 2021*, Evans JA set out the law on a leave to appeal application (see also *Miller Enterprise Limited & Anr. v. Shundra Strachan & Ors. SCCivApp No. 79 of 2025*):

11. In *Smith v Cosworth Casting Processes Limited (1997) 4 All ER 840* Lord Wolff, opined as follows:

(1) "The court will only refuse leave if satisfied that the applicant has no realistic prospect of succeeding on the appeal. This test is not meant to be any different from that which is sometimes used, which is that the applicant has no arguable case. Why however this court has decided to adopt the former phrase is because the use of the word 'realistic' makes it clear that a fanciful prospect or an unrealistic argument is not sufficient.

(2) The court can grant the application even if it is not so satisfied. There can be many reasons for granting leave even if the court is not satisfied that the appeal has any prospect of success. For example, the issue may be one which the court considers should in the public interest be examined by this court or, to be more specific, this court may take the view that the case raises an issue where the law requires clarifying.”

12. In *Keod Smith v Coalition to Protect Clifton Bay* (SCCivApp No. 20 of 2017), Isaacs JA adopting the guidance from Lord Wolff noted at paragraph 23 of the Judgment:

“The test on a leave application is whether the proposed appeal has realistic prospects of success or whether it raises an issue that should in the public interest be examined by the court or whether the law requires clarifying: per Lord Woolf in *Smith v Cosworth Casting Process Ltd* [1997] 4 All ER 840.”

- [10.] In its judgment delivered on 6 July 2026 in *Richard Hayward & Ors. v Striker Trustees Limited & Ors.* SCCivApp No. 229 of 2025 the Court of Appeal reaffirmed the test for granting leave to appeal. Kokaram JA said:**

15. The test for granting leave to appeal is well settled. The Court will only grant leave if (a) the proposed appeal has a realistic (not fanciful) prospect of success, or (b) the appeal raises an issue of general public importance that requires the clarification of the law. See *Smith v. Cosworth Casting Processes Ltd* (1997) 4 All ER 840.

“31. In considering whether the appeal has realistic prospects of success, the following principles are considered:

a. ‘In order to succeed in challenging the exercise of a judicial discretion an applicant must persuade the Court that the Judge exercised the discretion under a mistake of law; or in disregard of principle; or under a misapprehension as to the facts; or that she took into account irrelevant matters; or that she failed to exercise her discretion; or finally, that the conclusion which she reached in the exercise of her discretion was outside the generous ambit within which a reasonable disagreement is possible’ See *The World Famous Valley Boys Junkanoo Group et al v The Registrar General of the Commonwealth of The Bahamas* SCCivApp. No. 63 of 2025 at paragraph 56...; ‘In framing draft grounds of appeal, and in advancing submissions in favour of the grant of permission to appeal, the putative appellant must anchor their case to those principles and explain which of them is engaged, and why, as regards each challenge...”

- [11.] Having regard to the principles I must apply, I do not deem the application to warrant the grant of leave to appeal and therefore I refuse the application. The application, in my view, woefully fails the test for leave to appeal.
- [12.] The issue as framed by Mr. Dorsett in his written submissions is **“whether the learned judge erred in law and principle in granting injunctive relief to trespassers, refusing to hear the Claimants’ summary judgment application, and calling a clear statutory entitlement a triable issue”**.
- [13.] The issue before the Court when the Injunctive Order was granted was deemed to be one of urgency in relation to the supply of electricity to the property, which is the subject of the dispute between the parties. The dispute relates to which estate, that is, the Estate of the late Clarrington Ferguson or the Estate of Angela Ann Marie Smickle-Ferguson, is entitled to the property, being a house situated at No. 28 Taylor Street, Nassau Village, New Providence (“the property in Nassau Village”). At the time of the application which led to the Injunctive Order, two of the Defendants were in occupation of the property.
- [14.] Furthermore, at the time of the hearing and determination of the Injunctive Order, while pleadings were closed in the action, no determination was made by a judge of the Supreme Court in relation to the respective relief sought by the parties in their pleadings, Standard Claim Form filed on 2 April 2026 and the Defence and Counterclaim on 3 June 2026. That is, the substantive issues in dispute over the properties in the respective Estates were not determined and remained live issues. It therefore follows that there was in fact no determination by a Court of who were the trespassers or rightful owners of the property in Nassau Village.
- [15.] The facts before me at the grant of the Injunctive Order was such that the Bahamas Power and Light Company Limited may disconnect the power supply to the property in Nassau Village if the Court did not intervene and that without the electrical supply the home would be inhabitable.
- [16.] I do not deem the issues raised by Mr. Dorsett to be of merit and in my view, his intended appeal on the summary judgment ‘decision’, demonstrates a last-ditch hopeless effort to circumvent this Court’s case management discretion and has no realistic prospects of success. It does not raise any issue of public interest or importance, and I am further satisfied that the law does not need clarifying on the principles set out in **American Cyanamid Co v Ethicon Ltd [1975] 1 All ER 504**.
- [17.] In **Elisha Miller v Paulina Ginton & Ors SCCivApp No. 4 of 2022** the Court of Appeal dismissed an appeal which sought to challenge the grant of an injunction to reconnect the utilities to a property. Crane Scott JA (as she then was) giving the decision for the Court made the following instructive statements:

33. We agree with Mr. Wallace-Whitfield that (as Lord Diplock clearly explained in delivering the decision of the House of Lords in

American Cyanamid) it is no part of the court's function at the interlocutory stage of the litigation **"...to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature. These are matters to be dealt with at the trial..."**

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

35. It seems to us that on an application for interlocutory relief, some resort to the pleadings and to the evidence will be required. Mere references by the judge to the pleadings and to the affidavit evidence on the Court file without more will not automatically mean that the judge has taken account of irrelevant material or that a "mini-trial" has been held.

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

...

39. In short, in exercising her discretion on the application for interlocutory relief, the judge was entitled to examine the pleadings and the evidence before her for the purpose of satisfying herself that the underlying claim was not frivolous or vexatious and that there was indeed a serious issue to be determined at trial. We are satisfied that she dutifully did so and that she committed no error of law. Ground 3 is dismissed.

...

49. As we see it, in the circumstances of this case her decision to grant the interlocutory injunction was not unreasonable and discloses no error of law. The evidence shows that after voluntarily leaving the house, the Appellant had repeatedly caused the utilities to the house where the Respondents still lived, to be disconnected.

50. In seeking an interlocutory injunction for a second time, all that the Respondents really sought from the judge was an order which would restrain the Appellant from interfering with their previously unhindered enjoyment of the amenities to the house until trial of the substantive action. Damages would obviously not provide them with an adequate remedy for the inconvenience they would suffer in the interim pending resolution of the dispute. In any event, the balance of convenience clearly lay in favour of the grant of interlocutory relief.

...

57. Properly understood, the judge's observation at paragraph 12 that there can be nothing more urgent than restoring the supply of water to the house was made against the background of Mr. Wallace-Whitfield's contention that the grant of the injunction was not a matter of urgency for the Respondents in view of their inordinate delay in seeking injunctive relief. There is no merit in ground 12 which is dismissed.

[18.] As to the costs order made at the hearing of the injunctive relief application, I also deem the intended ground to be meritless.

[19.] I found no merit in any of the intended grounds of appeal.

Conclusion & Disposition

[20.] In light of the matters set out above, I dismiss the application by the Claimants seeking leave to appeal.

[21.] I note that no application was made by the Claimants for a stay pending the hearing and determination of the appeal.

[22.] I order the Claimants to pay the Defendants' costs on the instant application to be assessed by the Registrar in the absence of an agreement.

Postscript

[23.] Given the narrow issues in this matter and the fact that pleadings are closed, I set the trial dates to 7 and 8 December 2026. I also gave the usual directions for discovery and the filing of witness statements. The Pre-trial review is set for 10 November 2026. In my view, this is a matter that can benefit from a speedy trial.

[24.] I thank Counsel for the Claimants and the Defendants for readily agreeing to an early trial date, which should bring finality to the issues in the Estates and hopefully resolve the wider “family” dispute.

DATED 30 day of July 2026

Handwritten signature in blue ink, reading "R. Rigby J. Actg.".

Raynard S Rigby KC
Acting Justice